



European  
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SCIENCES



*Individualization of War Project*  
European University Institute

RESEARCH BRIEF 1 on the Central African Republic

***Who is a Civilian?***  
***Perceptions of “Civilianness” in the Central African Republic***

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The research leading to these results has received funding from the European Research Council under the European Union’s Seventh Framework Programme (FP/2007-2013) / ERC Grant Agreement n. [340956 - IOW] <sup>1</sup>

## Overview of the Brief

This brief focuses on contemporary operational dilemmas faced by international actors in CAR, centering on the perspectives of humanitarian actors as well as civilian staff, police, and peacekeeping forces of the integrated United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). The perspectives of displaced populations, local civil society, and armed actors are also addressed. This brief may be read alone or alongside a companion brief (Research Brief 2 on CAR), which focuses on issues of civilian protection and everyday criminal justice for displaced populations. The field research that generated these findings was conducted by the author during a three-week visit to CAR in April 2019.<sup>2</sup> This investigation is part of a larger project that explores the way in which IHL’s civilian-combatant distinction circulates amongst international actors in armed conflict settings, including contexts such as South Sudan.<sup>3</sup>

The first main section of the brief explores perceptions about who should have the status of civilian in CAR and who is seen to possess qualities of “civilianness”.<sup>4</sup> It examines the civilian character of Internally Displaced Persons (IDP) sites—focusing on the PK3 site in Bria, Haute-Kotto—and addresses the challenges of discerning who is a civilian in CAR. The second section of the brief considers the relevance of international law in CAR, focusing on how international actors understand the application of international humanitarian law (IHL) and human rights law (IHRL) to their daily operations that engage with civilian populations. The brief closes by articulating a number of questions that policy makers and others working on CAR may wish to reflect upon.

The highlights of the research findings are as follows:

**Who is a civilian:** The concept of the civilian retains considerable currency in CAR. Firstly, there is the question of who can be targeted or attacked with lethal force. Secondly, and of particular importance for this brief, there is the question of who merits protection under MINUSCA’s Protection of Civilians (PoC) mandate. As the findings reveal, international actors widely report the difficulty of discerning just which actors fit into the civilian category and doubt the claims of many actors asserting civilian status. No one interviewed for this study believes that the IDP sites in CAR are of a purely civilian character, though many international actors are committed to ‘maintaining’ the civilian character of the sites.

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<sup>2</sup> Time was spent in both Bangui and Bria, including a visit to the PK3 IDP site. A total of 71 individuals were interviewed, through semi-structured key informant interviews and small focus group discussions. Informed consent was secured in all cases. To protect confidentiality, the names of individual respondents and, in some cases, other identifying information (such as the gender of the speaker) have been withheld.

<sup>3</sup> See Rebecca Sutton, ‘The International Humanitarian Actor as ‘Civilian Plus’: The Circulation of the Idea of Distinction in International Law’ (PhD e-Thesis, London School of Economics, 2018).

<sup>4</sup> In this brief, the term “civilianness” refers to a set of qualities that are perceived to be civilian-like or linked to civilian identity. This concept of civilianness is elaborated upon in Sutton, *Ibid*.

**Characterising armed elements:** A related problem is the lack of agreement amongst international actors on how to categorize armed actors in CAR. It is a live question whether these actors should be thought of as combatants or armed groups, according to provisions in IHL, or instead as criminal gangs more appropriately dealt with through a policing paradigm. Many international actors use vague and fuzzy language when discussing these issues. They move seamlessly between the various paradigms of armed conflict or law enforcement, either for strategic reasons or because they do not grasp the potential contradictions involved in adopting certain frames.

**The relevance of international law:** There are significant disagreements amongst international humanitarian actors and MINUSCA actors regarding the application of public international law in CAR. This brief focuses on competing views on IHL's application, with some attention to IHRL. International actors disagree on the existence of an ongoing armed conflict (or conflicts) in CAR, as well as whether, when and how IHL applies. While some international actors—humanitarians in particular—believe that clarifying the relevant law is crucial, others question whether it would make a difference for daily operations and engagement with armed elements.

**Coping with uncertainty in the law:** In the midst of this uncertainty in the governing legal regime, the research uncovers a practice whereby international actors draw on practical reasoning instead of clear legal rules and principles. When entreating armed actors to spare local populations, for example, they will emphasize concerns of reciprocity or accessing the benefits of the peace process - rather than IHL targeting rules such as distinction or precautions in attack.

Reflecting its academic nature and purpose, this briefing note does not prescribe concrete policy solutions but rather articulates fundamental questions that underlie the daily practices of international actors in CAR. It is hoped that the reflections offered here will help to inform fresh thinking amongst international actors regarding what they are doing in CAR, how they are doing it, and for whom they are doing it. A further aim of the brief is to provide useful empirical material for observers who are grappling with (the legal aspects of) international intervention in CAR.

## 1. “Civilianness” in CAR

Conflict in CAR has been characterized by a fragmentation of armed actors, lack of cohesive command structures, generalized criminality and banditry, and localized conflict dynamics.<sup>5</sup> The nature of French colonial rule of CAR is described by many analysts as a facilitating factor in ongoing state weakness and instability and there is a lengthy history of intervention in CAR by other regional and international players.<sup>6</sup> CAR is also entangled in decades-long regional conflict cycle involving other countries such as Uganda, Chad and Sudan.<sup>7</sup>

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<sup>5</sup> Emma Fanning, 'Safeguarding Distinction in the Central African Republic,' *Humanitarian Exchange Magazine*, Issue 62, September 2014.

<sup>6</sup> UK Foreign and Commonwealth Office ('UK Briefing Note'), 'Central African Republic: Background Brief and Analysis of the Crisis', December 2013.

<sup>7</sup> *Ibid.* Many (ex-) Seleka fighters are from Chad or Sudan. See also footnote 8, below.

December 10, 2012 is generally viewed as the starting point of the current iteration of the conflict in CAR. Broadly speaking, the international community has framed the conflict in CAR as a battle between Muslim (ex-Seleka)<sup>8</sup> actors and Christian and animist (Anti-Balaka) actors. Those who are more familiar with the country vigorously dispute the above paradigm,<sup>9</sup> pointing to the importance of reaching further back into history.<sup>10</sup> While this brief is limited in scope and its modest aim is to provide a snapshot of the current moment, it exposes the way in which the daily practices of international actors in CAR are shaped by disagreements over what kind of conflict is manifest in the country.<sup>11</sup>

This first part of the brief considers what it means to say that a particular actor is ‘civilian’ in CAR, and the related question of who is perceived to fit in this category.<sup>12</sup> The focus here is primarily on the civilian identity of the local population, as seen from the perspective of international actors. Particular attention is paid to the practice of identifying civilians for the purpose of discerning who merits (UN) protection.

### 1.1 The Civilian Character of the IDP sites in CAR

*‘The Character of the IDP camps here is not civilian’*

-MINUSCA protection actor, Bangui

*‘Every day and night, armed groups can come. There’s no fence or gate and we aren’t protected.’*

-IDP residing in the cathedral site, Bria

International actors in CAR routinely speak of the importance of maintaining the civilian character of IDP sites. The terminology of ‘maintaining’ is somewhat misleading, however, as it suggests the sites are, presently, populated exclusively by civilians. On the contrary, representatives from international organizations and NGOs seem to agree that armed actors are present in and around most (if not all) of the IDP sites throughout the country. A humanitarian actor in Bangui speaks of PK3 in Bria in the following way: ‘For some of these armed guys it’s a shelter. They are in the middle

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<sup>8</sup> The coalition of Seleka rebels originates primarily from the northern part of CAR, and they are primarily Muslim. They have been formally demobilized, so members are often referred to as the ex-Seleka. The Anti-Balaka were initially formed as civilian defence forces in response to the violence by Seleka, but Anti-Balaka have subsequently engaged in large-scale attacks that included civilians.

<sup>9</sup> Louisa Lombard and Sylvain Batianga-Kinzi, ‘Violence, Popular Punishment, and War in the Central African Republic,’ *African Affairs*, Vol. 114, No. 454, 2014, pp. 52-71. See also Mediciens Sans Frontieres, ‘CAR: The Population does not Buy the Idea that this is a Religious Conflict’, 25 August 2014. [<http://www.msf.org/article/car-population-does-not-buy-idea-religious-conflict>]; Babatunde Olugboji, ‘This is Not a Religious War: What the Fight is Really About’, *Human Magazine*, Issue 1 Summer 2014 pp. 10-13.

<sup>10</sup> See Louisa Lombard, *State of Rebellion: Violence and Intervention in the Central African Republic* (University of Chicago Press, 2016).

<sup>11</sup> On the ‘meta conflict’ in CAR see Lombard, *supra* (*State of Rebellion*), Chapter 1.

<sup>12</sup> As defined in Article 50 of the First Additional Protocol (AP I) to the Geneva Conventions: ‘1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 4 of this Protocol...’. Rule 5 of the ICRC Customary Law Study defines the civilian as ‘persons who are not members of the armed forces’ and states that ‘the civilian population comprises all persons who are civilians’. See Rule 5 of ICRC Customary Law Study [[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule5](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule5)]. Civilians who directly participate in hostilities lose protection for such a time as they participate. See Article 51(3) of AP I.

of thousands of people, knowing they won't be harmed while they're there'.<sup>13</sup> A MINUSCA protection actor in Bangui puts it even more bluntly: 'The character of the IDP camps here is not civilian'.<sup>14</sup>

Many international actors also remark that armed groups in CAR are harming 'their own' populations inside the IDP sites. This refers to local populations considered loyal to a particular armed group due to religious or ethnic ties; for example, the Christian community in the case of Anti-Balaka. From the vantage point of a humanitarian actor in Bria, 'the PK3 site is not purely civilian, because the armed groups are there and they are doing things to the population'.<sup>15</sup>

It is well known that Anti-Balaka maintain an active presence in PK3, despite the efforts that humanitarian and MINUSCA actors make to enforce the site's civilian character. One international humanitarian actor describes the routine efforts that UN humanitarian agencies and NGOs make in this respect. 'We have relationships with community leaders...If someone in your family is Anti-Balaka, you need to tell them not to come here. The community thinks Anti-Balaka protects them, but Anti-Balaka causes problems and is taxing them'.<sup>16</sup>

Research for this brief suggests that a common way to characterize the role of UNPOL's efforts, along with those of MINUSCA, is guarding the civilian character of PK3. But interviewees also mention the problem of reprisal or revenge attacks. These occur when Anti-Balaka residing inside the IDP site try to tax or launch attacks against ex-Seleka affiliates outside the site, and those targeted respond by attacking IDPs inside PK3 – whether they are Anti-Balaka or not.<sup>17</sup> Anti-Balaka fighters are also likened to a band of youth, with some interviewees claiming that the 'self-defence' posture claimed by these actors is more myth than reality. Armed actors formerly affiliated with ex-Seleka forces, such as UPC<sup>18</sup>, also make much of the fact that certain IDP sites host Anti-Balaka elements. The subtext of these claims is that those residing in the sites are potentially 'fair game' for targeted violence.

Although CAR's IDP sites are meant to be weapons free, it is widely known that there are weapons held inside. These are often 'artisanal' or home-made weapons.<sup>19</sup> One MINUSCA actor describes the futility of weapons collections in this way: 'In DDR [Disarmament, Demobilization and Reintegration] you collect the weapons. They'll give you two and keep the others. They can make good machetes and they can make modern Kalashnikovs. They will go and kill and come back to the IDP site'.<sup>20</sup> This observation speaks to the difficulty of conducting weapons searches in Bria, and MINUSCA actors enumerate further challenges: there are up to 55,000 IDPs residing in the PK3 site, with no fence around the perimeter; alert networks enable armed actors to hide their weapons when a search is underway; and armed actors are increasingly retreating further inside the site to avoid detection along the main road.<sup>21</sup>

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<sup>13</sup> Interview with Humanitarian actor, Bangui, 18 April 2019.

<sup>14</sup> Interview with MINUSCA actor, Bangui, 12 April 2019.

<sup>15</sup> Focus group with humanitarian actors, Bria, 24 April 2019.

<sup>16</sup> Interview with humanitarian actor, Bria, 25 April 2019. A similar point is made in Interview with humanitarian actor, Bangui, 23 April 2019.

<sup>17</sup> Interview with MINUSCA actor, Bangui, 14 April 2019.

<sup>18</sup> Mouvement pour l'Unité et la Paix en Centrafrique.

<sup>19</sup> Interview with MINUSCA actor, Bangui, 12 April 2019; Interview with humanitarian actor, Bangui, 13 April 2019.

<sup>20</sup> Interview with humanitarian actor, Bangui, 13 April 2019.

<sup>21</sup> Interview with MINUSCA actor, Bria, 25 April 2019.

The displaced populations who reside in CAR's IDP sites also express anxieties about the porousness of the sites.<sup>22</sup> A focus group discussion with IDPs residing in the cathedral area revealed that although things have calmed down somewhat since the Khartoum<sup>23</sup> and Bria<sup>24</sup> peace agreements, the inhabitants do not feel protected in this setting. 'Every day and night, armed groups can come. There's no fence or gate and we aren't protected. They take the children, and sometimes adults, to their base. You can't do anything to stop it'.<sup>25</sup> A humanitarian actor cites such fears as a central reason for which displaced populations are loathe to give up (all of) their weapons.<sup>26</sup>

The next part of the discussion delves further into the challenges of determining who qualifies as a civilian actor in CAR.

## 1.2 Discerning Who is Civilian in CAR

*'You figure it out in the moment that they begin to act violently, take some kind of action.'*  
-INGO actor, Bria

*'...public opinion is MINUSCA is firing at civilians. MINUSCA is killing civilians'*  
-INGO actor, Bangui

When asked how one might discern who is civilian inside the PK3 site, officials from MINUSCA and humanitarian organizations indicate that distinguishing civilians from armed groups is a difficult task. Often the 'moment of truth' comes only when particular actors begin to act violently.<sup>27</sup> This challenge appears to be particularly acute with respect to Anti-Balaka, as they are so embedded in the IDP sites. One NGO actor in Bangui describes CAR as 'a place where *everyone* is civilian. Even if you have a weapon, wear a uniform and are attached to an armed group, you would claim you are a civilian'.<sup>28</sup> If a person is killed by international forces, armed groups will also often claim that such forces are 'killing our people', thereby suggesting that members of these groups are civilians.

During an April 2018 operation that MINUSCA carried out in coordination with CAR Armed Forces and Internal Security Forces to 'flush out' armed groups from PK5 in Bangui ('Operation Sukula'), locals attempted to thwart MINUSCA's progress.<sup>29</sup> When MINUSCA reportedly returned fire after

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<sup>22</sup> Focus groups with IDPs in PK3, Cathedral Area and Hospital Area in Bria, 26 April 2019. The IDPs I spoke with were most concerned about external armed actors entering the sites, rather than the conduct of armed actors residing in the sites.

<sup>23</sup> See 'Central African Republic: UN Chief Hails Signing of New Peace Agreement', *UN News*, 6 February 2019. [<https://news.un.org/en/story/2019/02/1032091>].

<sup>24</sup> See 'Central African Republic: Six Armed Groups Sign Peace Agreement in Bria', *Centre for Humanitarian Dialogue Report*, 11 April 2019. [<https://reliefweb.int/report/central-african-republic/central-african-republic-six-armed-groups-sign-peace-agreement-bria>].

<sup>25</sup> Focus group with IDPs in Cathedral Area, Bria, 26 April 2019.

<sup>26</sup> Interview with humanitarian actor, Bangui, 23 April 2019.

<sup>27</sup> This perspective is interesting given that, under IHL, an individual might directly participate in hostilities and yet still be considered to have civilian status (under IHL they would temporarily lose civilian immunity).

<sup>28</sup> Interview with humanitarian actor, Bangui, 13 April 2019.

<sup>29</sup> On Operation Sukula see: 'Security Council Press Statement on Attack against United Nations Multidimensional Integrated Stabilization Mission in Central African Republic', SC/13291-PKO/724, 11 April 2018. [<https://www.un.org/press/en/2018/sc13291.doc.htm>].

shots came from a group gathering around MINUSCA tanks, a number of local people died and MINUSCA was accused of killing civilians.<sup>30</sup> In connection with this incident, interviewees for this research openly mused as to whether those killed were ‘real’ combatants or ‘real’ civilians. Either way, public perceptions seem to be that MINUSCA is firing at civilians.<sup>31</sup>

Other actors on the ground in CAR speak of the challenges of determining who is civilian in a setting in which armed groups are ‘making use’ of civilians. Some interviewees take the view that it is one thing if civilians are used involuntarily—as in a human shield scenario—but another if civilians voluntarily decide to participate in fighting. This difference is not always obvious: ‘But often civilians sympathize with armed groups and can become ‘active’...If conscious, and not under duress, they are combatants in my view. But it’s so hard to know.’<sup>32</sup>

The issue of military uniforms has also proven vexing for international actors. This is especially the case with Anti-Balaka, as they do not typically wear any uniforms or insignia. A humanitarian actor in Bangui elaborates upon these dynamics:<sup>33</sup>

Usually we cannot say who is in a group. This is in normal times. And us Westerners, we cannot know who is who. It depends what distinction we want to make: civilian, armed civilian or member of an armed group. I could be part of an armed group, and just be the ‘papa’ protecting the house with a weapon. So we can’t look at the weapon to determine the civilian character of a person. In periods of tension, it can become a bit more clear: groups might put on uniforms and identify themselves more.

One of the implications of the perceived fluidity of the civilian-combatant distinction is a difficulty in counting deaths and casualties. As one representative from MINUSCA explains: ‘Most of the armed groups are civilians with arms. When they don’t have the arms, you don’t have the right to consider them armed groups. We have to call them civilians then.’<sup>34</sup>

In CAR, it is also sometimes the case that *not* wearing a uniform can amount to a sort of uniform. Actors on the ground explain how the lack of uniforms for the Anti-Balaka enables ex-Seleka and affiliated actors to make accusations that anyone who is not in uniform is Anti-Balaka.<sup>35</sup> However, some interviewees also express scepticism about the claim by international actors that they have

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<sup>30</sup> According to a Reuters report, local populations laid out the bodies of at least 16 people who were killed in Operation Sukula outside the MINUSCA HQ in Bangui. Local officials reported 21 civilians killed. See Leger Serge Kokopakpa, ‘Civilians Killed in Centra African Republic Were ‘Manipulated’: UN’, *Reuters*, 12 April 2018. [<https://uk.reuters.com/article/uk-centralafrica-un/civilians-killed-in-central-african-republic-were-manipulated-u-n-idUKKBN1HJ3FS>].

<sup>31</sup> The Security Council Press Statement on Operation Sukula also refers to the death of civilians and states that Security Council members ‘reminded all parties of their obligations under international humanitarian law’. See supra note 29. In the Reuters article cited above (*Ibid*) MINUSCA actors reportedly emphasize that the armed actors in PK5 were criminal gangs; see also ‘Central African Republic: UN Defends Role in Bangui Clashes’, *Deutsche Welle (DW)*, 20 April 2018. [<https://www.dw.com/en/central-african-republic-un-defends-role-in-bangui-clashes/a-43471148>].

<sup>32</sup> Interview with MINUSCA actor, Bangui, 15 April 2019. Another MINUSCA actor puts the term ‘civilian’ in air quotes for local populations that are used as human shields. Interview with MINUSCA actor, Bangui, 17 April 2019.

<sup>33</sup> Interview with humanitarian actor, Bangui, 16 April 2019.

<sup>34</sup> Interview with MINUSCA actor, Bangui, 18 April 2019. It is worth pointing out here that under IHL, being armed does not, in and of itself, disqualify an individual from civilian status.

<sup>35</sup> Interview with humanitarian actor, Bangui, 16 April 2019.

difficulty distinguishing between combatants and non-combatants. Those based in field offices are perceived by local actors as ‘knowing everyone’, including those who are part of armed groups.

Nonetheless, it is clear that humanitarian actors on the ground find the principle of distinction challenging to operationalize, when conflict parties instrumentalize allegations of non-civilian status – as was the case in incidents that occurred in Batangafo<sup>36</sup> and Alindao in late 2018.<sup>37</sup> Some humanitarians also report that MINUSCA actors erroneously associate membership in certain ethnic groups with combatant status. They offer the case of the Fulani as one example, voicing concern that some UN actors do not comprehend the nuances of transhumance in the region.<sup>38</sup> The tendency among some MINUSCA actors to view those in PK5 not as combatants participating in an armed conflict, but rather as criminals carrying out opportunistic acts, is also perceived by humanitarians as an outgrowth of the mission’s stated objective of bringing peace to CAR. In other words, a criminal-gang paradigm conforms to a peacetime scenario.

One interviewee from MINUSCA insists that the mission’s official position is that CAR’s IDP sites fall under a policing paradigm, though lower-level staff in field offices might suggest otherwise. Consistent with this view, violence in IDP sites – which is often perpetrated with artisanal weapons and hunting rifles - is depicted as criminal and a symptom of a law and order problem. These dynamics and questions of the relevant legal paradigm are explored further in the next section, and also in the companion brief on CAR.<sup>39</sup>

## 2.0 The relevance of International (Humanitarian) Law in CAR

*‘We don’t care what this context is. We do PoC’*  
-MINUSCA actor, Bangui

*‘It’s almost lucky it’s the wild west, we also have more leverage’*  
-Humanitarian actor, Bangui

When and where is it appropriate, in a legal sense, to speak of ‘civilians’ as a meaningful category of actor in CAR? Many CAR-based actors cite a civilian-combatant distinction in their routine operations, which implies that there is an armed conflict and IHL is governing law.<sup>40</sup> As field research conducted for this brief revealed, however, there is no consensus amongst international actors operating in CAR regarding where—and, indeed, whether—IHL applies.

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<sup>36</sup> For an MSF report describing the events of November 2018 in Batangafo see ‘Unprotected: Report on Violence and Lack of Protection for Civilians in CAR,’ *Medecins Sans Frontieres*, 19 February 2019. [<https://www.msf.org/unprotected-report-violence-and-lack-protection-civilians-car-central-african-republic>].

<sup>37</sup> Interview with humanitarian actor, Bangui, 16 April 2019. On 2018 violence in Alindao see: ‘CAR: Attacks on an IDP Camp in Alindao’, *ACAPS Briefing Note*, 30 November 2018. [[https://www.acaps.org/sites/acaps/files/products/files/20181130\\_acaps\\_briefing\\_note\\_attacks\\_on\\_an\\_idp\\_camp\\_in\\_alindao\\_car\\_0.pdf](https://www.acaps.org/sites/acaps/files/products/files/20181130_acaps_briefing_note_attacks_on_an_idp_camp_in_alindao_car_0.pdf)]. See also ‘More than 5,000 People Sheltering in MSF-Supported Batangafo Hospital After Violent Clashes’, *Medecins Sans Frontieres*, 14 November 2018. [<https://www.msf.org/central-african-republic-scores-dead-and-thousands-displaced-conflict-erupts-alindao>].

<sup>38</sup> Interview with humanitarian actors, Bangui, 19 April 2019.

<sup>39</sup> See Research Brief 2 on CAR.

<sup>40</sup> Strictly speaking, there is no civilian-combatant distinction as such in NIACs – though as a matter of customary IHL it can be said that the civilian-combatant distinction applies. See Rule 1 of the ICRC Customary Law Study [[https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule1](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule1)].



The classification of an armed conflict in CAR, and equally the determination that there is *not* an armed conflict, will depend upon the facts on the ground. From an international law perspective this classification is crucial: the legal obligations (and protections) of state, non-state actors and international actors such as humanitarians and peacekeepers will flow from it.<sup>41</sup> From approximately December 2012 onwards, international observers have generally described the situation in CAR as a non-international armed conflicts (NIAC) - or more precisely a set of multiple, overlapping NIACs.<sup>42</sup> As armed groups in CAR have increasingly fragmented, however, it has become less evident where the conflicts are and who the parties to the conflict(s) are. There is further uncertainty regarding the presence of an armed conflict following the 2019 Khartoum peace agreement. The ICRC's forthcoming report on the classification of the conflict in CAR—and the decision about whether MINUSCA has become a party to the conflict through its use of force—will provide an important update.<sup>43</sup>

Rather than attempt a definitive classification of the conflict(s) in CAR, this brief canvasses the perspectives of CAR-based actors regarding international law's relevance. The research findings show that international actors are divided not only on which body of international law applies—or which bodies apply, if multiple—but also on whether this even matters for their daily work. These differing perspectives are synthesized into four kinds of (overlapping) views: (I) It does not matter which body of international law governs in CAR; (II) International law matters, but it is not clear which body of law governs and when; (III) International law matters, and the governing regime should be IHL; (IV) International law matters, and the governing regime should be IHRL.

### I. It does not matter which body of international law governs in CAR

The relative lack of interest in, or attention paid to, international law in CAR is often implicit. In interviews with MINUSCA and UNPOL actors, humanitarian actors and civil society actors, the subject of international law mostly arose through my own prompting. When the subject of law was put on the table, some respondents treated it as an academic exercise – a time-consuming one that has a negligible impact on actual practice and distracts from more pressing concerns.

One MINUSCA actor speaks of international law in the following way: 'We don't care what this context is. We do PoC'.<sup>44</sup> In this framing, the authority conferred upon UN peacekeepers as a police force is ample for protecting civilians from violence perpetrated by state or non-state actors. If MINUSCA is faced with armed actors, the mission's Rules of Engagement require that warning

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<sup>41</sup> On the application of IHL in UN peacekeeping see: UN Secretary General's Bulletin: 'Observance by United Nations Forces of International Humanitarian Law', 6 August 1999. [<https://www.refworld.org/docid/451bb5724.html>].

<sup>42</sup> For a discussion of implications of a NIAC in CAR see Patryk I. Labuda, 'The UN Goes to War in the Central African Republic: What are the Limits of Peacekeeping', *Just Security*, 23 March 2017. [<https://www.justsecurity.org/39151/war-central-african-republic-limits-peacekeeping/>].

<sup>43</sup> Pronouncements about whether there is a NIAC in connection with the use of force by UN peacekeepers in Bambari, for example, could have implications for whether MINUSCA is considered a party to the conflict. In interviews, some MINUSCA actors doubted that the ICRC classification would be decisive; one individual emphasized that attacks on peacekeeper will be considered a war crime regardless. See also Geneva Academy's RULAC database, 'Non-International Armed Conflict in the Central African Republic', [<http://www.rulac.org/browse/conflicts/non-international-armed-conflict-in-the-central-african-republic#collapse1accord>](arguing that MINUSCA is a party to the conflict in CAR). The use of force by MINUSCA in Bambari in 2017 is also addressed in Labuda, *supra*.

<sup>44</sup> Interview with MINUSCA actor, Bangui, 19 April 2019.

shots be fired and armed actors be given a chance to lay down their weapons.<sup>45</sup> In such a policing paradigm, groups like the FPRC<sup>46</sup> and UPC are treated mainly as criminal gangs. Nonetheless, MINUSCA will often instruct all forces to comply with IHL, often conveying the benefits in practical terms. If armed actors refrain from violence, for example, they can access the benefits of the peace process.

## II. International law matters, but it is not clear which body of law governs and when

For those who extoll international law's importance in CAR, uncertainty about the governing legal regime may be explicit or implicit. The most common tendency observed in field research is for the speaker to move back and forth between IHL and IHRL regimes without acknowledging the boundaries between these bodies of law nor their potential interaction. References to crowd control, public order, and policing criminal gangs are routinely intermingled with claims about the civilian character of the IDP sites and the importance of protecting civilians from targeted attack.

As a point of clarification, this intermingling is not in and of itself problematic under international law. It may be consistent to claim that the IDP sites are (supposed to be) of civilian character under IHL, and also that law enforcement actions within and outside of the sites are governed by a human rights framework. It merits emphasis that not all violence occurring in CAR will relate to the armed conflict and, even if that were the case, it would be open to the relevant authorities—including UN peacekeepers—to apply a human rights framework. In other words, the problem is not the co-existence of legal regimes so much as a lack of specificity about which regime governs, how and when.

Some MINUSCA actors are adamant that more needs to be done to centre IHL and IHRL in the daily work of the mission, especially for strategic reasons of increasing political pressure. Any uncertainty these actors display regarding which body of law applies<sup>47</sup> is compounded by their sense that their interlocutors—such as media and commanders of armed groups—do not differentiate between IHL and IHRL. One MINUSCA actor explains: 'We will identify incidents as human rights violations, or sometimes IHL violations. We make that clear in our public discourse. But honestly, do people here care about the difference, I'm not sure.'<sup>48</sup>

One way that international actors cope with this uncertainty is to use pragmatic language when persuading armed actors to behave in certain ways. I would call this language a sort of IHL vernacular. Much like the MINUSCA actors cited earlier who extoll the benefits of the peace process, humanitarian actors emphasize practical concerns regarding reciprocity and invoke generic 'humanitarian principles' grounded in local norms.<sup>49</sup> Confusion about law may also have

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<sup>45</sup> Interview with MINUSCA actor, Bangui, 19 April 2019.

<sup>46</sup> Front Populaire pour la Renaissance de Centrafrique.

<sup>47</sup> A MINUSCA actor suggests that it is for judges and courts to make formal legal pronouncements, while MINUSCA's role is to do advocacy to increase political pressure. Interview with MINUSCA actor, Bangui, 18 April 2019.

<sup>48</sup> Interview with MINUSCA actor, Bangui, 18 April 2019.

<sup>49</sup> Interview with humanitarian actors, Bangui, 19 April 2019. These humanitarian principles are more expansive than the traditional humanitarian principles of humanity, impartiality, independence and neutrality.

some advantages, perhaps allowing international actors to cite the most protective regime.<sup>50</sup> One humanitarian actor muses, ‘It’s almost lucky it’s the wild west, we also have more leverage’.<sup>51</sup>

### III. International law matters, and the governing regime should be IHL

As a matter of international law, the application of IHL and IHRL regimes is not mutually exclusive. It is noteworthy, then, that numerous CAR-based actors perceive that there is a choice to be made. The first such group discussed here emphasizes IHL, while the next group (see below) applies a human rights framework.

Those humanitarian actors who are confident that IHL is the governing legal regime argue that CAR is clearly host to an armed conflict, that everyone knows who is fighting who, and that humanitarian actors need to use IHL to negotiate with these armed actors to get guarantees of security and access. One humanitarian actor highlights attempts that MINUSCA actors have made to enter hospitals in CAR with their weapons, citing a poor comprehension of IHL: ‘I don’t think they knew that in no hospital in the world are you supposed to come with your arms...’.<sup>52</sup> Such humanitarian actors see it as part of their work to engage with MINUSCA on IHL issues, noting that this kind of face-to-face contact is much easier to arrange in the capital than in field offices.<sup>53</sup> A more general problem is that no one at field level seems to refer explicitly to international law.

For IHL to gain more of a footing in CAR, its proponents highlight the importance of translating concepts in a way that local actors can understand, and of demonstrating why its application matters – for example, with respect to violations by armed actors. Intriguingly, one of the main strategic reasons cited for relying on IHL in CAR is to preserve this body of law in the longer term. International actors thus speak of ‘saving’ IHL concepts for future use,<sup>54</sup> and preserving a ‘long-term humanitarian ethic’.<sup>55</sup> Actors who engage in this forward-thinking work espouse the view that IHL achieves little in the present moment or the short term.

### IV: International law matters, and the governing regime should be IHRL

Some track a shift in narrative following the 2019 Khartoum peace agreement, away from a war-type situation and towards a law enforcement paradigm where human rights law takes centre stage (along with national law). This human rights framing puts MINUSCA in a more policing-type posture, consonant with the view that the CAR’s IDP sites are a ‘law and order’ problem and that armed actors are opportunistic criminal gangs.

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<sup>50</sup> Selecting the most protective regime is not straightforward, however. While the civilian protection regime may seem legally robust, it remains the case that IHL allows for ‘collateral damage’ and other harms to befall civilians. In some cases, a law enforcement regime that is informed by international human rights law could potentially offer more protection. For a book length treatment on civilian protection under these two legal regimes see: Mark Lattimer and Philippe Sands (Eds), *The Grey Zone: Civilian Protection between Human Rights and the Laws of War* (Hart, 2018).

<sup>51</sup> Interview with humanitarian actors, Bangui, 19 April 2019.

<sup>52</sup> Interview with humanitarian actor, Bangui, 16 April 2019. The legal issues posed by weapons in hospitals merits further attention. The mere entry of MINUSCA actors into a hospital with weapons will not automatically violate IHL; further context is required, as an assessment of IHL compliance will depend upon the facts. If MINUSCA actors were disarming a patient or carrying out questioning or arrest, for example, they might not be in breach of IHL. If MINUSCA actors were to attack the hospital or hide weapons inside, that would be another matter.

<sup>53</sup> Interview with humanitarian actor, Bangui, 16 April 2019.

<sup>54</sup> Interview with humanitarian actor, Bangui, 16 April 2019.

<sup>55</sup> Interview with MINUSCA actor, Bangui, 19 April 2019.

Some international actors who are more recently arrived in CAR were surprised to find other international actors taking IHL's relevance for granted. One humanitarian actor believes that international actors have relied upon IHL in parts of CAR where it does not even apply, and describes the 'no weapons' signs posted above the entrances to some hospitals as misguided.<sup>56</sup> For those who understand CAR to be at peace and thus governed by IHRL, this kind of reliance upon IHL does not make sense. Notably, even those actors who believe they are operating in a peace-time scenario are quick to rely upon a civilian-combatant distinction in their civilian protection work.

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The above findings suggest that the international community needs to clarify the application of the appropriate legal regime(s) in CAR. In situations where multiple bodies of law are potentially relevant – such as when violence occurs in connection with an armed conflict and both IHL and IHRL are in play – the interaction of the two legal regimes merits careful attention. Where acts of violence occur that are not related to an armed conflict, it will also be important to identify the international human rights law obligations that relevant actors must uphold. In any future conversations on this topic it will be crucial to address the perspectives of those actors belonging to the first type outlined above – that is, those who doubt that international law has any relevance for CAR at all. Such engagement is especially important because some proponents of this view are high-level MINUSCA officials.

## Conclusion

The research findings presented in this brief raise pressing questions regarding what it means to protect civilians in a context where the civilian category is so slippery, and in which few can agree on the relevant legal paradigm or on whether an armed conflict exists. These issues must be addressed by international actors working in and on CAR with some urgency, and the manner in which such conundrums are dealt with will have implications for humanitarianism and UN peacekeeping practices far beyond the CAR context.

In closing, five questions are articulated for policy makers and international actors working in and on CAR to reflect upon:

***What does it mean for MINUSCA's Protection of Civilians mandate if CAR is a place where everyone, or alternatively no one, is (perceived to be) civilian?*** This question applies to CAR as a whole, but more specifically to the IDP settings in which MINUSCA and other protection actors understand themselves to be actively engaged in protecting civilian populations.

***If international actors are putting the term 'civilian' in quotes, does this erode the sanctity of the civilian category over time?*** If local populations are spoken about in this way on a daily basis, might it lend credence to allegations of armed actors that everyone is a legitimate target for violence?

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<sup>56</sup> Interview with humanitarian actors, Bangui, 19 April 2019.

***What should respective international actors' posture be towards armed elements in CAR?***

What are the implications of treating these actors as criminal gangs engaged in opportunistic violence, as opposed to (legitimate) armed elements with which one must negotiate issues of security and access?

***In the absence of consensus on whether there is a (non-international) armed conflict in CAR, what is an appropriate manner for international actors to engage with IHL?***

Is the reliance upon vernacular concepts, such as reciprocity, a practice that all international actors should follow when interacting with actors who use violent means?

***If there is not an ongoing in armed conflict in CAR, is the civilian designation a meaningful label?***

If CAR is in a peace-time scenario and international human rights law is the governing regime, what are the implications of saying that someone is, or is not, civilian?