



European
University
Institute

DEPARTMENT
OF POLITICAL
AND SOCIAL
SCIENCES



Individualization of War Project
European University Institute

RESEARCH BRIEF 2 on the Central African Republic

***Everyday Criminal Justice and Civilian Protection
in the Central African Republic***

Dr. Rebecca Sutton

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] ¹

Overview

Recent violent conflict in the Central African Republic (CAR) has been characterized by a fragmentation of armed actors, lack of cohesive command structures, generalized criminality and banditry, and localized conflict dynamics.² After widespread violence broke out in late 2012 and spiked in 2013-2014, there was a brief period of relative stability and calm. Fighting was renewed in 2016, however, as armed factions multiplied and fought against each other. Throughout this period, civilian populations have experienced widespread displacement in CAR.³ Many civilians continue to reside in Internally Displaced Persons (IDPs) sites, some of which are under the protection of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA). Against this backdrop of upheaval and displacement, civilian populations grapple with everyday criminal threats and a lack of access to justice through a (mostly-absent) national criminal justice system. In keeping with a long tradition of popular justice and vigilantism, CAR's displaced populations routinely rely on 'self-justice' to address crime.

This brief considers the issue of everyday criminal justice in CAR and reflects on the challenges that low-level crimes present for international actors engaging in civilian protection activities. It focuses on contemporary operational dilemmas faced by international actors in CAR, considering the perspectives of humanitarian actors, actors from MINUSCA, displaced populations, local civil society, and armed actors. This brief may be read alone or alongside a companion brief (Research Brief 1 on CAR), which considers actors' perceptions of who should be considered a civilian within the context of CAR, and international law's relevance to the work of international actors.⁴ The field research that generated these findings was conducted by the author during a three-week visit to CAR in April 2019.⁵

Responding to noted weaknesses in CAR's domestic justice system, international protection and justice actors have become heavily involved in building local and hybrid criminal justice institutions. To date, much of the international focus has been on the criminal accountability

¹ Author contact: Rebecca.a.sutton@gmail.com. PhD (London School of Economics), JD (University of Toronto), MSc (SOAS). Teaching Fellow in Human Rights Law, University of Edinburgh; SSHRC Post-Doctoral Researcher in the Faculty of Law, McGill University.

² Emma Fanning, 'Safeguarding Distinction in the Central African Republic,' *Humanitarian Exchange Magazine*, Issue 62, September 2014.

³ It is estimated that up to one million individuals were displaced as of late 2014. See Final Report of the International Commission of Inquiry on the Central African Republic, S/2014/928 (22 December 2014).

⁴ Brief 1 also provides more background context on the conflict and on intervention in CAR.

⁵ 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) has been withheld.

of high-level perpetrators and the role of actors such as MINUSCA, the CAR Special Criminal Court, and the International Criminal Court in bringing alleged perpetrators to justice.⁶ This brief draws attention to the more mundane kinds of lower-level crimes and threats that displaced populations must grapple with on a daily basis in CAR – such as theft of a ration card in an IDP site. The discussion also brings this concern for everyday justice into contact with the broader goal of civilian protection in CAR.⁷

The first section of the brief considers access to justice in CAR’s IDP sites from the perspective of local and international actors. The second section examines the ways in which MINUSCA handles arrest, detention and investigation of crime in the IDP sites. The third section addresses the ‘self-justice’ practices that CAR populations engage in, focusing on how international actors perceive and interact with these practices.

Summary of Findings

The highlights of the research findings are as follows:

Access to justice in CAR:

Meaningful access to justice for displaced individuals who are victims of crime in CAR is severely constrained. IDPs express feelings of fatalism and futility in the face of criminal threats—such as theft, robbery, assault or sexual violence—in the IDP sites.

Few expect state actors to deal with criminal threats, and interviewees point to a justice vacuum outside Bangui, the capital. While MINUSCA actors might sometimes step in to deal with criminal threats, ‘self-justice’ is often the main avenue pursued by displaced populations who have suffered criminal harm (see below).

The relationship between justice and protection:

Displaced populations in CAR tend to think of everyday criminal justice as a protection issue. They define harms expansively to include non-physical threats. They expect international actors to provide both justice and protection on a daily basis, and when MINUSCA does not step in to deal with crime IDPs feel unprotected.

⁶ For recent report on high-level accountability in CAR see: Elise Kepler, ‘Without Justice in the Central African Republic ‘Everything Else is Wrecked’, *Human Rights Watch*, 18 April 2019. <https://www.hrw.org/news/2019/04/18/without-justice-central-african-republic-everything-else-wrecked>.

⁷ I elected to focus on this issue after finding in South Sudan that access to everyday justice was an important issue to IDPs that was overlooked by international protection actors. The South Sudan findings are presented in a forthcoming academic paper (co-authored with Emily Paddon Rhoads) on popular and community justice practices.

There is a lack of agreement amongst various actors in CAR regarding what constitutes a low-level criminal threat and what is a higher-level crime that might amount to a conflict-related atrocity. Sometimes, a distinction is made between ordinary crime that one might find in any urban environment, and more systematic criminal acts that are targeted at a specific group of victims. Matters are complicated by the fact that it is often the same civilian population suffering harm in both cases – and this is of course the very population MINUSCA is tasked with protecting.

International protection actors are aware that local populations in CAR link concepts of justice and protection. There is no clear agreement, however, on the extent to which MINUSCA should frame access to justice as a protection issue. While mission staff in Bangui propose that the UN’s protection of civilians (PoC) agenda cuts across all tasks the mission performs—including everyday justice—some field-based mission actors believe that mission leadership in Bangui wants them to compartmentalize justice and protection

Challenges in arrest and detention of alleged perpetrators:

Whether or not the PoC agenda is deemed to encompass everyday justice, as an operational matter MINUSCA routinely engages in arresting, detaining, and investigating crimes in the IDP sites. Two serious challenges arise here, both of which risk undermining the mission’s legitimacy as an intervening actor in CAR:

- (i) MINUSCA struggles to balance the rights of the accused with its commitment to protecting civilian populations. To maintain its image as a PoC actor, MINUSCA must not allow dangerous criminal elements to circulate amongst displaced civilian populations. Separating accused individuals from the community for a prolonged period of time, however, could violate the accused’s rights and undermine MINUSCA’s image as a promoter of the rule of law in CAR.
- (ii) Where MINUSCA disproportionately arrests low-level criminals affiliated with certain armed groups (*e.g.* anti-balaka), it faces accusations of bias that could tarnish the mission’s legitimacy overall.

Self-justice in CAR and MINUSCA’s response:

Local populations in CAR routinely rely on ‘self-justice’⁸, an expedited form of justice which might involve responses ranging from community mediation to violent

⁸ The terminology of ‘self-justice’ is used here because that was the term employed by the majority of respondents—including civilians, themselves. The term is employed in this brief loosely and broadly; it captures all informal, community and popular justice practices that take place outside of the state criminal justice system. The term ‘justice’ is potentially misleading in some instances, however. As Louisa Lombard and Sylvain Batianga-

vigilantism. MINUSCA has struggled to delineate a definitive position with respect to these practices, and it is not clear which practices, if any, the mission endorses. The brief identifies four main challenges that the mission faces with respect to self-justice in CAR:

- (i) The mission risks spreading itself too thin.
- (ii) Support for self-justice could interfere with the mission’s efforts to extend the reach of national law.
- (iii) The mission might condone justice practices—such as mob violence—that fall afoul of its principles and commitments.
- (iv) The mission might endorse justice meted out by armed groups who are harming local populations under cover of the ‘justice provider’ label.

However fraught such engagement is, the brief cautions that *not* taking a position on self-justice is not a viable option for MINUSCA either. Failing to confront these issues head on may generate serious legitimacy problems for the mission.

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 protection and justice actors in CAR. It therefore seeks to instigate fresh thinking amongst international actors regarding the relationship between protection and justice, the effects of current efforts to pursue these agendas, and how those efforts might be reformed.

1.0 Criminal threats and access to justice in CAR’s IDP sites

This section focuses on access to justice issues and the everyday criminal threats that displaced populations face in CAR. It also examines various actors’ perceptions of the relationship between civilian protection and criminal justice. The findings presented here suggest that it will be important for MINUSCA to further clarify whether—and if so, how—everyday justice should be conceptualized as part of the mission’s PoC agenda.

1.1 Access to justice in the IDP sites: local actors’ perspectives

‘There are threats, and theft. There’s nothing you can do.’

-IDP in Cathedral site, Bria

‘Justice should work together with protection, it’s obvious.’

Kinzi point out, ‘justice’ terminology lends a moral quality that is often lacking in the practices in question (they replace ‘popular justice’ with ‘popular punishment’). See 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.

This discussion outlines some access to justice issues that displaced population in CAR are facing, focusing on criminal-type threats. In interviews conducted in Bria and the PK3 IDP site, the following types of threats are repeatedly mentioned: simple theft; robbery involving weapons, often with some threat or use of force; threats of serious violence such as physical assault or murder; rape and other forms of sexual violence; murder, which is now relatively rare. All of these crimes might be perpetrated by other civilians or by armed groups.⁹

When discussing access to justice in CAR, IDPs and local civil society actors move fluidly between low-level and high-level crime, as well as between everyday criminal threats and the wider conflict. While everyone who was interviewed for this study agreed that killing or murder is a serious, high-level type of crime and that most thefts are low-level crime, there seems to be no clear agreement amongst local actors regarding the categorization of sexual violence. Some IDPs, for example, characterize rape in PK3 as a small crime to be dealt with privately by families,¹⁰ while others think it is a serious crime that forms part of an armed conflict paradigm—thus demanding the attention of MINUSCA and specifically UNPOL. Even the seemingly small crime of theft can traverse the low and high-level categories. A one-off theft of a ration card by a neighbour, for example, will be viewed differently from theft or looting that is carried out by armed actors (*brackage*). Where the crime is more systematic and aimed at individuals who are deemed loyal to the opposition, IDPs are more likely to situate this type of harm as part of the wider conflict.

While an IDP bloc leader in PK3 observes that overt conflict has diminished after the peace agreements, he feels this cannot be trusted: ‘Every time, the war starts again. Our homes are burned, we are looted. Of course I want justice.’¹¹ This individual initially seems to use the term ‘justice’ to refer to the arrests of high-level perpetrators in the context of the armed conflict, but when asked who is responsible for delivering justice he sets his sights on an informal, local resource: a camp-based family mediation program run by local paralegals.¹²

To say that something is viewed by local populations as an everyday criminal matter is not to say that it is negligible or harmless to those who experience it or live under threat of it. Small crimes like theft of food rations or ration cards, for example, can disturb relationships within

⁹ This brief focuses on the international response to crimes committed by local actors, and as such it does not address crimes perpetrated by international actors in CAR – such as alleged sexual abuse of local populations by UN mission actors. It can be expected that such criminal activity has a serious impact on the mission’s legitimacy in dealing with criminal justice and providing protection.

¹⁰ As discussed in Section 3 of this brief, MINUSCA actors voice discomfort with such private arrangements.

¹¹ Interview with IDP block leader in PK3, Bria, 26 April 2019.

¹² Such mediation mechanisms will be discussed in the third section of this brief.

the IDP site and impact who has access to the basic necessities of life. Moreover, such acts cannot feasibly be ignored by MINUSCA and international humanitarian actors, as it is the international aid system that has introduced the objects being stolen into the community. While the theft of World Food Program (WFP) food rations in PK3 has been a problem, it is reportedly less common in 2019 than in previous years.¹³ Mission actors attribute the decrease in food aid theft to the presence of MINUSCA forces at the aid distributions, though this is disputed.¹⁴

While, as mentioned, crimes in PK3 are only sometimes seen as tied to the armed conflict, it is striking how consistently IDPs treat the issue of crime in CAR as a protection matter. When asked how justice and protection relate to one another, a female IDP in PK3 answers they are *'aguako'* – Sangho for 'they are one and the same'.¹⁵ A local paralegal based in PK3 also suggests that those working on justice within the UN mission need to collaborate more with those mission actors doing PoC work: 'Justice should work together with protection, it's obvious'.¹⁶ The paralegal also highlights the lack of meaningful access to justice in PK3: 'Up until now, there hasn't been justice. If the authorities came to Bria, then maybe.'¹⁷ For their part, a group of female IDPs—who are the beneficiaries of an INGO program in PK3—report that small crimes and robbery in PK3 are routinely ignored. One female IDP explains: 'There's no justice. Even police are scared. Cases of rape and murder are with UNPOL, but nothing for smaller crimes.'¹⁸

Many IDPs express feelings of fatalism and futility in the face of criminal threats they encounter in CAR's IDP sites. An IDP residing in the Cathedral area in Bria, which is located near to but not inside PK3, states: 'There are threats, and theft. There's nothing you can do'.¹⁹ When asked whether they tend to report these incidents, one IDP replies: 'You can report it but there's no point'. Another says simply, 'Here, there is no justice'.²⁰ IDPs note that armed groups such as ex-seleka and FPRC²¹ might deliver justice elsewhere in CAR, but not here in Bria's Cathedral site. When asked what these armed actors would do if IDPs called them to step in, one IDP flatly responds: 'Nothing'.²²

¹³ Interview with two local paralegals, Bria, 26 April 2019.

¹⁴ Interview with two local paralegals, Bria, 26 April 2019.

¹⁵ Interview with four female IDPs in PK3, Bria, 26 April 2019.

¹⁶ Interview with two local paralegals, Bria, 26 April 2019.

¹⁷ Interview with two local paralegals, Bria, 26 April 2019.

¹⁸ Interview with four female IDPs in PK3, Bria, 26 April 2019.

¹⁹ Focus group with ten IDPs in the Cathedral area, Bria, 26 April 2019.

²⁰ Focus group with ten IDPs in the Cathedral area, Bria, 26 April 2019.

²¹ Front Populaire pour la Renaissance de Centrafrique.

²² Focus group with ten IDPs in the Cathedral area, Bria, 26 April 2019.

For their part, some armed actors emphasize that the responsibility for dealing with crime in Bria and PK3 lies with state actors. An FPRC member in Bria expects the Gendarmerie to be the first port of call for addressing crime in the area, noting that in certain cases MINUSCA will get involved.²³ Another FPRC member contends the mission's presence is too thin, however, and that the FPRC has thus assumed responsibility for providing security in Bria town. He reports that UNPOL is not functioning outside of the PK3 site: 'Where is UNPOL? I don't see them.'²⁴ A MINUSCA official in Bria concedes that these allegations have some truth to them, as UNPOL patrols are focused on PK3 and tend to go to Bria town only for 'mob control'.²⁵

The next section considers MINUSCA and other international actors' perspectives on access to justice in more detail, highlighting competing views on whether everyday justice constitutes a protection matter.

1.2 Access to justice in the IDP sites: international actors' perspectives

'When MINUSCA doesn't deal with crime, IDPs say 'you don't protect us', so criminality and protection is very confused for most people.'

-MINUSCA actor, Bria

'The link between PoC and justice is clear at the most senior levels of MINUSCA... We get these instructions that justice is PoC all the time.'

-MINUSCA actor, Bangui

UNPOL staff in Bria report a dramatic improvement in stability in the wake of the Khartoum²⁶ and Bria²⁷ peace agreements. Displaced populations are venturing further out of PK3 to cultivate their crops and local markets are beginning to recover in Bria.²⁸ However, UN mission staff note that criminal threats continue to affect daily life inside PK3. Many believe that the main perpetrators are unemployed and idle male youth residing in the site. According to an UNPOL actor in Bria, 'When they are stuck inside a site, for the youth the only option is to turn to crime. There is a sense of impunity.'²⁹ Despite ongoing Disarmament, Demobilization and

²³ Interview with FPRC actor, Bria, 25 April 2019.

²⁴ Interview with FPRC actor, Bria, 25 April 2019.

²⁵ Interview with MINUSCA actor, Bria, 25 April 2019. The overlap of policing and armed conflict paradigms is addressed in Research Brief 1 on CAR.

²⁶ 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>.

²⁷ 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>.

²⁸ Interview with three UNPOL actors, Bria, 25 April 2019.

²⁹ Interview with three UNPOL actors, Bria, 25 April 2019.

Reintegration (DDR) initiatives and Quick Impact Projects (QIPs) run by UN mission actors, high levels of unemployment persist.³⁰

An UNPOL official in Bangui observes that it would be normal for any urban centre from Tunis to New York to have crime, but proposes that crime in CAR goes beyond opportunistic urban crime. When criminal acts are targeted at particular victims because of their perceived affiliations to an armed group, for example, criminal harms interact with the conflict in a way that demands a novel kind of response.³¹ It is often difficult, however, to distinguish conflict-related criminal acts from ordinary criminal justice matters. Such an untangling may indeed be impossible in some instances: seemingly isolated criminal acts, for example, can foment inter-family and inter-communal conflicts.

The crucial question that arises for MINUSCA and other international actors in this setting is whether everyday justice matters should properly be considered part of the mission's PoC agenda. The canvassed views of international actors on this question can be distilled into two competing approaches: the first approach conceptualizes everyday justice as a separate matter from protection, and the second understands criminal justice as part and parcel of civilian protection efforts. As will be made evident, the dividing line between these approaches is not a bright one.

Approach 1: Everyday justice is a separate concern from the PoC agenda

Some international actors operating in CAR believe that issues of criminality and protection should be kept conceptually separate and differentiated from one another. For those who espouse this approach, the tendency of local populations to conflate the two issues can be vexing. A MINUSCA official based in Bria explains: 'When MINUSCA doesn't deal with crime, IDPs say 'you don't protect us', so criminality and protection is very confused for most people. It's not just a communication issue. Anything that affects them physically, their freedom, goods, dignity, they see it as PoC.' Interviews with IDPs in and around PK3 suggest that the concept of protection extends even further, to include non-physical threats.

Some international actors in Bria insist that criminal justice issues in PK3 should be left to state justice actors, such as the Gendarmerie. This is partly a matter of fit, as MINUSCA is deemed to be incapable of dealing with low-level crime issues. One humanitarian actor remarks: 'If you

³⁰ Interview with three UNPOL actors, Bria, 25 April 2019. Local civil society actors in Bangui also flag the issue of youth unemployment, describing it as 'a crisis for youth that isn't new'. One local NGO actor emphasises the importance of building up youth in CAR and creating opportunities for them other than criminal or armed group activity (Interview with two local civil society actors, Bangui, 23 April 2019).

³¹ Interview with three UNPOL actors, Bria, 25 April 2019.

have a problem with your wife, or a theft, MINUSCA can't help.³² This begs the question of who should step in in the absence of action by the Gendarmerie. As will be discussed in Section 3 of this brief, 'self-justice' by local actors routinely fills the gap – and, indeed, is part of a longer tradition of popular justice and punishment in CAR.

For those who believe MINUSCA should stick to a narrow and manageable PoC agenda, practical problems arise in the attempt to define what is properly considered a protection-related task. A criminal-type attack against the residents of the PK3 site, for example, might be carried out in retaliation for something anti-balaka have done. A Bria-based MINUSCA actor says such attacks are the most difficult to categorize, and proposes that in the absence of a clear war-like pattern it is preferable to treat criminal incidents as isolated (human rights) violations.³³ This individual elaborates:³⁴

All people of PK3 are seen as legitimate to attack by others, so we protect the camp. We have five checkpoints, just to prevent movement of large armed elements. It's worked mostly because armed groups don't see it as in their interest to attack the camp. It's better to steal, or abuse women. Here, it's criminal violence. We are between the two. We take a permanent posture with respect to the conflict and view the IDP camp within a conflict domain. So, we try to cover it as PoC. But individual crimes are individual crimes.

Such accounts centre classical PoC work and its focus on direct physical protection. Any moves made to address everyday crime are deemed to shift the mission into an awkward posture that fits somewhere between providing physical protection and addressing criminal violence. This blurring of realms is compounded when MINUSCA actors alternately claim to be operating in an armed conflict paradigm or a policing-style paradigm.³⁵

Whatever difficulties arise in differentiating justice and protection matters in practice, some Bria-based MINUSCA actors evidently try to do so because they believe this is the instruction from Bangui.³⁶ As will be discussed below, however, high-level MINUSCA staff in the capital expound an approach that explicitly joins up justice and protection concerns.

Approach 2: Everyday justice is a PoC concern

³² Interview with humanitarian actor, Bria, 25 April 2019.

³³ Interview with MINUSCA actor, Bria, 25 April 2019.

³⁴ Interview with MINUSCA actor, Bria, 25 April 2019.

³⁵ This issue of competing paradigms was addressed in Research Brief 1 on CAR, Section 2 ('The Relevance of International Humanitarian Law in CAR').

³⁶ Note that these were mainly protection actors and UNPOL, rather than justice actors per se. A MINUSCA actor in Bangui suggests that full-time justice staff would have framed things differently.

As noted earlier, local populations tend to conceptualize criminal justice as a protection issue. One humanitarian actor in Bria proposes that it only makes sense for international interveners to adopt an understanding of problems that mirrors the way that locals themselves understand them.³⁷ Another humanitarian rejects the premise that crime and protection are separate issues, saying that criminal justice in CAR falls under MINUSCA's mandate to protect the population.³⁸ Framing criminal justice issues as protection issues is thus a way of assigning responsibility, so as to trigger a response by the mission. One might also point out here that it is often the same civilian population—the very population that MINUSCA is tasked with protecting—that suffers the harm of criminal threats and more conventional protection threats.

A further reason to integrate concerns of everyday justice with civilian protection is the natural overlap between these matters and the difficulty of teasing them apart. Justice issues often encompass, or morph into, protection problems. A particular concern for the UN mission is the potential for low-level crime to catalyse and sustain cycles of violence, and for criminal elements to serve as peace spoilers. A UNPOL official says of crime and instability in PK3: 'We want calm in the camp, and crime impacts that. Crime can degenerate into family conflict and lead to the destabilization of the IDP camps. Small crimes can totally destabilize the peace.'³⁹ On the subject of inter-family spats, another MINUSCA actor adds: 'A family issue—you go deeper into the matter and find some personal disputes. Eventually it boils down to a criminal act.'⁴⁰ In the absence of meaningful access to justice, these cycles of violence are difficult to interrupt.⁴¹

In the same way that justice issues may generate protection issues, a protection problem may involve or lead to a justice violation. The intentional targeting of civilian populations in CAR, for example, may be viewed as an international justice issue that demands a high-level response—for example by justice actors such as the ICC or CAR's Special Criminal Court.

Many high-level MINUSCA staff in Bangui articulate a clear link between issues of crime and the PoC mandate. They point out that PoC is supposed to be mainstreamed across all tasks that the mission performs, including criminal justice at the local level. A MINUSCA justice actor in Bangui identifies local criminal justice systems as the single most important factor in securing access to justice in CAR, and maintains that this is properly understood as a PoC issue.⁴² PoC is treated here as an exhaustive package, with access to justice as an extra

³⁷ Interview with humanitarian actor, Bria, 26 April 2019.

³⁸ Focus group with five humanitarian actors, Bria, 24 April 2019.

³⁹ Interview with UNPOL actor, Bria, 25 April 2019.

⁴⁰ Interview with MINUSCA actor, Bria, 25 April 2019.

⁴¹ Focus group with five humanitarian actors, Bria, 24 April 2019.

⁴² Interview with MINUSCA actor, Bangui, 27 April 2019.

protection ‘tool’ or means for an overstretched mission that cannot be everywhere all the time.⁴³ The same MINUSCA official quoted above adds:

The link between PoC and justice is clear at the most senior levels of MINUSCA... We get these instructions that justice *is* PoC all the time. It’s a mega transversal issue, PoC. In our respective mandates each of us have a little role to play—for example, having a well-maintained prison.

Another MINUSCA actor in Bangui adds that everyone working for the mission is in essence a PoC actor—whether they are working in PoC, Justice and Corrections, Human Rights, the Joint Operations Centre (JOC), or the Joint Mission Analysis Center (JMAC): ‘No matter what role you have, the overall mandate is protection of civilians’.⁴⁴

While this mindset is asserted amongst mission leadership in Bangui, it does not seem to trickle down to MINUSCA staff outside the capital. Some Bria-based MINUSCA actors might personally espouse the view that everyday justice is a PoC issue, but they do not generally see this as the mission’s official position. As noted earlier, one MINUSCA official in Bria also describes IDP claims about the connection between justice and protection as ‘confused’.⁴⁵ While this suggests a potential disconnect between Bangui and field level, differences in rhetoric might not necessarily translate into a measurable difference in implementation. As a practical matter, some mission actors in Bria who conceptualize justice and protection as separate issues are still actively engaged in both traditional PoC work and criminal justice-type tasks.⁴⁶ Still, the lack of a shared vision across the mission regarding engagement with everyday justice could generate operational problems for MINUSCA. This uncertainty resurfaces, for example, in MINUSCA’s response to ‘self-justice’ in CAR (see Section 3).

The next section of the brief delves into routine criminal justice tasks implemented by mission staff in Bria and PK3, such as arrest, investigation and detention of alleged perpetrators. The aim of this part of the discussion is to further explore the operational challenges mission actors face in dealing with everyday crime, whether or not such tasks are conceptualized as PoC work.

2.0 MINUSCA’s response to crime in the IDP sites

‘We won’t fly them to Bangui if they have stolen a mango’

⁴³ Interview with MINUSCA actor, Bangui, 27 April 2019.

⁴⁴ Interview with MINUSCA actor, Bangui, 12 April 2019.

⁴⁵ See above in this section.

⁴⁶ One UNPOL actor in Bria says it is UNPOL and MINUSCA’s joint task to ‘do protection and stop crimes...We’re trying to prevent and stop all types of crime, including other crime that is not specific to IDPs.’ Interview with three UNPOL actors, Bria, 25 April 2019.

-MINUSCA official, Bangui

As noted earlier in this brief, access to justice for ordinary people in CAR in the face of crime is extremely limited. Many international actors voice concerns that a justice vacuum has been generated in CAR as state justice actors have fled to the capital in the face of violent threats.⁴⁷ Leaving aside for the moment the way in which local actors pursue justice through informal mechanisms (See Section 3), this section examines MINUSCA's direct engagement in criminal justice-related tasks in and around PK3. As will be shown, significant issues arise for MINUSCA and specifically UNPOL when interacting with criminal elements. Two main challenges will be highlighted here with respect to MINUSCA's engagement with low-level crime, namely: the need to balance the rights of the accused with community protection, and perceptions of mission bias.

2.1 MINUSCA's engagement with low-level crime

Under the urgent temporary measures (UTM) mandate MINUSCA has the mandate to arrest and detain,⁴⁸ but will generally only take this action when national justice actors are not present or not capable of doing so.⁴⁹

Interviews with UN actors in Bangui suggest that there are two types of arrests the mission may carry out in CAR: those for incidents involving potential International Humanitarian Law and International Human Rights Law violations, which may be of interest to international justice bodies like the ICC, and those for smaller crimes.⁵⁰ Perpetrators of the latter type of crime are routinely released back into the population. As one MINUSCA official states, 'We won't fly them to Bangui if they have stolen a mango.'⁵¹ If the crimes in question are more serious however—in one official's words, 'rape or problem for peace'—then the Transfer Task Force will transfer prisoners to Bangui if the (national) Prosecutor decides this is warranted.⁵²

Some members of the UN mission did not anticipate that they would engage so directly with low-level crime in CAR. According to one MINUSCA actor, the mission set up the UTM mandate to quickly restore basic law and order 'because there was absolutely nothing here. But it's developed far beyond what we perceived'.⁵³ Instead of focusing on potential peace spoilers,

⁴⁷ Interview with humanitarian actor, Bria, 26 April 2019 (arguing justice actors were too quick to flee); Interview with MINUSCA actor, Bangui, 27 April 2019 (arguing the threats made against justice actors were serious and genuine).

⁴⁸ The Urgent Temporary Measure mandate is outlined in UN Security Council Resolutions 2448 (2018) and 2387 (2017).

⁴⁹ Interview with two MINUSCA actors, Bangui, 23 April 2019.

⁵⁰ Interview with MINUSCA actor, Bangui, 15 April 2019.

⁵¹ Interview with MINUSCA actor, Bangui, 15 April 2019.

⁵² Interview with MINUSCA actor, Bangui, 15 April 2019.

⁵³ Interview with two MINUSCA actors, Bangui, 23 April 2019.

MINUSCA thus finds itself grappling with questions such as what to do if they witness a theft or if local police fail to deal with sexual violence.⁵⁴ A humanitarian actor in Bria contends that this is a good thing, and that the mission needs to deal with *all* crimes in PK3 to avoid an atmosphere of impunity. Invoking the prospect of uninterrupted cycles of day-to-day violence, this individual remarks: 'If a person stays hidden in the community, it just continues'.⁵⁵

The next part of the discussion considers decisions to release individuals back into the community after an arrest.

2.2 The rights of the accused

When crimes are committed outside Bangui, the local population will sometimes arrest an alleged perpetrator and ask MINUSCA to detain them. If MINUSCA accepts the request, the mission puts the perpetrator in Temporary Detention Facilities and UNPOL proceeds with an investigation.⁵⁶ The alleged perpetrator will either be released or transferred to Bangui and handed over to national authorities. MINUSCA can detain someone in the temporary facilities for 72 hours, a time-frame that can potentially be extended multiple times.

When deciding whether to transfer accused individuals from the field sites to Bangui, MINUSCA also considers issues of prison overcrowding in the capital. MINUSCA might release an accused individual to avoid exceeding prison capacity, even if it poses a problem for the community in which the crime occurred.⁵⁷ This points to a conundrum the mission must grapple with, namely how to balance the rights of the accused with the protection of local populations.

On the one hand, the mission comes under pressure for holding alleged perpetrators for too long; but equally, MINUSCA is criticized when it opts to quickly release accused individuals back into the community.⁵⁸ While extending the detention timeframe can provide the mission with more time to carry out proper investigations and keep the accused individual out of the community, it may also violate the accused's rights.⁵⁹ There thus seems to be a trade-off between community security and respecting the rights of the accused, with no clear guidance at mission level on how to resolve it. Two specific concerns arise here for MINUSCA. First, the

⁵⁴ Interview with two MINUSCA actors, Bangui, 23 April 2019. Again, there are differing views on what is considered high-level or low-level crime in CAR.

⁵⁵ Interview with humanitarian actor, Bria, 25 April 2019.

⁵⁶ Interview with two MINUSCA actors, Bangui, 23 April 2019.

⁵⁷ Interview with two MINUSCA actors, Bangui, 23 April 2019. An area for further inquiry is MINUSCA's role in providing security, protection and deterrence in Bangui prisons. In particular, the use of force by UN mission actors in the case of prison unrest merits attention (Interview with MINUSCA actor, Bangui, 15 April 2019).

⁵⁸ Interview with three UNPOL actors, Bria, 25 April 2019; Interview with two MINUSCA actors, Bangui, 23 April 2019.

⁵⁹ Interview with two MINUSCA actors, Bangui, 23 April 2019.

mission's legitimacy as a PoC actor may be undermined where criminal elements are re-introduced into protected IDP settings such as PK3. Second, violations of the accused's rights at the arrest, investigation and detention stages could also interfere with MINUSCA's stated intention of promoting the rule of law in CAR. As will now be discussed, a further challenge arises with respect to perceptions of mission bias.

2.3 Accusations of bias

The mission has faced accusations by armed actors that its response to crime in CAR is biased, specifically that anti-balaka members are disproportionately arrested.⁶⁰ In interviews, anti-balaka ask how the UN justifies arresting and holding their people for 'small crimes', while failing to send high-level war criminals to prison.⁶¹ A MINUSCA official deflects such accusations by articulating the difficulty of going after bigger fish.⁶²

But they need to understand, for us to catch big guys, we need a huge element of surprise. How are we expecting MINUSCA, with comparatively light force and limited surveillance to get these established, well-known perpetrators? ...The PoC mandate says that we have to consider, what will you get out of it? Is it the right moment? An opportune time?

A subtext of the critique from anti-balaka actors (most of whom are Christian) is that there is a pro-Muslim bias on the part of certain MINUSCA contingents.⁶³ While MINUSCA actors vehemently reject such claims, they are quick to concede that the mission lacks the dedicated resources to adequately respond to crime overall.⁶⁴ At the same time as anti-balaka often feel over-policed by MINUSCA, they also contend that the mission is not doing enough to address the issue of bandits in PK3.⁶⁵ In keeping with the fuzzy treatment of the boundary between crime and armed conflict in CAR, one anti-balaka member defines bandits as those who 'hurt or kill civilians'.⁶⁶

As this section of the brief has shown, whether or not MINUSCA explicitly frames its engagement with criminal justice as part of the PoC mandate, criminal activity in CAR generates serious dilemmas for the mission. In addition to grappling with issues of protecting the rights of the accused and perceptions of bias, MINUSCA must also decide how to react

⁶⁰ Interview with MINUSCA actor, Bangui, 14 April 2019. This is reported particularly with respect to Bangui and PK3.

⁶¹ Interview with MINUSCA actor, Bria, 25 April 2019.

⁶² Interview with MINUSCA actor, Bria, 25 April 2019.

⁶³ Interview with MINUSCA actor, Bria, 25 April 2019. The Mauritanian contingents are mentioned as one example.

⁶⁴ Interview with MINUSCA actor, Bria, 25 April 2019.

⁶⁵ Interview with anti-balaka actor, Bria, 25 April 2019.

⁶⁶ Interview with anti-balaka actor, Bria, 25 April 2019.

when local populations take justice into their own hands. The third, and final, section of this brief describes the dilemmas that arise for the mission in connection with the everyday justice practices that local populations resort to in CAR.

3.0 MINUSCA's response to 'self-justice' in CAR

'Justice is slow. It takes a long time for justice to happen. But people also do quick justice.'

-Local civil society actor, Bangui

'The problem is that the population resorts to popular justice, so we have to deal with it.'

-UNPOL actor, Bria

The design and implementation of effective protection and justice policies by international actors in CAR must also contend with the reality that affected individuals and communities *themselves* adopt a variety of responses to the criminal threats and other everyday harms that they face. Such practices are typically referred to by local populations themselves as 'self-justice'.⁶⁷ This section explores practices of 'self-justice' in CAR and examines the response of international actors to such practices. When MINUSCA officials speak about the criminal justice system in CAR, they typically refer to a formal, state-sponsored system that applies CAR's national penal code. The tendency here is to cite a justice vacuum, rather than to pronounce on particular laws or practices that should be condemned or condoned—for example, because they fall afoul of international human rights law. A point of particular interest for this brief is the fact that MINUSCA has not yet made clear its position on the legitimacy of popular justice practices⁶⁸ in CAR. It will be suggested here that it is important for MINUSCA to clarify its position on these matters.

3.1 Self-justice in the IDP sites

IDPs often rely on block leaders within the site, other local authorities or armed groups—such as anti-balaka in PK3—to address everyday crime. In the absence of any response by such actors, or by international actors such as the UN, ordinary members of the population may also address the issue themselves.⁶⁹ An INGO actor reports, perhaps hyperbolically: 'People just do self-justice. If someone is stealing from someone else, they can be lynched by their

⁶⁷ See footnote 8, above on how 'self-justice' is defined in this brief.

⁶⁸ Many respondents to this study treated this larger group of justice practices as specific iterations of 'self-justice'. While this brief follows this approach, more research is needed to untangle and categories the different types of justice that fall outside of the state criminal justice system.

⁶⁹ Interview with humanitarian actor, Bangui, 13 April 2019.

neighbours.’ An UNPOL actor surmises that this kind of vigilante popular justice is not only the custom in CAR but is also the kind of justice that populations prefer.⁷⁰

In fact, it seems that the preference for self-justice is often shaped by the belief that local populations have constrained or no access to the ‘slow justice’ associated with court proceedings and other formalized criminal justice mechanisms. Women are reported to have particular difficulty accessing slow justice, due to factors such as a lack of knowledge about their rights, lack of (financial) resources, and insecurity preventing physical access to justice institutions.⁷¹ Displaced women are also likely to live in fear if the perpetrator of a crime remains within the same IDP site as them, an issue which again highlights MINUSCA’s conundrum of balancing the accused’s rights with community protection.⁷² Self-justice emerges as an appealing prospect for displaced individuals, both male and female, who have been the victims of crime in CAR.

At one end of the spectrum, this expedited informal justice might involve (mostly) benign practices such as mediation by community leaders or paralegals. As mentioned in Section 1 of this brief, there is a small group of paralegals who serve as the focal point for mediation of disputes in PK3. They deal with all kinds of community disputes, as well as administrative issues like ensuring that birth certificates are available.⁷³ When there is a serious criminal case in PK3—which these paralegals define as sexual violence or murder—they will generally involve the UN mission.⁷⁴ These local actors do not expect national actors working within CAR’s criminal justice system to respond, and so they deem MINUSCA and UNPOL responsible for dealing with higher-level justice problems.⁷⁵ Coming back to the issue of the overlap between justice and protection, the paralegals also emphasize that maintaining peace at the household level in PK3 is necessary for ensuring calm and stability in the area.⁷⁶

At the other end of the self-justice spectrum there are vigilante practices and mob violence.⁷⁷ There are verifiable reports of local actors detaining people so that they can extort a fine from them,⁷⁸ and of communities staging live burials of women alleged to have committed

⁷⁰ Interview with three UNPOL actors, Bria, 25 April 2019.

⁷¹ Interview with local civil society actor, Bangui, 19 April 2019.

⁷² Interview with local civil society actor, Bangui, 19 April 2019.

⁷³ Interview with two local paralegals, Bria, 26 April 2019.

⁷⁴ Interview with two local paralegals, Bria, 26 April 2019.

⁷⁵ Interview with two local paralegals, Bria, 26 April 2019. One paralegal says: ‘We give justice over to justice – the UN’.

⁷⁶ Interview with two local paralegals, Bria, 26 April 2019.

⁷⁷ Interview with local civil society actor, Bangui, 19 April 2019.

⁷⁸ Interview with MINUSCA actor, Bangui, 27 April 2019. Interview with humanitarian actor, Bangui, 13 April 2019.

witchcraft.⁷⁹ The following section considers MINUSCA's fraught engagement with such forms of justice, along with the issue of justice delivered by armed groups in CAR.

3.2 MINUSCA's position on self-justice

At this juncture it is important for the mission to clarify just what MINUSCA and UNPOL understand to qualify as valid 'law' in CAR, and whether there is consensus that certain traditional justice practices are extra-legal or insupportable for some other reason. Ascertaining what forms of criminal justice response by local populations the mission is willing to condone is a separate matter from the question of whether low-level criminal justice should properly be considered a PoC concern. Nonetheless, it generates similarly pressing legitimacy issues for the mission.

MINUSCA and UNPOL actors interviewed for this study tend to lump all forms of self-justice together, and to treat these practices collectively as non-legal. One MINUSCA actor says the following of community responses to everyday harms: 'Conflicts related to family, forced marriage, problems with the gestation of animals, these are low level infractions. Mechanisms [to address them] exist in fact, not in law.'⁸⁰ It seems that there are two reasons why these practices are not viewed by mission actors as 'law'. Firstly, these informal mechanisms are not state-sanctioned or addressed in national legislation.⁸¹ Secondly, the interpretation of what is legal is tied up with value judgments about the legitimacy, desirability and fairness of the practice in question.

One UNPOL actor in Bria contends that even if self-justice practices in CAR are not considered law in the traditional sense, the mission does not have the option of simply looking away.⁸² Engaging directly with popular justice practices presents numerous challenges for the mission, however, four of which will be articulated here.

First, MINUSCA risks **spreading itself too thin** if it embarks on a concerted engagement with self-justice practices. This is especially so if criminal justice is increasingly brought within the fold of the PoC mandate, a prospect contemplated in this brief. Contemplating this eventuality, one MINUSCA actor laments: 'Now MINUSCA has to deal with it all, as though it's us for every domain'.⁸³

⁷⁹ Interview with humanitarian actor, Bangui, 13 April 2019; Interview with MINUSCA actor, Bangui, 18 April 2019.

⁸⁰ Interview with two MINUSCA actors, Bangui, 23 April 2019.

⁸¹ One individual states that all of MINUSCA's work 'is according to Central African law...we have to follow it.' (Interview with three UNPOL actors, Bria, 25 April 2019).

⁸² Interview with three UNPOL actors, Bria, 25 April 2019.

⁸³ Interview with three UNPOL actors, Bria, 25 April 2019.

Second, in endorsing self-justice practices in CAR, MINUSCA runs the risk of **limiting the reach of national law** and state justice mechanisms. While, as noted, there has been a reported justice vacuum outside the capital (especially as justice actors have fled to Bangui), MINUSCA is actively engaged in supporting state justice actors and re-building CAR's justice institutions. Sanctioning community practices outside the national legal system could interfere with the mission's work to bolster the state.

Third, MINUSCA might (be seen to) endorse justice practices that **violate the principles the mission espouses**, such as respect for human rights law. When local communities elect to repair harms privately for example, they sometimes call for fines to be paid between individuals or families as compensation. A conundrum arises for MINUSCA when these kinds of financial transactions are made in response to sexual violence; several MINUSCA actors argue that such crimes are too serious to be dealt with through traditional justice mechanisms.⁸⁴ While it is intimated here that the community justice practices in question are not legitimate legal practices, MINUSCA has yet to take an unequivocal stance on the issue.

Also related to the above point, the mission struggles in the face of violent self-justice practices. Vigilante violence against individuals accused of witchcraft—who tend to be women—constitutes an oft-mentioned example. Intriguingly, many international actors interviewed for this study discuss witchcraft—or, more precisely, threats of violence by local populations against individuals accused of witchcraft—as both a justice and a PoC issue. MINUSCA has in the past relocated at-risk individuals accused of witchcraft in PK3 to other sites, such as Bambari. The mission has also offered physical protection by doing patrols around the accused individual's house or allowing them to wait inside detention facilities for time to pass. One UNPOL actor frames the safeguarding of those accused of witchcraft as a human rights issue,⁸⁵ while another UNPOL actor proposes that it is PoC work, especially because people are sheltered inside the UN base ('If their life is under threat, we need a protection solution').⁸⁶ A Bria-based official voices approval for this kind of holistic approach, adding: 'It's an integrated mission'.⁸⁷ The fact that witchcraft is codified as a crime in CAR's criminal legislation introduces further complications: local actors who attempt to punish those accused of witchcraft point to this national law in support of their (sometimes violent) actions.⁸⁸

⁸⁴ Interview with two MINUSCA actors, Bangui, 23 April 2019.

⁸⁵ Interview with three UNPOL actors, Bria, 25 April 2019. Inside the MINUSCA base in Bria, there is a makeshift prison and also an informal shelter where at-risk individuals might be offered temporary protection.

⁸⁶ Interview with three UNPOL actors, Bria, 25 April 2019.

⁸⁷ Interview with three UNPOL actors, Bria, 25 April 2019.

⁸⁸ Discussed in Interview with humanitarian actor, Bangui, 13 April 2019; Interview with MINUSCA actor, Bangui, 18 April 2019.

A fourth challenge arises where it is **armed groups** that are meting out criminal justice in CAR.⁸⁹ Local populations often expect armed actors to assume this role, especially when state actors have absconded from their responsibilities of providing law and order.⁹⁰ Evincing wariness, one humanitarian actor proposes that armed actors use the ‘justice provider’ label as a pretext to extort payments from accused individuals.⁹¹ Even where the relevant practices are non-violent and contribute towards the maintenance of public order, it may be problematic for the mission to condone justice by armed actors. As one MINUSCA actor in Bangui explains: ‘Armed groups are going out and arresting people. UN cannot support this, because it’s not within an official established system. Even if we have seen sometimes that it helps to address issues of justice, at the same time it’s illegal.’⁹² Circling back to the third challenge mentioned above, the problem deepens when armed groups engage in justice practices that are violent or in clear violation of international law, as when armed actors kill individuals suspected of committing crimes without credible evidence or due process.⁹³

In light of these identified challenges, it is understandable that MINUSCA might hesitate to make clear public declarations about what it views as the right or wrong kind of justice in CAR. Further, if MINUSCA makes explicit pronouncements on what is *not* allowable, the mission may be construed as condoning all other conduct it does not expressly prohibit. The mission could also attract (further) accusations of bias where it draws attention to problematic justice practices of certain actors but not others.⁹⁴ Having enumerated the downsides, the fact remains that the mission’s failure to stake out a clear position on self-justice also carries serious costs – potentially undermining MINUSCA’s legitimacy as a protection and justice actor in CAR.

Conclusion

This brief has identified some challenges that arise in providing protection to local populations in CAR, drawing attention to an issue that is not consistently framed as a protection problem: the provision of everyday justice for displaced populations. These findings generate pressing questions about MINUSCA’s engagement with justice practices in CAR.

⁸⁹ When carried out by armed groups, self-justice practices may be linked to the self-defence motivations that grounded the initial creation of the groups. Interview with MINUSCA actor, Bangui, 15 April 2019.

⁹⁰ Interview with MINUSCA actor, Bangui, 14 April 2019.

⁹¹ Interview with humanitarian actor, Bangui, 13 April 2019.

⁹² Interview with two MINUSCA actors, Bangui, 23 April 2019.

⁹³ Interview with two MINUSCA actors, Bangui, 23 April 2019. Bambari is offered as a key example.

⁹⁴ This would compound the legitimacy problems the mission is already facing, with respect to its arrests of anti-balaka.

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

1. Should concerns of everyday criminal justice fall within MINUSCA's PoC mandate?

There are many respects in which everyday justice fits naturally within the protection sphere: criminal threats and classic protection threats often overlap, both in the nature of the harm caused and the population that suffers it. Moreover, displaced populations in CAR themselves think of the justice problems they face as protection problems—whether or not they relate to personal physical integrity. Despite this easy alignment between justice and protection, there may be important strategic reasons for giving everyday justice its own sphere outside of the PoC rubric. A point that is hinted at throughout the brief is that there is a danger of PoC expanding so that it means everything to everyone. It merits emphasis that treating justice as a separate matter from protection should not be tantamount to ignoring everyday criminal justice as a problem in its own right.

2. When arresting and detaining accused individuals, how should MINUSCA balance community security with the rights of the accused?

MINUSCA staff dealing with processes of arrest and detention appear to be informed of the mission's human rights commitments, and they do not wish to overstep these in their treatment of accused individuals. When such a commitment is paired with an awareness of prison overcrowding problems, however, it may lead to early re-introduction of accused perpetrators into IDP sites. Such practices can seriously undermine the security of IDPs and also their perceptions of whether MINUSCA is a trustworthy protection actor.

3. What kinds of (self-)justice practices by local populations is MINUSCA willing to support? Are there certain practices the mission will not condone?

It seems clear enough that MINUSCA cannot be seen to endorse any justice practices that involve extra-legal violence or physical harm to individuals. Short of this, the mission needs to clarify which forms of self-justice it wishes to support and it must justify the basis upon which this decision is made. International law could offer one useful yardstick in developing appropriate policies on this issue, but, equally, operational and strategic concerns—such as the mission's efforts to bolster national justice institutions in CAR—will need to be factored in.