

Joint Letter to UN Security Council on UNMISS Mandate

Ref.: IOR 40/9878/2019

To: All Members of the UN Security Council

15 February 2019

Dear Ambassador,

Re: Review of the Mandate of the UN Mission in South Sudan (UNMISS)

Since the latest conflict in South Sudan began more than five years ago, government and opposition forces and their allied militias have consistently targeted civilians and deliberately obstructed humanitarian agencies from reaching people in need and attacking humanitarian workers. Government and opposition forces have attacked health facilities and schools, burnt villages and looted civilian property, exacerbating a dire humanitarian situation and contributing to the creation of yet another lost generation.

A succession of ceasefires, and two peace agreements, have been signed since the crisis erupted in December 2013, all of which have been violated within a matter of days.

Parties to the conflict continue to commit crimes under international law and other serious human rights violations with near total impunity, wanton brutality and a complete disregard for human life. The government's failure to hold to account alleged perpetrators of crimes under international law signals to them that their actions will go unpunished, and helps perpetuate the destructive cycles of violence, revenge attacks and conflict in the country.

This situation and the hostile operating environment has made it difficult for the UN Mission in South Sudan (UNMISS) to fulfil the four pillars of its mandate, namely: to protect civilians, help create conditions for the delivery of humanitarian assistance, monitor and report on human rights violations and abuses, and support the implementation of the peace agreement.

However, UNMISS still has a crucial role to play in South Sudan and the upcoming review of its mandate offers an opportunity to reflect on the changes needed to enable it to effectively execute its mandate.

To begin with, the Security Council should make strong demands on the Government of South Sudan (GoSS) to immediately take concrete and verifiable steps to improve this environment, and the Security Council must be ready to maintain and impose further travel bans and seize financial assets of individuals who are suspected of perpetrating crimes under

international law or serious other human rights violations, or misusing public resources to finance such crimes or violations.

We also call on the Security Council to ensure the following measures are undertaken to strengthen fulfilment of the UNMISS mandate:

- The patrols that UNMISS already undertakes should be more strategic and have a stronger deterrent effect by regularly changing routes, being visible, disembarking and patrolling areas on foot, engaging more deeply with the communities whilst on patrol to effectively ensure the safety and security of civilians and protect women and girls from sexual violence.
- UNMISS should strengthen its early warning assessments for conflict and work with communities to identify conflict hot spots and triggers of conflict at the community level.
- The return, resettlement and reintegration of IDPs and refugees be done in a phased approach that is responsive to the dynamics of each PoC site and locality and in line with international human rights law and standards as enshrined in the 1998 UN Minimum Guiding Principles on Internal Displacement (the Kampala Convention) and the UN High Commissioner for Refugees (UNHCR) minimum standards for safe returns, resettlement and reintegration.
- UNMISS act swiftly and sternly, with the backing of the Security Council, to any act of violence or bureaucratic hurdle that negatively affects the much-needed humanitarian assistance.
- UNMISS steps up its efforts and continues to increase the frequency of public reporting of human rights violations and abuses and consider more and shorter flash reports to promptly expose violations and abuses by State and non-state actors.
- The UNMISS Human Rights Division (HRD) strengthen its efforts to collect and preserve information on individuals implicated in human rights violations and abuses for the purpose of future vetting processes, and in line with the United Nations Human Rights Due Diligence Policy on support to non UN Security Forces.
- UNMISS should proactively share information with the Commission on Human Rights in South Sudan (CHRSS) with due regard to the rights of witnesses and victims.
- UNMISS take all efforts to create a safe environment that enables civil society actors to operate freely and securely. The UNMISS Human Rights Division (HRD) should proactively investigate and issue periodic public reports on freedom of expression and opinion, peaceful assembly and association and related rights.
- UNMISS should strengthen collaboration with civil society actors that are still able to operate in South Sudan, especially those that monitor, document and report on human rights violations and abuses. Collaboration should extend to logistical support to these actors as well as longer-term and hands-on capacity-building support and technical assistance.
- UNMISS Military Liaison Officers (MLOs) should be empowered to report more proactively and detailed on the Cessation of Hostilities Agreement (CoHA) and troop movements to the Security Council to inform its swift action in engaging with parties to prevent or end violations.
- UNMISS should prioritize technical support to the transitional justice process by strengthening its transitional justice department as well as foster more political will for the process.

- UNMISS should actively be involved in the security sector reform process and the cantonment and training of the joint forces.
- UNMISS should collaborate with other actors to actively pursue accountability for crimes under international law and other human rights violations and abuses in South Sudan.

ANNEX: BACKGROUND TO THE RECOMMENDATIONS

Protection of Civilians

Since independence, the Government of South Sudan has demonstrated to the international community that it is incapable and unwilling to live up to its responsibility to protect populations from crimes under international law, that is inherent to the concept of sovereignty.

Government security forces, including the National Security Service (NSS), are allegedly responsible for a disproportionately large part of the violations of international humanitarian and human rights law documented by UNMISS and human rights organizations such as Amnesty International. They currently pose the single biggest threat to the protection of civilians in the country yet are expected to guarantee the safety of civilians. Until the security sector has been diligently vetted and reformed, UNMISS will need to step up to protect civilians.

At least tens of thousands of people have died because of the fighting that started more than five years ago.¹ Since the start of the crisis in December 2013, hundreds of people, mostly men, have been arbitrarily detained by the NSS and Military Intelligence Directorate and subjected to torture and other forms of ill-treatment.²

Whilst some detainees have been released, others remain locked up and arbitrary arrests by the NSS continue despite the clear obligation of the parties to the September 2018 revitalized peace agreement that “Prisoners of War (PoWs) and detainees shall be released immediately under the supervision of the International Committee of the Red Cross (ICRC).”³

Civilians have borne the brunt of the violence. Food insecurity has affected more than six million people, 59% of the estimated population.⁴ This is the result of continued conflict in 2018, coupled with deliberate obstruction of humanitarian assistance by the warring parties who use food as a weapon of war.

¹ Council on Foreign Relations, *Civil War in South Sudan*, *Global Conflict Tracker*, www.cfr.org/interactives/global-conflict-tracker#!/conflict/civil-war-in-south-sudan. A study by the London School of Hygiene and Tropical Medical attributes 190,000 violent deaths to the conflict and 383,000 deaths as the result of indirect causes related to the conflict. See, Francesco Checchi, Adrienne Testa, Abdihamid Warsame, Le Quach, Rachel Burns, *Estimates of crisis-attributable mortality in South Sudan, December 2013 – April 2018: A Statistical Analysis*, London School of Hygiene & Tropical Medicine, crises.lshtm.ac.uk/2018/09/25/south-sudan/

² Amnesty International, *A Trail of Broken Promises: Detention, Torture and Other Ill-treatment by the National Security Service and Military Intelligence Directorate in Juba, South Sudan Continues*, 4 September 2018, https://www.amnesty.nl/content/uploads/2018/09/A-Trail-of-Broken-Promises_04092018.pdf?x65409

³ Article 2.1.6 of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), 12 September 2018.

⁴ World Food Programme (WFP), *South Sudan Country Brief*, September 2018, reliefweb.int/sites/reliefweb.int/files/resources/WFP%20South%20Sudan%20Country%20Brief%2C%20September%202018.pdf

Sexual violence continues to be a major problem in South Sudan. In late November 2018, MSF reported 125 incidents of women and girls who were allegedly raped, beaten and robbed in and around Bentiu in 10 days alone as they walked to a food distribution site. Earlier that year, Amnesty International research proved that during the military operations in southern Unity State that started in April 2018, government forces and their allied militias systematically abducted and raped women and girls. This was going on whilst peace negotiations were taking place.⁵

These attacks demonstrate that women and girls are still particularly vulnerable and in need of UNMISS patrol protection when they collect firewood or food from distribution points. The patrols that UNMISS already undertakes must be more strategic and have a stronger deterrent effect by regularly changing routes, being visible, disembarking and patrolling areas on foot and engaging more deeply with the communities.

Although the months following the signing of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), have seen a decrease in political fighting, it is too early to conclude that the situation in South Sudan is stable. Ongoing fighting in the Equatorias, particularly around Yei, has caused more displacement of civilians with new Internally Displaced Persons (IDPs) reporting widespread lootings, torching of homes, kidnappings, sexual violence and killings of civilians by armed men. Some attributed the attacks due to suspicion of collaborating with rebel groups.

Even if the cessation of hostilities agreement was respected, inter-communal violence and high levels of revenge killings dictate that protection of civilian will likely be a prolonged need. With the notorious weak justice institutions and the allegations of serious crimes and human rights violations committed in the hands of the South Sudanese security forces, UNMISS must be prepared to effectively ensure the safety and security of civilians.

In an effort to pre-empt violence, UNMISS should strengthen its early warning assessments for conflict and work with communities to identify conflict hot spots and triggers of conflict at the community level.

The violence has forced 2.2 million South Sudanese, 80% of which are women and children, to flee their homes.⁶ This has led to the gravest refugee crisis in Africa and the third largest in the world. Within South Sudan, over 1.8 million people, the majority of which are children, have been internally displaced,⁷ many of which multiple times.

Close to 200,000 have sought protection in 'Protection of Civilians' (PoC) sites on the UNMISS bases.⁸ While recognizing the temporary nature of the PoC sites and the need for closure of

⁵ Amnesty International, South Sudan: "Anything That Was Breathing Was Killed" – War Crimes in Leer and Mayendit, South Sudan, 18 September 2018, <https://www.amnesty.org/en/documents/afr65/8801/2018/en/>

⁶ UNHCR, South Sudan Regional Refugee Response Plan January 2019 – December 2020, December 2018, <https://data2.unhcr.org/en/documents/download/67312>

⁷ UNOCHA, Humanitarian Bulletin South Sudan, 30 December 2018, Issue 12, https://reliefweb.int/sites/reliefweb.int/files/resources/SS_20181230_OCHA_Humanitarian_Bulletin_12%20final.pdf

⁸ UNMISS, PoC Update, 21 January 2019, https://unmiss.unmissions.org/sites/default/files/poc_sites_update_227_-_21_january_2019.pdf

these sites in due course of time, Amnesty International is concerned that the conditions in South Sudan are not sufficiently conducive for closure of PoC sites in the near future.

We strongly recommend that the return, resettlement and reintegration of IDPs and refugees be done in a phased approach that is responsive to the dynamics of each PoC site and locality and in line with minimum international human rights law and standards as enshrined in the Minimum Guiding Principles of IDPs, the Kampala Convention and the UN High Commissioner for Refugees (UNHCR) minimum standards for safe returns, resettlement and reintegration.

Amnesty International urges the Security Council to ensure that any return of IDPs and refugees is done strictly on a voluntary basis. UNMISS must protect the right of IDPs to be protected against any forced relocation or any return or resettlement that could place their life and physical safety at risk. Civilians must be provided with all relevant and accurate information in a timely manner that may affect their decision, including on both the security situation outside of UN bases and the conditions in the proposed area of resettlement.

Any return and resettlement must be guided by diligent, well thought through plans for each of the PoC sites that are unique to their political situations and fault lines. These plans must also facilitate conflict-sensitive resettlement and reintegration programs bearing in mind that the return of IDPs risks kindling old community-level conflicts or igniting new ones. UNMISS must strictly adhere to the do no harm principle and avoid unintentionally contributing to demographic shifts that exacerbate conflict. Likewise, careful thought must be put into the impact of occupied houses and land on the land rights of IDPs currently residing in the PoCs. As discussions about the return, resettlement and reintegration of IDPs continue, UNMISS must ensure participation of civilians in these plans.

Creating the conditions conducive to the delivery of humanitarian assistance

Given the dire humanitarian situation in South Sudan and the exorbitant high levels of trauma,⁹ UNMISS and the UN Country Team (UNCT) must be specifically mandated to collaborate with development and humanitarian partners to ensure that basic services including (mental) health care, food and water, shelter, sanitation and education are accessible to civilians. Given the destructive effect of the conflict on civilians, special attention will have to be paid to the rights of the disabled.

The humanitarian crisis in South Sudan will continue to require assistance and the aftermath of the current fighting will prolong this even further. In December 2018, thirty-seven incidents of obstruction to the delivery of humanitarian assistance were reported by humanitarian organizations, with 46% of those involving violence against personnel and assets.¹⁰ UNMISS

⁹ Amnesty International, South Sudan: "Our Hearts Have Gone Dark": The Mental Health Impact of South Sudan's Conflict, 6 July 2016, <https://www.amnesty.org/en/documents/afr65/3203/2016/en/>; A 2015 study by the South Sudan Law Society (SSLS) and the UN Development Programme (UNDP) found that 41% of the 1,525 sample group across the country showed symptoms consistent with Post-Traumatic Stress Disorder (PTSD). In, South Sudan Law Society and the UN Development Programme, Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan, June 2015, <http://www.ss.undp.org/content/dam/southsudan/library/Rule%20of%20Law/Perception%20Survey%20Report%20Transitional%20Justice%20Reconciliation%20and%20Healing%20-.pdf>

¹⁰ UNOCHA, Humanitarian Bulletin South Sudan, 30 December 2018, Issue 12, https://reliefweb.int/sites/reliefweb.int/files/resources/SS_20181230_OCHA_Humanitarian_Bulletin_12%20final.pdf

must act swiftly and sternly, with the backing of the Security Council, to any act of violence of bureaucratic hurdle that negatively affects the much-needed humanitarian assistance.

Monitoring and investigation human rights

Since the reorganization of the structure and operating procedures of the UNMISS Human Rights Division (HRD), the monitoring and reporting on human rights violations and conflict-related violations has improved in terms of frequency and rapid response. UNMISS should step up its efforts and continue to increase the frequency of public reporting and consider more and shorter flash reports to promptly expose violations and abuses by State and non-state actors.

The UNMISS HRD should strengthen efforts to collect and preserve information on individuals allegedly implicated in crimes under international law and human rights violations and abuses for the purpose of future vetting processes.

To further contribute to accountability, UNMISS should proactively share information with the Commission on Human Rights in South Sudan (CHRSS) with due regard to the rights of witnesses and victims.

Human rights defenders and journalists as well as UN personnel continue to face threats, intimidation and are subjected to arbitrary detention¹¹ or enforced disappearances¹² by state and non-state actors. This has forced many into exile.

Both the 2014 NSS Act and the 2016 NGO Act have contributed to the shrinking of the civic space by giving the NSS broad powers of arrest and making registration and operation increasingly difficult and expensive for NGOs. NSS, for instance, now requires organizations to request their approval to hold public events and will attend workshops and meetings.

UNMISS should take all efforts to create a safe environment that enables actors to operate freely and securely. The UNMISS HRD should proactively investigate and issue periodic public reports on freedom of expression and opinion, peaceful assembly and association and related rights.

UNMISS should strengthen collaboration with the civil society actors that are still able to operate in South Sudan, especially those that monitor, document and report on human rights violations and abuses. Collaboration should extend to logistical support to these actors as well as longer-term and hands-on capacity-building support and technical assistance.

Supporting the Implementation of the Agreement and the Peace Process

There is a strong and urgent need for the Security Council and UNMISS to react to the reports more vigorously and seek the compliance of the Government of South Sudan with the

¹¹ Amnesty International, Urgent Action Update: Activist Arbitrarily Detained for Almost 6 Months, 25 January 2019, https://www.amnesty.org.uk/files/2019-02/FI14318_1.pdf?lsHUGXss7qIEYjEzJ5P2nQDBVw8akckm; Amnesty International, Urgent Action: South Sudanese Activist Arbitrarily Detained, 27 August 2018, <https://www.amnesty.org/download/Documents/AFR6589942018ENGLISH.pdf>; See also DefendDefenders, "This Is Our Freedom. These Are Our Rights:" Human rights defenders in South Sudan since July 2016," 26 April 2018, www.defenddefenders.org/publication/this-is-our-freedom-these-are-our-rights-human-rights-defenders-in-south-sudan-since-july-2016/.

¹² Amnesty International and Human Rights Watch, Kenya: Court drops oversight on enforced disappearance of two South Sudanese critics, 12 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/kenya-court-drops-oversight-on-enforced-disappearance-of-two-south-sudanese-critics/>

Agreement. Unless punitive and accountability measures follow breaches of the revitalized peace agreement, the parties will continue violating the agreement.

The Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAM-VM) does not systematically and publicly report on violations. To fill this gap, the UNMISS Military Liaison Officers (MLOs) must be enabled to report more proactively on the Cessation of Hostilities Agreement and troop movement to the Security Council in order to inform its swift action to pressure parties to end the violations.

The revitalized peace agreement contains vital provisions to deal with the legacy of violence, hold those responsible to account (including through the establishment of a hybrid court for South Sudan), provide much-needed reparations to victims and initiate institutional reforms necessary to guarantee non-repetition. In the upcoming year, UNMISS should prioritize technical support to the transitional justice process by strengthening its transitional justice department as well as fostering more political will for the process.

The technical support necessary extends to guarantees of non-repetition such as security sector reform efforts, including preparatory activities such as the cantonment and the training of joint forces, that are desperately needed to secure the country and reparations to repair the harm done to victims of human rights violations and abuses.

In the peace agreement that was signed in August 2015, 3.5 years ago, the government agreed to the creation of an African Union-South Sudanese Hybrid Court for South Sudan to investigate and prosecute those most responsible for crimes under national and international law and other human rights violations committed in the context of the conflict. Yet, South Sudanese leaders have dragged their feet and long delayed establishing the court. People who committed these crimes should be held accountable. UNMISS should strengthen efforts towards the establishment of the Hybrid Court for South Sudan and, in parallel, must collaborate with other actors to actively pursue complementary and strategic avenues for pursuing accountability for human rights violations and abuses in South Sudan.

Without accountability and rigorous reforms, the future of the political and security situation in the country is unlikely to change.

We thank you for your attention to these pressing issues.

Sincerely,

Amnesty International
Center for Inclusive Governance, Peace and Justice (CIGPJ)
Remembering the Ones We Lost (ROWL)
South Sudan Women Empowerment Network (SSWEN)

