

A. 'South Sudan: Violence jeopardizing MSF work'

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

[Source: 'South Sudan: Violence jeopardizing MSF work', BBC, 26 February 2014, available at: <http://www.bbc.com/news/world-africa-26357138>]

[1] Medical charity MSF has warned its work in South Sudan is being jeopardized as a result of 'brutal' attacks on medical facilities in which patients and its hospital staff have also been targeted.

[2] Fighting between the government and rebels since mid-December has displaced about 860,000 people, the UN says.

[3] The sides have accused each other of violating a January ceasefire.

[...]

[4] The report lists numerous recent 'gruesome attacks', including:

- Patients murdered in their beds in the town of Malakal, Upper Nile state;
- A hospital in Leer, Unity state, was 'thoroughly looted, burned and vandalized';
- The MSF compound in Bentiu, capital of Unity state, was looted amid heavy fighting.

[...]

[5] Malakal, a dusty market town that serves as the gateway to the oilfields of the Upper Nile region, has been at the center of clashes and has repeatedly changed hands.

[...]

[6] Last month the army said that it had recaptured the town after days of heavy fighting.

[7] What started as a political dispute between President Salva Kiir and his former deputy Riek Machar escalated into full-scale conflict, with some of the fighting along ethnic lines.

[8] Although both men have supporters from across South Sudan's ethnic divides, fighting has often been communal, with rebels targeting members of Mr Kiir's Dinka ethnic group and government soldiers attacking Nuers, Mr Machar's people.

[...]

B. 'South Sudan: Medical care under fire'

[Source: 'South Sudan: Medical care under fire', MSF, 26 February 2014, available at: <http://www.msf.org.uk/article/south-sudan-medical-care-under-fire>]

[1] As entire towns in South Sudan suffer devastating attacks, medical care has also come under fire with patients shot in their beds, wards burned to the ground, medical equipment looted and, in one case, an entire hospital destroyed, the international medical humanitarian organization Médecins Sans Frontières/Doctors Without Borders (MSF) announced today. Hundreds of thousands of people have been effectively denied lifesaving assistance.

[2] MSF staff witnessed the gruesome aftermath of recent armed attacks and clashes in Malakal in Upper Nile State, discovering patients murdered inside the town's Teaching Hospital.

[3] In another disturbing violation of medical structures since conflict erupted in mid-December 2013, an MSF team returned to Leer, in Unity State, and discovered the hospital thoroughly looted, burned and vandalized. Vast parts of the town appear to have been razed to the ground.

[4] 'Assaults on medical facilities and patients are part of a broader backdrop of brutal attacks on towns, markets and public facilities,' [...]

[5] On 22nd February, MSF teams discovered at least 14 dead bodies throughout the Malakal Teaching Hospital compound, scattered among 50 to 75 patients who remained in the facility, too weak or elderly to flee for safety. Several patients showed signs they had been shot dead while lying in their beds.

[6] Many of the hospital wards, including the therapeutic feeding center for malnourished children, had been burned, and general looting had clearly taken place throughout the hospital.

[...]

[7] Some of the patients MSF evacuated to the UNMISS base recounted that armed groups entered the hospital on 19th February and shot dead people who had no money or mobile phones to hand over.

[8] Later that afternoon, armed men returned and killed patients in their beds and others who had fled to the operating theatre for safety, according to survivor testimonies. They also reportedly raped women and young girls.

Hundreds of thousands deprived of care in Leer

[9] Hundreds of thousands of people have been cut off from critical, lifesaving medical care after Leer Hospital was ransacked and destroyed between the final days of January and early February.

[10] When MSF staff were able to assess Leer Hospital following weeks of insecurity in the area, they discovered a horrific scene of equipment and buildings reduced to ash, drug vials smashed and strewn throughout the grounds, and sterilized surgical equipment broken and discarded everywhere.

[11] Drugs, patient beds, and other supplies were thoroughly looted. Not a single hospital bed remains in the facility compound.

[...]

[12] MSF's 240 locally hired staff remains hidden in the bush, struggling to treat patients with rapidly dwindling supplies. The staff reports they are reusing wound dressings and trying desperately to assist the displaced that have grown more ill from drinking dirty river water and from eating water lilies for lack of food.

[...]

Disturbing pattern of medical care under fire in South Sudan

[13] The atrocities in the hospital in Malakal and the destruction of Leer Hospital take place amidst a disturbing pattern of incidents affecting medical staff, patients, and MSF-supported facilities in South Sudan:

[14] In mid-January, armed men robbed and threatened staff at the MSF compound in Malakal, leading to a temporary suspension of MSF's medical activities in the town.

[15] In mid January, the MSF compound in Bentiu, capital of Unity State, was looted amidst chaotic fighting in the town, which forced MSF staff to vacate Bentiu State Hospital and leave drugs and supplies with patients and their caretakers. [...]

[16] Patients were reportedly killed in their beds in the hospital in Bor, capital of Jonglei State, during fighting in December 2013. In early February, MSF staff visited the hospital and discovered the decomposed corpses of a mother and child dumped in the facility's water tank. [...]

[17] 'Medical care has come under fire in South Sudan,' said Gorgeu. 'Rather than safe havens for treatment, hospitals are now targets of attack and brutality. They are places to fear rather than trust, a complete inversion of their purpose and role.'

[18] 'Hundreds of thousands of people are in desperate need of shelter, food, water, and healthcare in South

Sudan. The question is, how can effective, neutral aid be provided in a climate of utter disrespect and fear?' [...]

Discussion

I. Qualification of the Conflict and Applicable Law

1. (Document A, paras 2-3 and 5-7)

- a. Using the information in Document A, how would you classify the situation in South Sudan? What rules are applicable in this situation? On what criteria is your determination on classification based? Who are the parties to the conflict? Which criteria have to be fulfilled for a situation to be classified as a non-international armed conflict? Which set of rules applies in the present case? (GC I-IV, Art. 3; P II, Art. 1)
- b. Does the cease-fire agreement concluded by the Government of South Sudan and the rebel forces affect the applicability of IHL?
- c. Does IHL apply to Malakal City? To the entire territory of South Sudan? (GC I-IV, Art. 3; P II, Art. 1)

II. Protection of Wounded and Sick

2. (Document B, paras 1-18)

- a. (Document B, paras 2, 5 and 16) Does IHL of non-international armed conflicts prohibit killing of wounded and sick persons? Is the killing of wounded and sick persons a war crime in non-international armed conflicts? (GC I-IV, Art. 3(1)(a); P II, Art 4(2)(a) and 7; CIHL, Rule 111; The International Criminal Court, Art. 8(2)(e))
- b. (Document B, para. 8) Does IHL of non-international armed conflicts prohibit rape of wounded and sick persons? Women? Children? Is rape a war crime in non-international armed conflicts? (GC I-IV, Art. 3(1)(c); P II, Art. 4(2)(e); CIHL, Rules 93, 134 and 135)
- c. What are the parties' obligations in relation to the treatment of wounded or sick people under the IHL of non-international armed conflicts? According to what criteria should priorities in providing them care be established? Who benefits from this treatment? Fighters wounded during hostilities? Wounded civilians? Only civilians who are in the hands of the enemy? Sick civilians? Pregnant women? Children? (GC I-IV, Art. 3(2); P II, Art. 7; CIHL, Rule 110)
- d. Do the same guarantees apply to the sick and wounded in international and non-international armed conflicts? (GC I-IV, Art. 3(2); GC I, Art. 12; GC II, Art. 12; GC IV, Art. 16; P I, Arts 10 and 11)?
- e. Is the human right to health applicable in the present context? Are rebel groups bound by human rights obligations?

III. Protection of Medical Personnel

3. (Document B, para. 14) Does IHL prohibit attempts upon the lives of, or other threats to, medical personnel in non-international armed conflicts? (GC I-IV, Art. 3; P II, Arts 9-10; CIHL, Rule 25)

IV. Protection of Hospitals

4. (Document B, paras 1, 3, 6, 9, 11, 12, 14 and 18)

a. (Document B, paras 1, 6, 11 and 14) Does IHL prohibit looting of hospitals in non-international armed conflicts? Is looting of hospitals a war crime in non-international armed conflicts? (GC I-IV, Art. 3; P II, Art. 11; CIHL, Rule 28; The International Criminal Court, Art. 8(2)(e)(v))

b. (Document B, paras 3 and 9) Did the destruction of the hospital in Leer violate IHL of non-international armed conflicts? Is a hospital a legitimate target under IHL? When might it become a legitimate target? If a party to the conflict uses it to treat wounded fighters? If a party to the conflict uses the hospital for military purposes? Can the more detailed provisions of Protocol I be used to give precision to the provisions of Protocol II in a non-international armed conflict? (GC I, Arts 19-22; GC IV, Arts 18-19; P I, Arts 12-13 and 52; P II, Art. 11; CIHL, Rules 7-10 and 28)

c. Is it a war crime to attack a hospital during a non-international armed conflict? (CIHL, Rules 28 and 156; The International Criminal Court, Arts 8(2)(e)(ii) and (iv))