A. Report of the Commission on Human Rights in South Sudan


IV. Context and Background

18. There are currently three armed structures in South Sudan claiming the heritage of the Sudan People’s Liberation Army: the Government forces (known as SPLA), the SPLA-in-Opposition, loyal to Riek Machar (SPLA-IO/RM) and the SPLA-in-Opposition, loyal to First Vice-President Taban Deng (SPLA-IO/TD). The SPLA and the SPLA-IO/RM are supported by militias — the Dinka Mathiang Anyoor (now largely integrated into the SPLA) and the Nuer White Army, respectively. […] The Shilluk Agwelek militia has fought at different times alongside both SPLA and SPLA-IO/RM and is primarily focused on the defence of Shilluk lands.

19. Since its outbreak in December 2013, the conflict has evolved beyond the power struggle between President Salva Kiir Mayardit and Riek Machar. Despite the signing of the Conflict Resolution Agreement in August 2015, the conflict has spread and is no longer one single conflict, but a series of inter and intracommunal conflicts, reigniting and encompassing historical localized conflicts and contests over land, resources and power.

20. SPLA suffered numerous defections, while SPLA-IO split into two factions in July 2016. The split served to strengthen the SPLA, as the SPLA-IO/TD supports the Government. SPLA and the SPLA-IOs demonstrate established hierarchical organizational structures that facilitate command and control and operational flexibility through the use of sectors, divisions, brigades and battalions. The majority of operations employ light infantry tactics, often with fire support from artillery and tanks. Priority is given to attack and, upon capture, little thought is given to defence against counter-attack. Inclusive planning, intelligence gathering, and effective communication facilitate the exercise of command. Commanders on both sides have made use of poorly trained and undisciplined militias, which they have chosen to exploit rather than control.

21. New armed groups, currently estimated at 40, continue to emerge, mainly as a result of the spread of the conflict to the Equatoria region and the northern part of the Upper Nile. The fragile situation has been exacerbated by the creation of 28 — and later 32 — states along ethnic lines by Presidential Order. During 2017, a number of senior officers defected from SPLA and the two SPLA-IO factions to form and join these new groups. There are also a large number of other armed groups participating in the revitalization process.

22. There have been numerous violations of the cessation of hostilities agreements since 2014. The latest Cessation of Hostilities Agreement came into effect on 24 December 2017, following the revitalization forum sponsored by the Intergovernmental Authority on Development (IGAD), which called upon all forces to “immediately freeze in their locations”, halt actions that could lead to confrontation and release political detainees, women and children. Violations of the ceasefire were reported shortly thereafter, which have been condemned by the African Union, the United Nations and IGAD.[…]
I. Introduction

[1] Within days of the outbreak of conflict in Juba on 15 December 2013, and the subsequent targeting of Nuer civilians by government security forces, armed Nuer civilian youth – commonly known as the White Army – mobilized on a massive scale to avenge the killings. In the following months, Nuer youth, fighting alongside the Sudan People’s Liberation Movement/Army-in-opposition (SPLM/A-IO), clashed with the government army (the SPLA) and its allies across the Greater Upper Nile region.

[...]
being local initiatives, the White Armies efficient leadership and mobilization structures have made them desirable allies for military and political actors, as seen during the second Sudanese civil war and in the ongoing conflict.

[8] The increased decision-making powers of youth and their leaders within the White Armies has not eclipsed the role of elders and influential spiritual leaders, who continue to influence, both in terms of restricting and promoting, decisions to engage in violence.

[9] As in the past, Nuer prophets play important roles promoting internal peace and social cohesion among Nuer sections. Concurrently, some prophets have also promoted and morally sanctioned youths' participation in large-scale violence through guidance and blessings of youth fighters ahead of raids and offensives. Importantly, the powers and influence of prophets can extend beyond sub-ethnic and even ethnic lines.[…]

[10] In one of the most significant examples from the post-CPA period (post 2005), the Lou Nuer prophet Dak Kueth facilitated a military alliance between Dinka Nyareweng and Lou Nuer youth ahead of a major retaliatory attack on Murle communities in Pibor in December 2011. Although the attack was organized and led by the high-level leadership of the Lou Nuer White Army in coordination with Nyareweng Dinka youth, Dak Kueth played a significant advisory, spiritual, and unifying role before and during the offensive.

[11] Nuer prophets have continued to play an important role brokering and legitimizing violence in the current civil war. Military actors – including SPLA-IO leaders – have in turn sought to collaborate closely with Nuer prophets in order to increase their leverage over Nuer youths and their involvement in the war.

iv. History of involvement in government wars

[12] When war broke out in December 2013, Nuer White Armies in the Greater Upper Nile region fought alongside SPLM/A-IO in their battles over control of the three state capitals of Greater Upper Nile: Bentiu, Bor and Malakal. These combined forces perpetrated extreme violence, including killings and rapes of non-combatants seeking refuge in churches, mosques and hospitals.

[13] Revenge for atrocities committed against Nuer civilians in Juba in the first few days of the war no doubt motivated many fighters. Participation of the White Armies in the violence, however, also needs to be understood in the context of a longer history of involvement in political violence. Although the organization of the White Armies takes place at local levels, political and military actors have always had strong interests in using these structures to pursue their own political and military aims.

The second Sudanese civil war 1983-2005

[…]

The ‘inter war’ period (2005-2013)

[…]

The ‘new’ South Sudanese civil war

[14] The large-scale mobilizations of Nuer youth after the war broke out in December 2013 needs to be seen within this historical and socio-political context. As in the past, the White Armies organized and led by their respective youth leaders, participated in military battles both independently and in parallel with professional soldiers (Black Armies) in order to protect their communities and avenge atrocities perpetrated against Nuer civilians in Juba. In the early stages of the war, SPLA-IO military commanders organized military offensives against the SPLA in Bor and Malakal in coordination with local kuaar burnam and their White Army forces. Members of the Jikany Nuer White Army involved in the assault on Malakal in December 2013 claimed that they – and not the SPLA-IO – were primarily responsible for capturing the town. Throughout the conflict, the Nuer White Armies of Upper Nile, Jonglei and Unity states were not fighting under a common command structure but continued to mobilize and organize youth fighters separately under their respective youth leaders: they were not, as such, a single fighting force.

[15] Although the SPLM/A-IO leadership depends on the military support of the White Armies; they do not always have control over the youth or even their leaders. Most youth, driven by local security obligations, have little interest in political agendas, long-term offensives, or being based in areas far away from home.[…]In an attempt to enhance control over the youth and encourage recruitment into its military units, the SPLM/A-IO military leadership, like the SPLA in the 1980s, has increasingly sought to integrate Nuer youth leadership into their command structures, with the top kuaar burnam in Lou Nuer areas receiving ranks, uniforms and training. The integration of former kuaar burnam has facilitated coordination between the White Armies and SPLA-IO during joint civil-military offensives. While new kuaar burnam have been selected to replace those recruited into the military, the integration of influential kuaar burnam may at the same time reduce internal control within local White Armies, as the new leaders do not always have the influence or experience of those they have replaced.

[16] Commitment to their communities continues to motivate the White Armies and their leaders. As part of their social obligations to protect their communities, attempts to rescue Nuer civilians vulnerable to attack or displaced by fighting have been
an important driver for mobilization. The White Army leader of Akobo County at the time, as well as other members, claimed in
interviews that a failed offensive by the Lou Nuer White Army against the capital Juba in December 2013 was motivated not only
by revenge but also by a desire to protect Nuer civilians. […]

v. Conduits of an ethnic war? White Armies' motivations for participating in violence

[17] The White Armies involvement in violent conflict – in the current war and in the past – largely reflects their social obligations
to protect their families and livestock. Community defense and justice provision, in the form of revenge, has long been one of the
strongest motivators for participation in the White Armies. Economic and social incentives – including opportunities to loot and
raid cattle, access guns and ammunition, and obtain status and respect – also encourage many Youth to participate in violence.

[18] Elders and chiefs frequently complain about their 'unruly' and 'disrespectful' youth. While engagement in warfare and
looting, combined with the status and power accorded to the kuaar burnam, increased the socio-economic independence of
youth, at the same time inter-generational interactions are marked by collaboration and mutual support.

[19] This is demonstrated in regular consultations between White Army leaders, elders and local authorities on matters
pertaining to security, as well as the widespread communal support for youth fighters ahead of large-scale raids and revenges,
in the form of logistical support, food, and blessings. While participation in the White Armies is mainly voluntary, during times of
high intensity conflict every able-bodied male is expected to join local units, from boys as young as ten to men in their late
forties. […] Over the past decade and in the current civil war participation has expanded: involvement in large-scale attacks is no
longer limited to young men in cattle camps but also includes educated town youth and military veterans. […] Uninitiated boys,
some as young as eight, are also occasionally brought along to observe and assist. From December 2013, support for and
participation in the White Armies expanded further as many SPLA-IO soldiers, preferring to fight close to their home territories
and alongside their kin, joined their ranks.

[20] Military cooperation with professional soldiers, who frequently engaged in socially unacceptable forms of extreme violence,
inevitably contributed to influence the tactics of some White Army fighters. As seen in the past and in recent warfare, military
and political actors' manipulation of local grievances and ethnic identities also contributed to intensify local and political violence.

Discussion

I. Classification of the situation and applicable law

1. (Document A, paras 18-21; Document B, paras [1] and [11]) How do you classify the situation in South Sudan since
December 2013? Is there an armed conflict? If yes, who are the Parties to it? What additional information would you need to
make such a determination? What is the law applicable to the situation? Is APII applicable? Does IHL apply to the entire territory
of South Sudan? (GC I-IV, Art. 2, 3; PII, Art. 1)

2. (Document A, para. 20; Document B, paras [2]-[11]) What are the criteria under IHL to determine the existence of a NIAC?
What are the indicators for the organization of armed groups? (GC I-IV, Art. 3, PII, Art. 1; ICTY, The Prosecutor v. Tadić)

a. Based on the information provided in the document, are the factions of the SPLA/IOs sufficiently organized?

b. Based on the information provided, can “white armies” be considered as one or several organized armed group(s) for the
purposes of IHL? Is a single unified command required by IHL to determine organization? In your opinion, could the “white
armies” be considered as subjected to responsible command? Would the kuaar burnam structure satisfy this test? Would the fact
that kuaar burnam’s wide ranging responsibilities beyond mobilization of the youth in war affect your assessment? Could the
Nuer prophets be considered responsible commanders?

c. Could the fact that the “white armies” are fighting on behalf of the SPLA-IO make them belong to that Party to the conflict?
Would their motivation to fight on behalf of SPLA-IO have to be taken into account?

d. If the “white armies” are not organized armed groups parties to the NIAC, are their members nevertheless bound by IHL? In
which circumstances?

II. Protection of children

3. (Document B, Paras [17]-[20]) In general, may children under 18 participate in armed conflict? Under IHL? Under IHR? Is the
obligation of state armed forces and organized armed groups the same when it comes to prohibition of enlisting of children?
Assuming that “white armies” are an organized armed group for the purpose of IHL, what would be their obligation regarding
participation of children? (PI, Art. 77; PII, Art. 4; CIHL, Rules 135, 136, 137; CRC, Art. 38; OPAC, Art. 1-4; ICC, The Prosecutor v. Lubanga)

III. Conduct of hostilities

4. (Document B, paras[3]- [5]) Assuming that “white armies” fulfil the organization threshold, could all initiated Nuer youth be considered as legitimate targets? Under which circumstances? (ICRC Interpretive Guidance on DPH)

5. (Para.[10]) Assuming that the incidents described in the Report were carried out against the SPLA by the “white armies”, would they amount to direct participation in hostilities for the purposes of IHL? (ICRC Interpretive Guidance on DPH)