

South Sudan/Attacks on Humanitarian Personnel

In the context of violence in South Sudan, humanitarian personnel have faced many challenges. They have been subject to attacks hindering their work and preventing them from providing relief to civilian populations in need.

Acknowledgments

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A. RESOLUTION 2683 (2023) OF THE SECURITY COUNCIL

[Source: United Nations Security Council, “Resolution 2683 (2023) Adopted by the Security Council at its 9332nd meeting, on 30 May 2023”, 30 May 2023, available at: <https://digitallibrary.un.org/record/4012126?ln=fr&v=pdf>]

Resolution 2683 (2023)

Adopted by the Security Council at its 9332nd meeting, on 30 May 2023

The Security Council,

[...]

Expressing concern over the continued intensification of violence prolonging the political, security, economic, and humanitarian crisis in most parts of the country, condemning the mobilization of armed groups and encouragement of defections, including by members of the government forces and armed opposition groups, and further recognizing that intercommunal violence in South Sudan is politically and economically linked to national-level violence and corruption,

Underscoring the need for the parties to avoid a relapse into widespread conflict and respect the agreed command structure arrangement [...],

Expressing deep concern at continued fighting in South Sudan, condemning repeated violations of the Revitalised Agreement and the Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access (ACOH), strongly condemning all fighting, including violence in Upper Nile, Jonglei, and Central Equatoria states, and demanding that parties that violate the ACOH be held accountable in accordance with their obligations under the ACOH and Revitalised Agreement,

Strongly condemning past and ongoing human rights violations and abuses and violations of international humanitarian law by all parties, including by armed groups and national security forces, as well as the incitement to commit such abuses and violations, and the alarming surge in conflict-related sexual violence, which is a basis for designation, as described in paragraph 15 (e) of resolution 2521 (2020), further condemning harassment, targeting, and censorship of civil society, including journalists, human rights defenders, humanitarian personnel, and media correspondents, emphasizing that those responsible for violations of international humanitarian law and violations and abuses of human rights must be held accountable, and that the Revitalised Transitional Government of National Unity (RTGNU) bears the primary responsibility to protect its population from genocide, war crimes, ethnic cleansing, and crimes against humanity, and expressing concern that, despite the signing of the Revitalised Agreement, violations and abuses including those involving gender-based violence continue to occur, which may amount to international crimes, including war crimes and crimes against humanity,

Expressing its alarm and deep concern over continued armed violence against humanitarian workers and facilities, and food convoys that resulted in the deaths of at least 20 humanitarian workers and volunteers and nearly 50 security incidents since January 2023, and the looting and destruction of life-saving assistance, strongly condemning all instances of violence against humanitarians, expressing grave concern at the imposition of taxes and illegal fees which hamper the delivery of humanitarian assistance across the country, stressing the detrimental impact of continued insecurity on humanitarian operations across the country, encouraging all parties to allow and facilitate safe, rapid and unhindered humanitarian access to people in need, and calling on RTGNU to protect humanitarian personnel and create a safe and enabling environment for humanitarian assistance, consistent with international humanitarian law and its obligations under the Revitalised Agreement,

Expressing grave concern regarding increased violence between armed groups in some parts of South Sudan, which has killed and displaced thousands, and condemning the mobilization of such groups by parties to the conflict,

[...]

Recalling the need for Member States to ensure that all measures taken by them to implement this resolution comply with their obligations under international law, including international humanitarian law, international human rights law and international refugee law, as applicable,

Stressing that the measures imposed by this resolution are not intended to have adverse humanitarian consequences for the civilian population of South Sudan, and *recalling* paragraph 1 of resolution 2664 (2022), which states that the provision, processing or payment of funds, other financial assets, or economic resources, or the provision of goods and services, by certain entities or organizations, necessary to ensure the timely delivery of humanitarian assistance or to support other activities that support basic human needs, are permitted and are not a violation of the asset freeze,

[...]

Also *expressing* grave concern at the threat to peace and security in South Sudan arising from the illicit transfer, destabilizing accumulation and misuse of small arms and light weapons, and *further expressing concern* that illicit trafficking and diversion of arms and related materiel of all types undermine the rule of law and have the potential to undermine respect for international humanitarian law, can impede the provision of humanitarian assistance and have wide-ranging negative humanitarian and socioeconomic consequences,

[...]

Acting under Chapter VII of the Charter of the United Nations,

[...]

Arms Embargo and Inspections

[...]

Targeted Sanctions

[...]

Sanctions Committee and Panel of Experts

[...]

B. HUMAN RIGHTS DIVISION, UNMISS, OCTOBER – DECEMBER 2023 BRIEF ON VIOLENCE AFFECTING CIVILIANS

[Source: Human Rights Division UNMISS, “Brief on Violence Affecting Civilians”, October – December 2023, available at:

https://unmiss.unmissions.org/sites/default/files/q4_brief_on_violence_affecting_civilians_0.pdf]

[...]

CONTEXT

This brief presents an overview of trends in violence affecting civilians between October and December 2023, by assessing the four major forms of individual harm most commonly experienced by victims in the context of the armed conflict in South Sudan, i.e. killing, injury, abduction, and CRSV [conflict-related sexual violence]. Entrenched patterns of violence involving community-based militias and/or civil defense groups remained the primary driver of sub-national violence throughout the country. While incidents of violence attributable to the conventional parties to the conflict remained relatively low.

[...]

South Sudan is a State Party to the African Charter on Human and Peoples' Rights and has ratified three core international human rights treaties. Pursuant to this legal framework, South Sudan is legally bound to respect, protect, promote, and fulfil the human rights of all persons within its territory or under its jurisdiction or control.

International human rights law applies both in times of peace and armed conflict. South Sudan is also bound by norms of international human rights law that have attained the status of customary law.

International humanitarian law applies to the non- international armed conflict in South Sudan. All parties to the conflict are obligated to abide by the relevant rules of customary international law applicable in non-international armed conflicts, including the principles of distinction, proportionality, and precaution. Additionally, in 2012, South Sudan incorporated the provisions of the four Geneva Conventions and its Additional Protocols into domestic law. Consequently, acts with a nexus to the non-international armed conflict which constitute breaches of Common Article 3 of the Geneva Conventions, may be prosecuted before the South Sudanese courts.

[...]

Community-based militias and/or civil defense groups

During the fourth quarter of 2023, intercommunal violence by community-based militias and/or civil defense groups constituted the primary source of violence affecting civilians and accounted for more than three-quarters of victims (86 percent or 740 individuals). Mainly, this resulted from the evolving nature of the violence, which is often carried out in military-style tactics, using military-grade weapons. For instance, at least five separate incidents of attacks in Warrap State claimed the lives of more than 100 civilians, of which nine were women and four children.

[...]

[...] Further, HRD [Human Rights Division of the United Nations Mission in South Sudan] documented the killing of two male humanitarian aid workers in the GPAA by alleged armed Murle elements. Moreover, intending to recover their lost cattle, the armed Toposa elements from the bordering Greater Kapoeta of Eastern Equatoria State (south of Jonglei State) raided Maruwa Payam in Vertet County of the GPAA several times, resulting in three killings, one injury and looting of cattle and other civilian properties.

[...]

C. UNMISS PRESS RELEASE FOLLOWING ATTACKS ON HUMANITARIAN CONVOY ON 9 FEBRUARY 2024

[Source: UNMISS, “Press release: UNMISS condemns attack on humanitarian convoy near Bor, Jonglei”, 9 February 2024, available at: <https://reliefweb.int/report/south-sudan/unmiss-condemns-attack-humanitarian-convoy-near-bor-jonglei>]

Juba, 9 February 2024: The United Nations Mission in South Sudan (UNMISS) strongly condemns an attack on a humanitarian convoy that was being escorted by peacekeepers in Aniydi Payam of Bor South County of Jonglei State.

As the convoy passed through Macdit, 60 kilometers from Bor town, a group of armed men emerged from the bushes and one opened fire on the UN vehicles. An UNMISS vehicle was damaged, but fortunately there were no casualties. UNMISS peacekeepers returned fire and repelled the attackers.

“This attack threatened the lives of humanitarians delivering vital assistance to communities in need as well as peacekeepers providing protection. It is utterly unacceptable,” said Nicholas Haysom, the Secretary General’s Special Representative to South Sudan and head of UNMISS.

“We appreciate the response of the Government of Jonglei State who rapidly dispatched a joint protection team of local forces to the location to provide support. It is important that a thorough investigation takes place and that the perpetrators are held accountable,” he said.

DISCUSSION

I. Classification of the situation and applicable law

1. (*Document A, paras 1-3; Document B, paras 8-9*)
 - a. How would you classify the situation in South Sudan? Can it be considered either as an international armed conflict or a non-international armed conflict? What differentiates the two types of conflicts? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)

- b. Who are the parties involved in the situation? What are the criteria to determine whether a non-international armed conflict takes place? (GC I-IV, Arts 2 and 3; P I, Art. 1; P II, Art. 1)
- c. What are the criteria for identification of armed groups under IHL? (P II, Art. 1; ICC, *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Judgment, 8 July 2019)
- d. Is IHL equally applicable to all the parties to the conflict? Are armed groups bound by IHL?

II. Attacks against humanitarian personnel

- 2. What is the role of humanitarian relief in armed conflicts? Who benefits from it? (GC IV, Art. 23, 55 and 59; P I, Arts 69, 70 and 71; P II, Art. 18(2); CIHL, Rule 55)
- 3. What is the purpose of UNSC Resolution 2664 (2022)? Is it lawful to impose taxes and fees to humanitarian organisations? What are humanitarian exemptions?
What protection is to be given by States to humanitarian personnel? By non-State parties? What are the obligations of States towards humanitarian personnel? And of non-State parties? (P I, Art. 71(2); P II, Arts 9 and 18(2); CIHL, Rules 31 and 32)
- 4. (*Document C*) May humanitarian personnel be targeted? Could targeting humanitarian personnel constitute a “military advantage”? Why? (P I, Arts 48, 52(1)-(2), 57 and 58; P II, Art. 13; CIHL, Rules 7, 8, 9, 10, 14, 15, 31 and 32)
- 5. (*Document A, para 4*) Are attacks on humanitarian personnel prohibited under IHL? In case they are, how can such acts be criminalized, and their authors prosecuted? In terms of criminalization, how would you define genocide, war crimes, ethnic cleansing, and crimes against humanity? What distinguishes war crimes from other international crimes? (P I, Arts 71, 85; CIHL, Rules 31 and 32; Rome Statute, Art. 8 (2) (b) (iii), 8 (2) (b) (xxiv), 8 (2) (b) (xxv), 8 (2) (e) (ii), 8 (2) (e) (iii))
- 6. What are the options to hold people committing international crimes accountable?