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UNHCR POSITION ON RETURNS TO SOUTH SUDAN – UPDATE I

1. This position supersedes and replaces UNHCR's February 2014 Position on Returns to South Sudan.¹

Introduction

2. The humanitarian situation in South Sudan continues to deteriorate while the security situation remains fluid and uncertain. Civil conflict continues despite negotiations between the Government of the Republic of South Sudan (the Government) and the Sudan People's Liberation Movement/Army (in Opposition) (SPLA-iO or the Opposition) under the auspices of a regional body, the Intergovernmental Authority on Development (IGAD). Both parties are reported to have repeatedly violated cease-fire agreements.²

Security situation

3. Fighting between Government and Opposition forces continues to be reported, especially in Upper Nile, Unity and Jonglei States.³ There are also reports of continuing intercommunal clashes amidst disputes over land and cattle which pre-date the current political crisis.⁴ More than one year into the civil conflict, over 117,000 civilians are estimated to have sought safety and remain today in Protection of Civilians (PoC) sites located on bases of the UN Mission in South Sudan.⁵ These sites have not, though, been free from violence.⁶
4. According to reports, civilians throughout the country, both inside and outside of PoC sites, have been deliberately targeted by armed elements on the basis of ethnicity, nationality, or

¹ UNHCR, *UNHCR Position on Returns to South Sudan*, 11 February 2014, <http://www.refworld.org/docid/52fa1ecd4.html>.

² Intergovernmental Authority on Development (IGAD), *Summary of Latest Reports of Violations of the Cessation of Hostilities Agreement (COHA) of 23 January 2014. Investigated and verified by the IGAD Monitoring and Verification Mechanism in South Sudan. From 1 March – 16 March 2015, 27 March 2015*, http://southsudan.igad.int/attachments/article/284/Violations_Summary_V32-35_ENG.pdf; Integrated Regional Information Networks (IRIN), *South Sudan Peace: Deal? What Deal?*, 2 February 2015, <http://www.refworld.org/docid/54d225ca4.html>; UN News Service, *South Sudan Gripped by 'Serious Failure of Leadership' as Peace Talks Stall, Warns Top UN Official*, 24 February 2015, <http://www.refworld.org/docid/54f06bc84.html>; IGAD, *Message from H.E. Hailemariam Dessalegn, Prime Minister of the Federal Democratic Republic of Ethiopia and Chairperson of the IGAD Assembly to the People of South Sudan*, 6 March 2015, <http://southsudan.igad.int/index.php/282-message-from-h-e-hailemariam-dessalegn-prime-minister-of-the-federal-democratic-republic-of-ethiopia-and-chairperson-of-the-igad-assembly-to-the-people-of-south-sudan>.

³ UN Security Council, *Report of the Secretary-General on South Sudan (covering the period from 18 November 2014 - 10 February 2015)*, S/2015/118, 17 February 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/118.

⁴ International Crisis Group (ICG), *South Sudan: Jonglei – 'We Have Always Been at War'*, 22 December 2014, Africa Report N°221, <http://www.refworld.org/docid/54991c5e4.html>; Sudan Tribune, *Lakes State Death Toll Rises as Police Vacate Hotspots*, 29 December 2014, <http://www.sudantribune.com/spip.php?article53487>.

⁵ UN Mission to South Sudan (UNMISS), *UNMISS 'Protection of Civilians' (PoC) Sites*, 13 April 2015, <http://reliefweb.int/sites/reliefweb.int/files/resources/UNMISS%20PoC%20Update%20No.%2068.pdf>.

⁶ See for example Al Jazeera, *Attack on S Sudan UN Base May Be 'War Crime'*, 19 April 2014, <http://www.aljazeera.com/news/africa/2014/04/attack-s-sudan-un-base-may-be-war-crime-20144195198569537.html>; UNMISS, *Attacks on Civilians in Bentiu & Bor: April 2014*, 9 January 2015, <http://www.refworld.org/docid/54b50bf54.html>; UN Security Council, *Report of the Secretary-General on South Sudan (covering the period from 18 November 2014 - 10 February 2015)*, S/2015/118, 17 February 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/118.

perceived support for one of the parties to the conflict, notably in Bor and Bentiu, the capital cities of Jonglei and of Unity States respectively.⁷ Humanitarian workers, both foreign and national, have been targeted and killed, with no reported prosecutions.⁸

Human rights situation

5. Systematic and widespread human rights violations are extensively reported, as is a lack of accountability for those responsible for the violations.⁹ Sexual and gender-based violence (SGBV) is reportedly rampant and used as a tool of war, and there are also reports of SGBV incidents inside the PoC sites.¹⁰ Children are reported to be forcibly recruited on both sides of the conflict, while also suffering from other grave child rights violations.¹¹ Freedom of information has been restricted as journalists have been subjected to threats and violence by armed elements and some national media outlets have been ordered by the government to cease publishing.¹²

Humanitarian situation

6. The conflict has had a catastrophic impact on the civilian population, as large-scale displacement continues within and from South Sudan. More than 1.5 million South Sudanese are estimated to have been displaced internally, while more than 500,000 individuals have crossed the borders to seek refuge in Ethiopia, Kenya, Sudan, and Uganda.¹³ All governments in the region recognize civilians who fled South Sudan as refugees on a *prima facie* basis, and have sought to respond in a generous manner to the needs of the refugee population including by cooperating closely with UNHCR and other humanitarian actors.¹⁴
7. In South Sudan, more than 2.5 million people are facing crisis or emergency levels of food insecurity since January 2015, with the number likely to increase further in the lean season between April and July 2015.¹⁵ The malnutrition situation is classified as critical or very

⁷ UNMISS, *Special Report: Attack on Bentiu, Unity State*, 29 October 2014, 19 December 2014, <http://unmiss.unmissions.org/Portals/unmiss/Documents/Reports/UNMISS%20HRD%20-%20Attack%20on%20Bentiu%20October%202014.pdf>; UN Security Council, *Report of the Secretary-General on South Sudan (covering the period from 18 November 2014 - 10 February 2015)*, S/2015/118, 17 February 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/118; Human Rights Watch, *World Report 2015 - South Sudan*, 29 January 2015, <http://www.refworld.org/docid/54cf837f14.html>.

⁸ The Guardian, *British Aid Worker Killed in South Sudan*, 18 February 2015, <http://www.theguardian.com/global-development/2015/feb/18/british-aid-worker-killed-south-sudan-carter-center>; UNMISS, *UNMISS Deplores Killings of More Humanitarian Aid Workers in Maban County*, 5 August 2014, <http://unmiss.unmissions.org/LinkClick.aspx?fileticket=GTNfCNmCtw%3d&tabid=3483&mid=9133&language=en-US>; Médecins Sans Frontières (MSF), *South Sudan Conflict: Violence Against Healthcare*, 1 July 2014, http://www.msf.fr/sites/www.msf.fr/files/rapport_msf_south_sudan_conflict_violence_against_healthcare.pdf.

⁹ UN Security Council, *Report of the Secretary-General on South Sudan (covering the period from 18 November 2014 - 10 February 2015)*, S/2015/118, 17 February 2015, http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2015/118; UN News Service, *In South Sudan, Senior UN Official Says 'No Doubt' Rights Violations Are Ongoing*, 5 February 2015, <http://www.refworld.org/docid/54d4c96d4.html>.

¹⁰ UN News Service, *South Sudan at 'Crossroads' As It Seeks to Combat Sexual Violence*, Says UN Official, 20 October 2014, <http://www.refworld.org/docid/544651b24.html>; The Guardian, *Women in South Sudan: 'They Attack Us at Toilets or Where We Collect Water'*, 11 September 2014, <http://www.theguardian.com/global-development/2014/sep/11/women-south-sudan-sexual-violence-camps>.

¹¹ African Committee of Experts on the Rights and Welfare of the Child (ACERWC), *Press Statement - Advocacy Mission of the ACERWC on the Situation of Children in South Sudan*, 8 August 2014, <http://www.refworld.org/docid/5451f8d54.html>; UN Security Council, *Report of the Secretary-General on Children and Armed Conflict in South Sudan*, 11 December 2014, S/2014/884, <http://www.refworld.org/docid/54a6958e4.html>; BBC, *Many South Sudan Boys 'Kidnapped to Be Child Soldiers'*, 1 March 2015, <http://www.bbc.com/news/world-africa-31681302>.

¹² Committee to Protect Journalists (CPJ), *South Sudan Daily Nation Mirror Ordered to Stop Publishing*, 10 February 2015, <http://www.refworld.org/docid/54e5a1d44.html>; Freedom House, *Freedom of the Press 2014 - South Sudan*, 8 October 2014, <http://www.refworld.org/docid/544deb09.html>.

¹³ UN Office for the Coordination of Humanitarian (OCHA), *South Sudan: Crisis Situation Report No.81*, 3 April 2015, https://gallery.mailchimp.com/f2c222dd83de60ecbebe45951/files/South_Sudan_Situation_Report_No_81.pdf; UNHCR, *South Sudan Situation UNHCR Regional Update 56 (30 March - 10 April 2015)*, 10 April 2015, <http://www.refworld.org/docid/552b719e4.html>.

¹⁴ UNHCR, *South Sudan Regional Refugee Response Plan*, 31 December 2014, p. 11, <http://www.unhcr.org/54919e999.pdf>.

¹⁵ OCHA, *South Sudan: Crisis Situation Report No.81*, 3 April 2015, https://gallery.mailchimp.com/f2c222dd83de60ecbebe45951/files/South_Sudan_Situation_Report_No_81.pdf; OCHA, *South Sudan: Humanitarian Response Plan 2015*, 1 December 2014, p. 15, <https://docs.unocha.org/sites/dms/SouthSudan/2014%20South%20Sudan/HRP2015/SOUTH%20SUDAN%20HRP%202015.pdf>.

critical in over half of the country.¹⁶ In a country with sparse health and educational infrastructure, the civil conflict has now also caused a major public health crisis, disrupting essential primary and secondary health care services.¹⁷ At the same time, emergency education interventions are reportedly needed for at least 1.7 million children and adolescents as the conflict continues, including as a result of attacks against and the military use of schools.¹⁸ An estimated 2.3 million people have been found to be in need of shelter materials and basic household items.¹⁹ Humanitarian access has been constrained by security incidents against humanitarian staff, bureaucratic impediments and seasonal floods.²⁰

International protection needs and non-return advisory

8. In conclusion, the situation in South Sudan has continued to deteriorate since the outbreak of the current civil conflict in December 2013, with the security, rule of law and human rights situation in South Sudan remaining deeply compromised. In such a context, persons fleeing South Sudan are likely to meet the criteria for refugee status under the 1951 Refugee Convention,²¹ or would otherwise meet the criteria contained in the refugee definition in Article 1(2) of the 1969 OAU Convention.²² Depending on the individual profile and circumstances of the case, exclusion considerations may need to be looked into.²³ Furthermore, to preserve the civilian character of asylum, States need to assess the situation of arrivals carefully so as to identify armed elements and separate them from the civilian refugee population.²⁴
9. The security, rule of law and human rights situation pertaining today in South Sudan also stands in the way of safe and dignified return for any person originating from South Sudan, whether or not the individual is found to be in need of international protection. Accordingly, UNHCR hereby reaffirms the February 2014 position, recommending States to suspend forcible returns of nationals or habitual residents of South Sudan to the country. The bar on forcible return serves as a minimum standard and needs to remain in place until such time as the security, rule of law and human rights situation in South Sudan has improved sufficiently to permit a safe and dignified return of those determined not to be in need of international protection.

UNHCR,
14 April 2015

¹⁶ OCHA, *South Sudan: Humanitarian Response Plan 2015*, 1 December 2014, p. 17, <https://docs.unocha.org/sites/dms/SouthSudan/2014%20South%20Sudan/HRP2015/SOUTH%20SUDAN%20HRP%202015.pdf>.

¹⁷ Ibid., p. 53.

¹⁸ OCHA, *South Sudan: Crisis Situation Report No.81*, 3 April 2015, https://gallery.mailchimp.com/f2c222dd83de60ecbebe45951/files/South_Sudan_Situation_Report_No_81.pdf; OCHA, *South Sudan: Humanitarian Response Plan 2015*, 1 December 2014, p. 42, <https://docs.unocha.org/sites/dms/SouthSudan/2014%20South%20Sudan/HRP2015/SOUTH%20SUDAN%20HRP%202015.pdf>; UN Security Council, *Report of the Secretary-General on Children and Armed Conflict in South Sudan*, 11 December 2014, S/2014/884, <http://www.refworld.org/docid/54a6958e4.html>.

¹⁹ OCHA, *South Sudan: Humanitarian Response Plan 2015*, 1 December 2014, p. 64, <https://docs.unocha.org/sites/dms/SouthSudan/2014%20South%20Sudan/HRP2015/SOUTH%20SUDAN%20HRP%202015.pdf>.

²⁰ Ibid., p. 21.

²¹ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, U.N.T.S. Vol. 189, p. 137, <http://www.unhcr.org/refworld/docid/3be01b964.html>; UN General Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, U.N.T.S. Vol. 606, p. 267, <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html>.

²² Organization of African Unity, *Convention Governing the Specific Aspects of Refugee Problems in Africa*, 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>.

²³ UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, HCR/GIP/03/05, <http://www.unhcr.org/refworld/docid/3f5857684.html>.

²⁴ UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, <http://www.refworld.org/docid/452b9bca2.html>.