



## UNHCR POSITION ON RETURNS TO SOUTH SUDAN

### *Introduction*

1. On 15 December 2013, violence erupted in the headquarters of the South Sudan army's Presidential Guard in Juba. President Salva Kiir accused former Vice President Riek Machar of an attempted coup, which Mr. Machar denied; Mr. Machar accused President Kiir of having instigated the violence in a move to eliminate Mr. Machar's opposition to the President's Government.<sup>1</sup> In the following days the violence spread quickly to other locations. Most of South Sudan's states experienced heavy fighting between Government forces and forces allied to former Vice President Machar. The fighting was particularly intense in Central Equatoria, Jonglei, Unity, Upper Nile and Lakes states.<sup>2</sup> While the conflict was sparked by political strife, it quickly took on an ethnic dimension, feeding on pre-existing ethnic tensions, mainly between the Dinka and Nuer tribes.<sup>3</sup> There have been widespread reports of ethnically-motivated attacks by armed forces against civilians by both sides, as well as attacks by civilians against civilians, with political affiliation imputed to civilians on the basis of their ethnicity. For example, Dinka members of South Sudan's security forces, both the police and the army, were reported to have targeted Nuer civilians on the basis of their presumed allegiance to Mr. Machar, himself a Nuer; while opposition forces and other armed groups reportedly targeted Dinka civilians on the basis of their presumed support for President Kiir, himself a Dinka.<sup>4</sup>
2. The political and security situation remains fluid. An agreement to cease hostilities was signed by both parties on 23 January 2014, but alleged violations of the agreement have since been reported.<sup>5</sup> Ongoing fighting in Unity State in late January, for example, reportedly led to the forced displacement of thousands of civilians, with humanitarian aid workers forced to flee together with the people they sought to assist.<sup>6</sup> Moreover, statements by South Sudan's

<sup>1</sup> Gérard Prunier, "South Sudan: It All Began So Well", *Le Monde Diplomatique (English edition)*, February 2014, <http://mondediplo.com/2014/02/03southsudan>; Human Rights Watch, *South Sudan: Ethnic Targeting, Widespread Killings*, 16 January 2014, <http://www.hrw.org/news/2014/01/16/south-sudan-ethnic-targeting-widespread-killings>.

<sup>2</sup> OCHA, *Revision of the Crisis Response Plan for South Sudan (January - June 2014)*, 3 February 2014, <http://www.unocha.org/cap/appeals/revision-crisis-response-plan-south-sudan-january-june-2014>; OCHA, *South Sudan Crisis: Situation Report (Report Number 16)*, 3 February 2014, [http://reliefweb.int/sites/reliefweb.int/files/resources/South%20Sudan%20crisis%20-%20situation%20update%2016\\_as%20of%203%20February.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/South%20Sudan%20crisis%20-%20situation%20update%2016_as%20of%203%20February.pdf).

<sup>3</sup> Gérard Prunier, "South Sudan: It All Began So Well", *Le Monde Diplomatique (English edition)*, February 2014, <http://mondediplo.com/2014/02/03southsudan>; New York Times, *Political Strife in South Sudan Sets Off Ethnic Violence*, 21 December 2013, [http://www.nytimes.com/2013/12/22/world/africa/political-strife-in-south-sudan-sets-off-ethnic-violence.html?\\_r=0](http://www.nytimes.com/2013/12/22/world/africa/political-strife-in-south-sudan-sets-off-ethnic-violence.html?_r=0).

<sup>4</sup> Human Rights Watch, *South Sudan: Ethnic Targeting, Widespread Killings*, 16 January 2014, <http://www.hrw.org/news/2014/01/16/south-sudan-ethnic-targeting-widespread-killings>; New York Times, *Political Strife in South Sudan Sets Off Ethnic Violence*, 21 December 2013, [http://www.nytimes.com/2013/12/22/world/africa/political-strife-in-south-sudan-sets-off-ethnic-violence.html?\\_r=0](http://www.nytimes.com/2013/12/22/world/africa/political-strife-in-south-sudan-sets-off-ethnic-violence.html?_r=0); International Crisis Group, *South Sudan Needs Respected Outside Mediation*, 18 December 2013, <http://www.crisisgroup.org/en/publication-type/media-releases/2013/africa/south-sudan-needs-respected-outside-mediation.aspx>.

<sup>5</sup> AP, *S. Sudan Rebels Say Gov't Violating New Cease-Fire*, 23 January 2014, <http://abcnews.go.com/International/wireStory/south-sudan-rebels-sign-cessation-hostilities-21639449>; Enough, *South Sudan: Satellites Show Homes Aflame in Opposition Leader's Hometown*, 4 February 2014, <http://www.enoughproject.org/blogs/south-sudan-satellites-show-homes-aflame-opposition-leaders-hometown>.

<sup>6</sup> MSF, *MSF Staff and Patients Forced to Flee Leer Hospital Amidst Ongoing Insecurity*, 31 January 2014, <http://www.msf.org/article/south-sudan-msf-staff-and-patients-forced-flee-leer-hospital-amidst-ongoing-insecurity>.

Minister of Justice concerning charges of treason against Mr. Machar and six other politicians have raised concerns about the fate of the cessation of hostilities agreement.<sup>7</sup>

3. The impact of the fighting on South Sudan's civilian population has been extremely serious. Thousands of civilians have been killed or wounded in the fighting, while hundreds of thousands have lost their livelihoods and access to basic services.<sup>8</sup> Humanitarian access in many parts of the country continues to be hampered by security concerns.<sup>9</sup>

#### *Internal and external displacement*

4. Around 870,000 people are reported to have been displaced by the conflict since mid-December 2013, including 738,000 people within South Sudan and 130,400 people who have fled to neighbouring countries, primarily Ethiopia, Kenya, Sudan, and Uganda.<sup>10</sup> Tens of thousands of civilians sought safety in or in close proximity to UN bases in South Sudan; over 74,800 civilians remained there in early February.<sup>11</sup> UNHCR welcomes the decision of most Governments in the region to recognize persons who fled South Sudan as refugees on a *prima facie* basis, as well as their generous response and their cooperation with UNHCR and other humanitarian actors.

#### *International protection needs and non-return advisory*

5. As the situation in South Sudan is fluid and remains uncertain, UNHCR recommends that States suspend forcible returns of nationals or habitual residents of South Sudan to the country. Many persons fleeing South Sudan are likely to meet the criteria for refugee status under the 1951 Refugee Convention,<sup>12</sup> or would otherwise meet the refugee definition in Article 1(2) of the 1969 OAU Convention.<sup>13</sup> Depending on the individual profile and circumstances of the case, exclusion considerations may need to be looked into.<sup>14</sup> Furthermore, to preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify armed elements and separate them from the civilian refugee population.<sup>15</sup> 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 have improved sufficiently to permit a safe and dignified return of those determined not to be in need of international protection.

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<sup>7</sup> The East African, *South Sudan Rebel Leaders Now Charged with Treason*, 8 February 2014, <http://www.theeastafrican.co.ke/news/South-Sudan-rebel-leaders-now-charged-with-treason/-/2558/2198044/-/7j0d3mz/-/index.html>; Aljazeera, *South Sudan Officials Charged with Treason*, 6 February 2014, <http://www.aljazeera.com/indepth/features/2014/02/south-sudan-officials-charged-with-treason-20142312581655804.html>; International Crisis Group, *Crisis Watch*, 1 February 2014; <http://www.crisisgroup.org/en/publication-type/crisiswatch/crisiswatch-database.aspx?CountryIDs=%7b8B313EA2-534B-4421-B78C-776E93632115%7d#results>.

<sup>8</sup> OCHA, *Revision of the Crisis Response Plan for South Sudan (January - June 2014)*, 3 February 2014, <http://www.unocha.org/cap/appeals/revision-crisis-response-plan-south-sudan-january-june-2014>.

<sup>9</sup> OCHA, *South Sudan Crisis: Situation Report (Report Number 17)*, 6 February 2014, [http://reliefweb.int/sites/reliefweb.int/files/resources/South\\_Sudan\\_Situation\\_Report\\_17\\_as\\_of\\_6\\_February\\_2014.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/South_Sudan_Situation_Report_17_as_of_6_February_2014.pdf).

<sup>10</sup> Ibid.

<sup>11</sup> Ibid.

<sup>12</sup> 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>.

<sup>13</sup> 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>.

<sup>14</sup> 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>.

<sup>15</sup> UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, <http://www.refworld.org/docid/452b9bca2.html>.