Protection and Human Rights Considerations

Preparedness and Response to COVID-19 for South Sudan

A. Background:

The outbreak of COVID-19 was declared a pandemic by the World Health Organisation on 11 March 2020 after the virus had spread to at least 114 countries infecting more than 118,000 individuals, and leading to at least 4,290 reported deaths. COVID-19 will impact each country differently, depending on local health infrastructure, the severity of the spread of the virus, the country's political, economic and social context, as well as the country's level of preparedness.

In South Sudan, the first COVID-19 case was officially reported on 05 April 2020. Preparedness and Prevention measures are critical at present. In our collective responsibility to support the Government of South Sudan in its preparedness and response mechanisms in the outbreak of COVID-19, we must ensure that these mechanisms are grounded in a human rights-based approach. These mechanisms must recognize, in particular, that the right to health is a fundamental part of the human rights framework and of our understanding of the human right to dignity. They must be cognizant of the fact that all human beings have an equal right to seek health care, and the right to health must be enjoyed without discrimination on the grounds of race, age, ethnicity or any other status (including refugees and internally displaced persons/IDPs).[1]

It is also important to highlight that pursuant to Sustainable Development Goal (SDG) 3, South Sudan is committed to ensure healthy lives and promote wellbeing for all at all ages. Moreover, SDG target 3.d, calls on the United Nations with the support of the international community, to strengthen the capacity of all countries, in particular developing countries, for early warning, risk reduction and management of national and global health risks. Therefore, best practice in the prevention and response to COVID- 19 rest on a mutually reinforcing inalienable right to

[1] Art.12 International Covenant on Economic, Social and Cultural Rights (ICESCR) and Committee on Economic, Social and Cultural Rights, 22nd session, General Comment number 14 (2000). For further reference see: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1AVC1NkPsgUedPlF1vfPMJ2c7ey6PAz2qaojTzDJmC0y%2B9t%2BsAtGDNzdEqA6SuP2r0w%2F6sVBGTpvTSCbiOr4XVFTqhQY65auTFbQRPWNDxL

health, development and social protection and upholding the principle of leaving no one behind enshrined in the Agenda 2030 for Sustainable Development.

There are over 7.5 million persons in need of humanitarian assistance in South Sudan. More than 1.5 million are IDPs, while over 299,000 are refugees from other countries. Major flooding in late 2019, coupled with ongoing inter-communal clashes, food insecurity and subsequent displacement, have affected the resilience and coping mechanisms of families and individuals and strained the humanitarian response system as well. Lack of basic health-care services (with limited or no access to hospitals for supportive care and treatment of complications), compounded by factors including: a high prevalence of malnutrition, inadequate water and sanitation facilities, and communicable diseases; ongoing inter-communal clashes; logistical challenges resulting from the remoteness of locations or ongoing insecurity; inadequate surveillance/early warning systems to detect cases in remote locations; and poor links to national disease monitoring systems, will result in many civilians at heightened risk of not being able to exercise their fundamental right to health, exposing them to COVID-19 infections. Additionally, health facilities and health care workers were not spared from the violence during the armed conflict and, in some circumstances, were directly targeted. Health facilities, in particular those away from urban centres have been destroyed or occupied and supply chains for medical equipment and medicines have been disrupted. Therefore, should the COVID -19 pandemic hit South Sudan, the population would be at substantial risk, particularly those with chronic medical issues, older persons, separated and unaccompanied children, persons with disabilities, persons in detention, pregnant women, and those living in refugee or IDP camps or informal displacement settings including congested urban areas.

The COVID-19 outbreak is a public health emergency, which in the context of South Sudan's lack of any viable national social safety net, possess multiple protection challenges and threats to human rights. In large part as a result of the armed conflict, public health services are not able to provide prevention, treatment and control of epidemic, endemic, occupational and other diseases for all persons living in the country. Additionally, the prevention and response therefore cannot be only medical, but must also address human rights and protection challenges, whether they arise from the health crisis itself or measures to contain it. While recognizing the right of any state to place proportionate restrictions to preserve public health, the absence of due process of law in South Sudan may affect fundamental rights to freedom of movement, the right to leave and return to the country, including through the arbitrary closure of borders.

This paper therefore **provides for a set of protection and human rights considerations** for the international community, humanitarian actors, donors and the Government of South Sudan to take into account in their Prevention and Response (hereinafter referred to as *Response*) plans for COVID-19.

B. Human rights and Protection Considerations:

1. Ensure human rights and protection are central to the *Response* – The *Response* programming to COVID-19 must be rights-based, with the Government bearing the primary responsibility to protect the human rights of its people and all other persons living in the Republic of South Sudan. Key rights which would be implicated are the right of all human rights without discrimination to the enjoyment of the highest attainable standard of health; the right to life, development and social services and physical integrity, rights to participation and right to information, the right to food and the right to seek asylum, among others. Ensuring promotion and protection of women's and children's rights in particular is also critical.

A rights-based approach is key for purposes of inclusion and participation of affected communities in the Response; for ensuring accountability and transparency on the part of those providing interventions; and for preventing Government overreach in the restrictive measures needed for transmission control, among other areas.[2] Application of the rights based approach will aim to avoid, to the greatest degree possible, further exacerbating existing vulnerabilities of those most at risk in the course of preparedness planning and response.[3]

All human beings have the right to enjoy the highest attainable standard of health and to do so without discrimination.[4] The right to health is not limited to receiving health care but encompasses a wide range of socio-economic factors and extends to the underlying determinants of health.[5] Equality and non-discrimination are key considerations to support the

[2] See, e.g., Human Rights and Coronavirus: What's at Stake for Truth, Trust, and Democracy? *Health and Human Rights Journal* (1 March 2020), *available in* https://www.hhrjournal.org/2020/03/human-rights-and-coronavirus-whats-at-stake-for-truth-trust-and-democracy/.

[3] COVID-19: How to include marginalized and vulnerable people in risk communication and community engagement, UNWOMEN and Translators Without Borders on behalf of the Regional RCCE Working Group – Asia and the Pacific (2020).

[4] While South Sudan is not yet a state party to the International Covenant on Economic, Social, and Cultural Rights (1966) ("ICESCR''), the Transitional National Legislative Assembly voted to ratify the ICESCR in June 2019. Article 12 of the ICESCR provides:

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

[5] ICESCR, General Comment No. 14 (2000), the Right to the Highest Attainable Standard of Health, E/C.12/2000/4, at paras 4, 8, 9.

full enjoyment of the right.[6] In addition, necessity and proportionality of any public health-related response, including any restrictive measures, is a further critical consideration.[7]

2. **Access to impartial assistance according to need and without discrimination** - The right to health must be enjoyed without discrimination on the grounds of race, gender, age, ethnicity, or any other status. Affected persons and communities must be supported with adequate access to clean water, healthy food, waste disposal, and soap wherever they are. Psychosocial support should be available for all persons including children who may be affected by the outbreak. National and international funding that is being mobilized to fight the virus should also include resources for forcibly displaced communities (IDPs, refugees) and also IDP and refugee returnees. This can come in several forms, including the creation of new, temporary health facilities near displacement sites, setting up screening centres and mobilizing additional health workers.[8]

3. Enhance people's safety, dignity and rights and avoid exposing them to further harm – Protection of individual privacy and patient confidentiality will be crucial in encouraging those who are ill to seek medical help, by reducing the perceived social costs (stigmatization) of acknowledging that one is ill and seeking medical care. This may involve allowing individuals the possibility to seek care in a manner that will not unnecessarily compromise their personal privacy. It may include voluntary testing, the physical location of any treatment facilities or it may concern sensitive handling of their patient's medical records. Specific plans for the respectful, dignified, and culturally appropriate disposal of the deceased should be made.

4. Preparedness - While working with the national authorities, humanitarian actors should advocate for the implementation of prevention and response measures to address COVID-19 in compliance with international standards and are aligned with a human rights-based approach. The specific needs and experiences of persons most at risk of infection and most vulnerable to the impact of COVID-19 are reflected in the *Response* plan.

The right to access information and community engagement is salient in the entire *Response* phase. Disseminating clear and accurate information on the prevention, early diagnosis and treatment of COVID-19, as well as the status of efforts to address its spread, should be a priority. The government should inform the population about COVID-19 and sensitize them rapidly, regularly, and transparently on preventive measures to limit the spread of COVID-19.

[6] CESCR, General Comment No. 14 (2000), the Right to the Highest Attainable Standard of Health, E/C.12/2000/4, at para. 18.
[7] CESCR, General Comment No. 14 (2000), the Right to the Highest Attainable Standard of Health, E/C.12/2000/4, at paras 28, 29.
[8] See Arts 5 and 9, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009.

International public health agencies, in partnership with local health authorities and humanitarian agencies, must ensure that accurate information and practical advice is provided to these communities in a clear, easy to understand and transparent manner tailored to the specific information needs of various groups including linguistic minorities, persons with disabilities impacting the ability to read, hear, or otherwise communicate, persons without formal education, children, and others.

Humanitarian agencies should aim to reduce human exposure to this virus by informing communities of risks of exposure and risk avoidance. All Clusters and Agencies should support such efforts through integration of these activities into their programmes such as in FSL, WASH, CCCM, or nutrition programmes.

Communities have to be fully engaged in the planning, decision-making and implementation of activities in order to have a comprehensive response. Existing community perceptions and beliefs may undermine the response, including exacerbating the proliferation of the virus and stigmatizing those who contract it. The full engagement of communities is therefore fundamental to avoid discrimination of those affected and to guarantee implementation of mitigation measures. Ensure that communities are informed about and participate meaningfully, to the extent possible, in the assessment of the impact of the outbreak and to the development of solutions. Promote feedback and complaint mechanisms.

In the event of the spread of COVID-19 in South Sudan, life-saving assistance interventions should be identified at an early stage with a view toward allowing adequate time for incorporating / continuing the incorporation of protection and human rights principles into operational planning. These functions include: *delivery of food and safe water; provision of essential health services; supplying essential materials such as soap and essential medicines/supplies; ensuring security/protection for the population, staff and good/supplies; ensuring fuel/other supplies to enable cooking, functioning of generators, ensuring that appropriate and timely information is available to inform decision-making and response through regular communication with external networks and agencies.*

As the entity with the primary responsibility for the protection of civilians, as well as the promotion and protection of human rights for those within its territory, the **Government is duty-bound to provide safe and secure access** to basic needs/services such as those identified above, in particular with regard to health services and medical treatment, in affected areas. Intercommunal violence and cattle raiding taking place in affected areas has the potential to further hinder access to the limited health services presently available in South Sudan. It would be incumbent upon the Government of South Sudan to ensure that such access is secured.

5. Needs assessment of vulnerable categories/individuals – The *Response* programming must take into account the special needs of vulnerable persons population who would be at substantial risk, particularly those with chronic medical issues, older persons, separated and unaccompanied children, persons with disabilities, persons in detention, pregnant women, and those living in refugee or IDP camps or informal displacement settings including congested urban areas.

It should be noted that humanitarian programmes that support women and girls are normally disrupted during public health emergencies, when, paradoxically, the vulnerabilities of women and girls are amplified. With the onset of local COVID-19 virus transmission in South Sudan, women and girls may face heightened risks due to social pressure to confirm to traditional roles as caregivers. Women and girls may therefore face increased risks of infection, vulnerability due to loss of means of livelihoods, lack of access to education for girls (who may be forced to leave school to undertake caregiving duties); and inadequate access to other basic services. If not well- supported, women and girls in such roles may also become vulnerable to psychosocial distress.

The *Response* must take into consideration the specific needs of a diversity of persons with disabilities. Persons with disabilities face barriers that increase risk in humanitarian contexts, barriers that also have gender-specificities. "Barriers can be either classified as a threat if put in place purposefully by an actor or as a vulnerability if happening as an inadvertent act. In both cases, these barriers lead to exclusion, which increases the likelihood of persons with disabilities to face threats and vulnerabilities at a higher level than the rest of the crisis-affected population." By making use of enablers (such as support services in camps, facilitated access to food distribution points, or acquisition of assistive devices), persons with disabilities can improve their individual resilience. Falling risk and rising resilience imply improved protection.

Detainees might face higher vulnerabilities as the spread of the virus will expand rapidly due to the high concentration of detainees in confined spaces and to the general lack of care given to detainees in some contexts. Maintaining health in prisons is in the interest of the persons deprived of their liberty as well as of the prison staff. If the risks related to the virus in prisons are not addressed, they can spread to the general public.

Stigma and discrimination related to COVID-19 may make children more vulnerable to violence and psychosocial distress as well. The numbers of unaccompanied and separated children may also increase, and alternative arrangements for psychosocial, educational, and family support may be needed.[9] Disruption of livelihood and closure of schools may place

[9] The Alliance for Child Protection in Humanitarian Action, Technical Note: Protection of Children during the Coronavirus Pandemic, Version 1, March 2020.

children at risk of forced recruitment or other negative coping mechanisms therefore *Response* plans must take into account the direct and indirect risks that children may be exposed to.

While the likelihood of diverting humanitarian funding and other resources into prevention and response to COVID-19 remains a reality, humanitarian actors should ensure continued prioritization of programmes for response to protection and other humanitarian incidents including of violence against women, boys and girls in order to continue efforts to provide life-saving critical humanitarian assistance to those in need.

6. Lockdowns, quarantines and other such measures to contain and combat the spread of COVID-19 and the right to freedom of movement, to seek safety from violence and persecution, and to access humanitarian assistance – Restrictions of movements, quarantines and lockdowns should always be carried out in strict accordance with human rights standards and be strictly necessary and proportionate to the evaluated risk. Many of the measures taken, such as the closing of borders, curfews, and quarantines, can have an impact on the freedom of movement and restrict access to health care, food, water, and sanitation for those living in neighbourhoods and villages of affected areas. Quarantines, which restrict the right to freedom of movement, may be justified under international law only if they are proportionate, time-bound, undertaken for legitimate aims, are strictly necessary, and applied in a non-discriminatory way. Quarantines must be imposed in a safe and respectful manner, and when possible, should be voluntary. The rights of those under quarantine must be respected and protected, such as the right to food, the right to be treated humanely, the right to health, the right to privacy and information, right to access potable water and freedom to practice one's religion.

Restrictions on the freedom of movement of displaced persons in need of protections solely on suspicion of being infected with COVID-19 would raise human rights concerns and must adhere to the provisions of necessity and proportionality cited above.

Special provisions should be made to enable the movement of persons who seek safety from violence or persecution to ensure that the least restrictive means are used to prevent COVID-19 transmission and that these individuals have an option to seek safety, in order to avoid discrimination as well as violations of the fundamental rights to liberty and security of the person, and the right to freedom of movement.[10] In addition, affected asylum-seekers should

[10] For authority on the rights of IDPs including freedom of movement and right to liberty and security of person, see Arts 5 and 9, African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention), 2009. South Sudan is a state party to the Kampala Convention. See Status of Ratifications, Kampala Convention, October 2019, *available in https://au.int/sites/default/files/treaties/36846-sl-AFRICAN%20UNION%20CONVENTION%20FOR%20THE%20PROTECTION%20AND%20ASSISTANCE%20OF%20INTERNALLY%20DISPLACED%20PERSONS%20IN%20AFRICA%20%28KAMPALA%20CONVENTION%29.pdf*,

not be denied access to asylum procedures as COVID-19 does not create a bar to accessing asylum procedures for refugees seeking asylum in South Sudan. Further COVID-19 should not constitute a ground for refoulement or expulsion to third country.[11]

7. Conflict sensitivity – if COVID-19 penetrates communities, this could provide a trigger for potential violence in some communities, including inter-communal or inter-clan violence. The response to COVID-19 must take into account principles of conflict sensitivity in addition to the humanitarian principles, rights-based approach, and core principle of non-discrimination outlined above. Due consideration must be afforded to any increased conflict drivers potentially presented by the disease. Conflict mitigation, community / social cohesion, and sensitization initiatives should take this into account.

8. Prevention of / protection from Sexual Exploitation and Abuse - Appropriate measures need to be taken to ensure the protection of affected communities against sexual or physical violence and exploitation. Special attention must also be paid to children and especially unaccompanied and separated who would be more vulnerable.

9. Coordination forums – Humanitarian or government led task force or coordination forums for COVID-19 preparedness and response must include the participation of protection and human rights actors. Human rights and Protection actors must be engaged in the early stage with the UNCT/HCT and participate in the COVID-19 task team to ensure the centrality of protection and human rights approaches are considered in discussions and planning of activities with other areas and clusters. The response to the outbreak of the virus has to involve all the clusters and protection must be mainstreamed through the multi-cluster approach.

10. Enhancing staff safety and duty of care - Promote the safety, self-care and psychosocial wellbeing of the humanitarian personnel or frontline teams including provision of protective gear. Moreover, the frontline teams should be adequately briefed on preventive measures and practices to keep themselves protected from the virus and should be provided with regular supervision, technical guidance and emotional debriefing. Frontline workers especially women could be vulnerable to abuses and insults from patients and caregivers dues to intense stress of the disease and negative copying mechanisms. At the community level they may be isolated which may affect them emotionally.

[11] See Arts 26, 31-33, UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, available at: https://www.refworld.org/docid/3be01b964.html and UN Genral Assembly, *Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, available at: https://www.refworld.org/docid/3ae6b3ae4.html.
See also UN High Commissioner for Refugees (UNHCR), *Key Legal Considerations on access to territory for persons in need of international protection in the context of the COVID-19 response*, 16 March 2020, available at: https://www.refworld.org/docid/5e7132834.html.

Annex 1: Legal Framework

1. International human rights law

1. The Republic of South Sudan is a State Party to the African Charter on Human and Peoples' Rights and seven international human rights treaties.[12] In July 2019, the Government of South Sudan passed national ratification bills for accession to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and their First Optional Protocols (establishing individual complaint mechanisms).

1.1 Right to health

2. Article 12 of the International Covenant on Economic, Social and Cultural Rights recognizes the right to the enjoyment of the highest attainable standard of physical and mental health (right to heath). South Sudan has also ratified the Convention on the Elimination of All forms of Discrimination against Women and the Convention on the Rights of the Child, which address the right to health in various ways. The former requires the elimination of discrimination against women in health care as well as guarantees of equal access for women and men to health care services. It also requires States Parties to enact and enforce laws and policies that protect women and girls from violence and abuse, and to provide for appropriate physical and mental health services.

1.2 Progressive realization of the right to health

3. International human rights law provides that States have the obligation to progressively achieve the full realization of the right to health, and therefore acknowledges constraints that may arise from a lack of available resources. However, while acknowledging these constraints, international human rights law also obligates States Parties to demonstrate that they have taken all possible measures to comply with this obligation. It is always challenging to draw a clear line between the inability and the unwillingness of a State to provide adequate resources to meet its obligations, particularly in a country such as South Sudan, which has been through a devastating armed conflict. Despite its fragile situation, under international law, South Sudan is not exempted from taking all necessary measures to ensure the progressive realization of the right to health.

1.3 Minimum core content obligations

4. The situation of non-international armed conflict may reduce available resources, but does not exonerate the Government of South Sudan from the realization of a minimum core content obligations. The onus is on the State to demonstrate that every effort has been made to use all resources at its disposal to satisfy this minimum core obligations.

[12] The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; and the Convention on the Rights of the Child. The Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography entered into force for South Sudan on 27 October 2018.

5. With regard to the right to health, the minimum core content includes the obligations to ensure inter alia the right of access to functioning health facilities, goods and services on a non-discriminatory basis, especially for vulnerable and marginalized groups; to provide essential drugs; to ensure equitable distribution of all health facilities, goods and services; and to adopt and implement a national public health strategy and plan of action.

1.4 International obligations of States Parties to the International Covenant on Economic, Social and Cultural Rights

6. To reduce inequalities in accessing health care between and within countries, States Parties to the International Covenant on Economic, Social and Cultural Rights are advised, depending on the availability of resources, to facilitate access to essential health facilities, goods and services in other countries, wherever possible and to provide the necessary aid when required.

7. The Committee on Economic, Social and Cultural Rights in its General Comment no. 14 (2000) underlines the obligation of all States Parties to take steps, individually and through international assistance and cooperation, especially economic and technical, towards the full realization of the rights recognized in the Covenant, such as the right to health.

1.5 Right to health in territory under the control of non-state actors

8. Under the international human rights framework, the Government of South Sudan retains residual obligations towards members of its population living in territories under the control of SPLA-IO (RM), although it does not exercise effective jurisdiction over these territories and is unable to implement, or is prevented from implementing its human rights obligations. For instance, the Government has the duty to take measures to seek international assistance for those territories and populations, and to ensure that international agencies are able to operate without any administrative obstacles.

9. According to the circumstances and context, armed non-state actors, such as SPLA-IO (RM), may also have international human rights obligations concerning the right to health in the territories under their control. Due to the group's level of organization, and the kind and duration of power that its exercises over territories under its control, its representatives may be responsible, as de facto authorities, for discharging certain economic, social and cultural rights obligations.[13]

2. Domestic legal framework

10. The transitional constitution of the Republic of South Sudan recognizes under article 31 that all levels of Government shall promote public health, establish, rehabilitate and develop basic medical and diagnostic institutions and provide free primary health care and emergency services for all citizens.

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[13] Giacca G., *Economic, Social and Cultural Rights in Armed Conflict*, Oxford University Press, 2014.