

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review:

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THE REPUBLIC OF SOUTH SUDAN

I. BACKGROUND INFORMATION

The Republic of South Sudan (“South Sudan”), which gained its independence from the Republic of the Sudan in July 2011, has not acceded yet to neither the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the “*1951 Convention*”), nor the *1954 Convention relating to the Status of Stateless Persons* (“*1954 Convention*”), nor the *1961 Convention on the Reduction of Statelessness* (“*1961 Convention*”), nor the *1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa* (“*1969 OAU Convention*”). Although South Sudan has signed, but not ratified yet, the *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa* (“*Kampala Convention*”), it is party to the International Conference on the *Great Lakes Region Protocol on the Protection and Assistance to Internally Displaced Persons* (“*Great Lakes Protocol*”).

South Sudan adopted the *2012 Refugee Act*, which, among other positive aspects, (a) incorporates the refugee definition established by the *1951 Convention* and *1969 OAU Convention*, and expressly grants asylum for persecution on the grounds of tribe and gender discriminating practices; (b) guarantees the enjoyment of the rights set out in Part Two (the “bill of rights”) of the *2011 Transitional Constitution of the Republic of South Sudan*; (c) entitles refugees to seek employment; (d) provides access to the same basic health services and primary education as nationals of South Sudan.¹ Although the Commission for Refugee Affairs (CRA) has been established, the drafting of *Implementing Regulations* and capacity building of key actors foreseen in the legislation, such as the Eligibility Committee, remain to be done. UNHCR has undertaken the registration and formal refugee status determination (RSD) procedures with the gradually increasing participation of CRA. *Prima facie* RSD mechanisms and the provision of temporary protection to a specific group are established in Section 30 of the *2012 Refugee Act*. However, since South Sudan’s independence, the Sudanese refugees

¹ Section 7(a) and 7 (d); Section 33 (c); 33(f) and 33(g) of the *2012 Refugee Act*.

have been the only group to be recognized *prima facie* as refugees². South Sudan has also adopted the *2011 Nationality Act*, which confers equal rights to women and men.

As of 31 October 2015, there are some 265,288 registered refugees residing in South Sudan, the vast majority of whom (92 per cent) are Sudanese. Approximately 49.3 per cent are male, 50.7 per cent are female, and 60.3 per cent are children under 18 years of age. There are also some 688 registered asylum seekers, mostly from Federal Democratic Republic of Ethiopia, Eritrea and the Somali Republic, of whom 73.4 per cent are male, 26.6 per cent are female, and 12.4 per cent are children under 18 years of age. Additionally, an estimated 600 Burundians are pending screening registration as asylum seekers. At present, there are no documented cases of stateless persons in South Sudan. It is also estimated that, as of 31 October 2015, there are some 1.66 million internally displaced persons (IDPs) in South Sudan.

Non-Sudanese Refugees and Asylum-Seekers in South Sudan:

Since 9 July 2011, South Sudan had already hosted nearly 21,800 registered refugees (4,863 from Federal Democratic Republic of Ethiopia, 15,916 from the Democratic Republic of Congo and 1,014 from the Central African Republic), who had benefited a *prima facie* refugee status recognition, while South Sudan was still part of the Republic of the Sudan. Following its independence, South Sudan continued to acknowledge their refugee status and to protect them.

Ethiopian Refugees: As of 31 October 2015, there are 4,206 registered Ethiopian refugees from the Anuak community residing in South Sudan. Most of them arrived in 2003 during the Gambella uprising. Approximately half of them are hosted in Gorom refugee camp outside Juba in Central Equatoria. The rest are mostly self-reliant and settled around Pochalla in Jonglei State. In 2014, some 500 Anuak Ethiopians opted to repatriate voluntarily with UNHCR's assistance following the onset of conflict in South Sudan.

Congolese Refugees: As of 31 October 2015, 15,602 registered Congolese refugees having fled attacks from the Lord's Resistance Army (LRA), in 2008, are hosted mostly in refugee sites around Yei in Central Equatoria State and around Yambio in Western Equatoria State.

Central African Refugees: As of 31 October 2015, 1,880 registered refugees from the Central African Republic reside in South Sudan, mostly in refugee sites around Yambio in Western Equatoria State. They have also fled LRA attacks in their country of origin, in 2008.

Asylum-Seekers: As of 31 October 2015, South Sudan hosts 688 registered asylum-seekers. They are comprised mainly of 510 Ethiopians, Eritreans and Somalis, who have been residing in various locations (e.g. Juba, Bentiu, Bor, Malakal). Specifically, after the outbreak of the civil conflict in December 2013, they fled, along with IDPs, into Protection of Civilians (POCs) sites. With IOM's and UNMISS's assistance, asylum-seekers residing in POCs sites outside Juba were transferred to Juba under the assumption that they were immigrants seeking to be repatriated. Although many foreign nationals did repatriate, this residual group raised protection concerns vis-à-vis their respective country of origin, and were subsequently registered as asylum-seekers by UNHCR/CRA. CRA, in negotiation with UNHCR, UNMISS and various humanitarian actors, arranged, in cooperation with the State and Western Equatoria's local authorities to offer protection and support to those wishing to be relocated to

² Initially registered and recognized by UNHCR at the onset of the influx, the Ministry of the Interior in South Sudan subsequently endorsed the *prima facie* recognition of this group by letter

a refugee camp near Yambio. This option was accepted by nearly 100 of them. For the rest of this group, CRA authorised them to remain in Juba and to offer them protection upon closure of the POC site in Juba by UNMISS, in early September 2015.

Additionally, between May-June 2015, approximately 600 Burundians in the Juba area sought to apply for asylum as a result of the violence eruption in Burundi surrounding the presidential election. Although CRA was initially sceptical of these individuals' motives given Burundi's remoteness, it started registering them as asylum seekers, in early December 2015.

Sudanese Refugees:

Comprising 96 per cent of the refugee population living in South Sudan, 243,600 Sudanese refugees are registered as of 31 October 2015. Most of them arrived during the second semester of 2011 (some 76,800) and during 2012 (some 100,000) and their immigration flow, especially from the South Kordofan State, continues to arrive. Some 132,644 Sudanese refugees come from Blue Nile State in Sudan and are hosted in four camps located in Maban County in Upper Nile State, while some 111,420 Sudanese refugees come from South Kordofan State in Sudan and are mainly hosted in a camp and a site in Parieng County in Unity State. Some 5,900 Sudanese refugees are residing in the Juba urban area and some 2,400 are residing in Yei River Country (around 1,400 in Lasu Refugee Settlement and around 1,000 in Yei urban area).

Internally Displaced Persons (IDPs):

On 15 December 2013, fighting broke out in Juba between the members of the Presidential Guard and the Sudan People's Liberation Army (SPLA) subsequently splitting forces loyal to the Government and to former Vice-President Riek Machar. In the days that followed, the conflict spread to the States of Jonglei, Unity and Upper Nile. Since then, the conflict has created a major protection crisis and forced more than 2.27 million people to leave their homes.

By the end of October 2015, conflicts and food insecurity have triggered significant internal displacement as well as refugee outflows with 1.66 million IDPs and over 630,000 refugees fleeing to neighbouring countries. Close to 200,000 IDPs have sought protection within six UNMISS bases in South Sudan (Juba, Bor, Bentiu, Malakal, Melut and Wau). A smaller number is accommodated in collective accommodations, including empty public buildings and schools. However, due to continuous armed clashes between the government forces (SPLA) and the opposition (SPLA/IO) and/or militias affiliated with warring sides, the overwhelming majority of IDPs is living outside managed sites, in host communities or in areas with difficult access.

On 23 January 2014, under the auspices of Intergovernmental Authority on Development (IGAD)³, the *Cessation of Hostilities Agreement*⁴ was signed between the Government of the Republic of South Sudan and SPLM/A – IO. The IGAD Monitoring and Verification Mechanism for South Sudan, headquartered in Juba, was set up shortly after, with a mission to support the mediation process by monitoring, investigating and reporting the two Parties' compliance with the *Cessation of Hostilities Agreement*. Finally, the *Agreement for Resolution of the Conflict in the Republic South Sudan* (“Peace Agreement”) was signed in August 2015⁵.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Accession to the 1951 Convention and 1969 OAU Convention

The *Bill* adopting the text of the *1951 Convention* has been cleared by the Council of Ministers. It was submitted to the National Legislative Assembly, but is still pending as of 20 November 2015. The *Bill* adopting the text of the *1969 OAU Convention* has been cleared by the Council of Ministers, endorsed by the National Legislative Assembly and approved by the President. Only the formality of depositing the accession instrument remains.

Establishment of a national legal framework regarding refugee protection

UNHCR commends South Sudan's commitment to respect the principle of *non-refoulement* extending the protection to refugees and asylum-seekers on its territory. Although South Sudan has not acceded yet neither to the *1951 Convention* nor the *1969 OUA Convention*, at the *2011 Ministerial Intergovernmental Event on Refugees and Stateless Persons* (2011 Ministerial Meeting), the Government of South Sudan expressed its commitment to enact, by the end of that year, its *Refugee Bill*. Furthermore, the Government of South Sudan committed to nominate and deploy three Commissioners for Refugees to the most sensitive States of the country, where refugee influx is the highest, namely Upper Nile, Unity, and Western Equatoria States.

In view of this pledge, UNHCR congratulates the Government of South Sudan on the adoption of the *2012 Refugee Act*, the establishment of the Commission for Refugee Affairs (CRA) in 2013 and the appointment of Assistant Commissioners in Unity, Upper Nile, Central Equatoria and Western Equatoria. The presence of the Assistant Commissioners has been vital in order to maintain close relations with the host community and state political/police officials. Working

³ In 1983 and 1984, through UNHCR initiative, six countries in the Horn of Africa — the Republic of Djibouti, Federal Democratic Republic of Ethiopia, the Republic of Kenya, the Somali Republic, the Republic of the Sudan and the Republic of Uganda - took action to establish an intergovernmental body for the development and drought control in their region. In January 1986, the Assembly of Heads of State and Government met in Djibouti to sign the *Agreement*, which officially launched IGADD headquartered in Djibouti. After its independence, Eritrea became the seventh member in 1993. The Intergovernmental Authority on Development (IGAD) in Eastern Africa was created in 1996 to supersede the Intergovernmental Authority on Drought and Development (IGADD). The *IGAD-led Mediation Process for South Sudan* was set up by IGAD Member States in response to the ongoing crisis in the country. The mission of the mediation is to achieve a sustainable, inclusive and comprehensive peace in South Sudan.

⁴ *Agreement on Cessation of Hostilities between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army (in Opposition) (SPLM/A in Opposition)* available at: <http://southsudan.igad.int/index.php/2014-08-07-10-47-57>.

⁵ *Agreement for Resolution of the Conflict in the Republic South Sudan* was signed by the SPLM/SPLA-IO, as well as the Former Detainees and Other Stakeholders, on 18 Aug 2015. After a slight delay, the *Agreement* was also signed by the President of the Republic of South Sudan, on behalf of SPLM/A, on 26 Aug 2015.

level relations are quite positive and have helped to resolve numerous practical issues. National and State governments have provided protection and land for settlement and cultivation reasons to refugees in order to become self-reliant. Work remains to be done on the drafting of the *Implementing Regulations* and the capacity building of key actors foreseen in the national legislation, such as the Eligibility Committee.

Adoption of domestic legal framework regarding nationality

Following its independence, the Government of South Sudan acknowledged the importance of acquiring a citizenship and underscored the fact that, as part of a comprehensive *Strategy to prevent statelessness*, it had already adopted the *Nationality Act* that entered into force on 07 July 2011. The *Nationality Act* confers the same rights to women and men. Gender inclusive terminology is applied expressly throughout the text. Specifically, the *Nationality Act* allows South Sudanese mothers to transfer their nationality to their children. It does not allow foreign women married to South Sudanese men to renounce their foreign nationality before acquiring first the South Sudanese nationality. Moreover, the *Nationality Act* does not prohibit dual or multiple nationality.

Nevertheless, the South Sudanese law does not contain any disposition determining the status of stateless persons and addressing their specific protection needs, such as the issuance of travel documents. While the *Nationality Act* establishes the normative framework, the risk of statelessness subsists as a result of state succession; delayed or/and erroneous implementation of the *Nationality Act*; historical migration; population living close to several undetermined borders; generalized lack of documentation; lack of civil registration and civil status recording system and database; lack of census etc.

Commitment to establish a legal framework for the protection of IDPs

At the *2011 Ministerial Meeting*, shortly after South Sudan's independence and with a view to prevent renewed forced displacement such as those witnessed during 20 years of armed conflict, the Government of South Sudan pledged to accede to and ratify the *Kampala Convention* and to develop the related domestic legal framework, so as to give full effect to this treaty.⁶ Indeed, South Sudan signed the *Kampala Convention* on 25 January 2013. The *Bill* ratifying the Convention has been cleared by the Council of Ministers and was submitted to the National Legislative Assembly on 29 September 2015. However, it is still pending as of 20 November 2015. National legislation to address internal displacement has not developed yet.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Ensure the civilian character of asylum

The overall refugee protection context, particularly in Unity and Upper Nile States near the border with the Republic of the Sudan, and in Yida settlement, continues to be compromised by the presence of armed elements and combatants. Their presence is associated to challenges, such as ensuring refugees' physical security and particularly child protection, guaranteeing the

⁶ UN High Commissioner for Refugees (UNHCR), *Ministerial Intergovernmental Event on Refugees and Stateless Persons - Pledges 2011*, October 2012, available at: <http://www.refworld.org/docid/50aca6112.html>.

maintenance of law and order, deterring voluntary and forced recruitment and Sexual and Gender Based Violence (SGBV).

Recommendations:

UNHCR recommends that the Government of South Sudan:

- a. Commit to pursue the withdrawal of military and irregular armed actors from refugee sites and to enforce their disarmament;
- b. Reduce presence of combatants, armed elements and weapons at refugee sites through initial and continuous screenings carried out by national and local authorities;
- c. Strengthen the presence, capacity building and competence of the South Sudanese government, especially CRA, in the field level;
- d. Reinforce rule of law, through national police deployments and formal justice system to refugee sites;
- e. Support refugees' relocation from Yida settlement to the recently established Pamir camp; and
- f. Raise awareness of local authorities, refugees and local citizens over the negative consequences of voluntary and forced recruitment, particularly child recruitment.

Issue 2: Rule of law and access to justice in refugee camps and settlements

The ongoing conflict in South Sudan has led to the destruction or dismantling of the vast majority of formal courts and constrained the deployment of mobile courts. Currently there are no statutory courts in or nearby any of the refugee sites in South Sudan. As such, access to justice is one of the most serious protection concerns affecting the refugee population. While customary courts are authorized under South Sudanese law to adjudicate misdemeanors, the formal, statutory courts have exclusive jurisdiction over criminal matters (e.g. vandalism, theft, assault, SGBV, murder, etc.). In the absence of formal courts, customary courts have been established by the refugee communities to adjudicate misdemeanours and other disputes in the camps. However, with respect to criminal matters, suspected perpetrators are either detained indefinitely without access to a trial or are being released, thus perpetuating impunity that begets further criminality.

Recommendations:

UNHCR recommends that the Government of South Sudan:

- a. Implement prevention, investigation, prosecution, and reparation mechanisms to combat crime and protect the victims of human rights' violations in refugee camps and settlements;
- b. Reinforce national law enforcement, judicial and penitentiary services, and promote effective oversight, disciplinary measures, monitoring and accountability mechanisms, transparent remuneration and other incentives, training and professional development on international human rights law, and fair gender, ethnic and religious representation; and
- c. Ensure the (re)-establishment of functioning formal statutory courts throughout the territory, including by deploying mobile courts to refugee camps and settlements.

Issue 3: Accession to international and regional human rights legal frameworks

Regarding the protection of UNHCR's persons of concern, such as refugees, asylum seekers, IDPs and stateless, South Sudan has made significant progress adopting national laws. However, a gap remains with respect to adherence to international and regional legal frameworks.

Recommendations:

UNHCR recommends that the Government of South Sudan ratifies and accedes to:

- a. The *1951 Convention* without reservations, in particular with respect to the right to seek employment, the right to freedom of movement, and the right to have access to primary education and health care;
- b. The *1969 OAU Refugee Convention*;
- c. The *1954 Convention* and *1961 Convention*; and
- d. The *African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)*.

Issue 4: Legal framework for the protection of IDPs

Despite the signing of the *Peace Agreement*, its implementation is delayed due to continuous incidents of violence occurring in a number of regions in the country, in particular those belonging to States comprising the Great Upper Nile (Upper Nile, Jonglei and Unity). In addition to the loss of life and destruction of livelihoods, the on-going civil war is hindering millions of South Sudanese persons from accessing basic services, including health and education, and is causing major internal and external displacement. In addition to hundreds of thousand IDPs who have found relative safety in POC sites and among host communities in zones deemed more secure, there are many hundreds of thousands more IDPs who have been displaced multiple times and/or continue to be on the move as a result of direct security threats and the lack of basic support, such as food and medicine. IDPs in POC sites largely lack freedom of movement and are reluctant to exit UNMISS bases, where they have sought protection. IDPs outside POC sites have different levels of freedom of movement, depending on the profile of the host community and level of insecurity in the particular location.

Since the beginning of the crisis, the basic human rights of the civilian population caught in conflict have been violated. Children are exposed to violations of their rights; they have been killed, raped and otherwise abused, while thousands are reportedly forced to join military factions. Children in displacement are often deprived access to education and to a safe environment guaranteeing their development.

Conflict in South Sudan has immense impact on the quality or, in some instances, the very existence of basic services, primarily health care and education. Access to clean water and adequate sanitation is a continuous challenge, while access to food is very limited, due to the conflict and unreliable weather conditions impacting crops.⁷

⁷ Integrated Food Security Phase Classification (IPC), Republic of South Sudan - Full Report August-September 2015, page 2, available at:

<http://reliefweb.int/sites/reliefweb.int/files/resources/IPC%20Report%20South%20Sudan%20-%20September%202015%20-Final.pdf>, "...an estimated 3.9 million people (3.1 million in Crisis and 800,000 in Emergency) or 34 per cent of the population are classified as severely food and nutrition insecure and are unable to meet their food needs in September. This is an 80 per cent increase compared to the same period last year. Of extreme concern is the estimated 30,000 people in Unity State, who are experiencing Catastrophe and are likely to deteriorate into famine in the absence of urgent and immediate humanitarian access..."

Humanitarian access to the most vulnerable categories of the displaced population in remote areas outside POC sites and large host communities has been difficult, or at times impossible, due to the continuous fighting and general insecurity. These challenges are only reinforced by the logistical obstacles resulting from poor or inexistent road networks.

Recommendations:

UNHCR recommends that the Government of South Sudan:

- a. Accords and guarantees IDPs the enjoyment of all their rights as citizens of South Sudan, such as unhindered access to services, including access to humanitarian assistance in the areas under the control of the Government as reiterated in the *Peace Agreement*; and
- b. Establish a comprehensive policy framework on internal displacement, in line with the regional and international standards and create a framework and conditions for the implementation of durable solutions for internal displacement.

Issue 5: Promote refugees' local integration

In order to limit refugees' dependency and to increase their resilience and self-sufficiency in the long term, taking into account the demands for humanitarian aid, South Sudan has to take measures towards this direction. While, the *2012 Refugee Act* provides refugees with the right to seek employment, few refugees can benefit from formal employment, due to the acute economic crisis and the employers' preference to employ nationals. However, the national and state government have provided land to refugees for settlement and cultivation in practically all refugee locations.

Recommendations:

UNHCR recommends that the Government of South Sudan:

- a. Provide refugees with access to arable land, thereby lessening the need of humanitarian food assistance and allowing them to contribute to the local economy;
- a. Ensure that refugees enjoy the right to seek employment in line with Article 33 (f) of the *2012 Refugee Act*; and
- b. Establish a framework for promoting local integration as a durable solution for protracted refugee situations, particularly where refugees are self-reliant and actively contribute to the local economy and development.

Issue 6: Prevent and eliminate statelessness

The *Nationality Act* is a positive step forward establishing a national legal framework. Nevertheless, the risk of statelessness subsists as a result of state succession; delayed or/and erroneous implementation of the Nationality Act; generalized lack of documentation, civil registration; lack of civil status recording system and functional authority. This is also due to historical migration flows, such as nomadic populations and individuals of undetermined nationality living close to disputed borders; individuals, who were separated from their families and cannot prove their links to the country (abducted and separated children during the 21 years long war).

Recommendations:

UNHCR recommends that the Government of South Sudan:

- a. Collect data regarding stateless populations and those at risk of statelessness in South Sudan, in cooperation with UNHCR, and comprehensively assess the protection risks they face;
- b. Include questions related to nationality in the planned census to establish the number of persons whose nationality is undetermined;
- c. Establish Civil Registration and Vital Statistics (CRVS) systems with the continuous technical support of the African Union's CRVS frameworks; and
- d. Allocate a budget for the issuance of nationality documentation throughout the country and ensure that Department of Nationality, Passports and Immigration (DNPI) officials receive specialized training on the *Nationality Act*.

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