

UNHCR POSITION ON RETURNS TO SOUTH SUDAN – Update II

April 2019

1. This position supersedes and replaces UNHCR's April 2015 Position on Returns to South Sudan – Update I.¹

Introduction

2. Since the signature of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) on 11 September 2018,² the permanent ceasefire is being upheld in most parts of the country and there is a marked reduction in violence.³ Nevertheless, conflict remains and egregious human rights violations continue to be perpetrated by parties to the conflict with near complete impunity.⁴ While Chapter III of the R-ARCSS contains provisions upholding the right of return and prioritizing reintegration during the transitional period,⁵ sustainable conditions are not in place for the safe and dignified return of refugees and IDPs in South Sudan.
3. The humanitarian situation in South Sudan has also not seen any marked improvement and remains dire. Internal and external displacement continues. The Central African Republic (CAR), the Democratic Republic of the Congo (DRC), Ethiopia, Kenya, Sudan and Uganda host a total of 2.28 million refugees from South Sudan. In addition, South Sudan is host to some 300,000 refugees from Sudan and other countries and there are some 1.87 internally displaced persons (IDPs) inside South Sudan, bringing the total number of persons of concern to UNHCR to 4.45 million people.⁶
4. There are reports of occasional returns of IDPs to their areas of origin or habitual residence; similarly, as of February 2019, there are reports of over 142,000 South Sudanese refugees having returned spontaneously,⁷ mostly to areas hosting IDPs. The return may be of a temporary nature, with some spontaneous returnees living in an IDP-like situation.⁸

Security Situation

5. As peace negotiations gained momentum over the course of 2018, Government forces sought to gain control of opposition-held areas, particularly in Unity and Western Bahr el Ghazal States. During these operations, Government forces directed attacks against the civilian population as if they were members or

¹ UNHCR, *UNHCR Position on Returns to South Sudan*, 14 April 2015, <https://www.refworld.org/docid/552bc6794.html>.

² UN News Service, *South Sudan Peace Deal a 'Big Step Forward': UN Mission Chief*, 6 August 2018, <https://www.refworld.org/docid/5bc494f5a.html>.

³ UN Security Council, *Report of the Secretary-General on South Sudan (Covering the Period from 1 December to 26 February 2019)*, S/2019/191, 28 February 2019, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2019_191.pdf, para. 17.

⁴ Ibid. para. 57.

⁵ *Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan*, 12 September 2018, <https://iqad.int/programs/115-south-sudan-office/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan>, p. 42.

⁶ UNHCR, *Regional Update South Sudan Situation*, 1-31 January 2019, <http://reporting.unhcr.org/sites/default/files/UNHCR%20South%20Sudan%20Situation%20Regional%20Update%20-%20January%202019.pdf>, p. 1.

⁷ The two repatriation methods commonly distinguished are organized repatriation (return by means of UNHCR organized transport and possibly linked with other assistance) and spontaneous repatriation (return by refugees' own means). As UNHCR does not facilitate the return of South Sudanese refugees, the returns to South Sudan are characterized as spontaneous.

⁸ Between September 2018 and February 2019, there have been 22,800 reported returns; see UNHCR, *Overview of Spontaneous Refugee Returns to South Sudan*, 28 February 2019, <https://reliefweb.int/sites/reliefweb.int/files/resources/68300.pdf>.

supporters of the opposition forces.⁹ Since the signing of the R-ARCSS, the Ceasefire and Transitional Security Arrangements Monitoring Mechanism has verified localized sporadic fighting between government and opposition forces and between opposition groups in the Yei area, Central Equatoria, the Wau triangle area in Western Bahr el-Ghazal and Koch, Unity. Though the overall scale and frequency of clashes has remained low, fighting between warring parties, intercommunal violence and cattle-raiding, especially in Lakes and Jonglei, has remained a cause of civilian casualties, displacement, abduction of civilians and looting.¹⁰ In 2018, a total of 107,496 South Sudanese fled to neighbouring countries.¹¹

Human Rights Situation

6. Systematic and widespread human rights violations and abuses committed by all parties have inflicted suffering on millions of people, with a lack of accountability for those responsible for the violations. Following the signing of the R-ARCSS, an overall decline in the number of reported human rights violations and abuses by parties to the conflict has been documented. However, the United Nations Mission in South Sudan (UNMISS) continues to corroborate incidents that pose a threat to human rights and physical security. They include instances of killing or wounding civilians, abduction, sexual violence, arbitrary arrest and prolonged detention, the recruitment and/or use of children by armed groups or forces, forced displacement, looting and the destruction of civilian property and extortion.¹²
7. Sexual and gender-based violence (SGBV) remains a central characteristic of the conflict and persistent high levels have continued to be documented after the signing of the R-ARCSS. SGBV is endemic and sexual violence and other forms of violence particularly against women and girls persist despite the suspension of most military offensives.¹³ In April and May 2018, cases of indiscriminate attacks against civilians were reported in Southern Unity including unlawful killings of civilians, rape, abductions and sexual slavery of women and girls, unlawful destruction of property and pillage, forced displacement and attacks on humanitarian actors and facilities.¹⁴ Rape and gang-rape are being used as a tactic of warfare¹⁵ to pursue military and political objectives, such as clearing areas of perceived enemies, defined along ethnic and political lines. In this context, sexual violence serves a “push factor” for forced displacement.¹⁶ In a series of attacks between 19 and 29 November 2018, at least 157 women and girls sought medical assistance after being raped by unidentified armed men in government-controlled territory while travelling on public roads near the villages of Guit and Nhialdiu in Northern Liech.¹⁷ Instances of sexual violence against men and boys remain significantly under-reported due to social stigma.¹⁸
8. Children continue to be forcibly recruited while also suffering from other grave child rights violations. A September 2018 report noted that from October 2014 to June 2018, alarming levels of all six grave violations against children committed by all parties to conflict were reported,¹⁹ as well as the intensification of the impact of the fighting on children as conflict progressively expanded from the greater Upper Nile region to the greater Equatoria region. Recruitment and use of children in armed conflict, killing and maiming, rape and other forms of sexual violence and abductions of children by all parties to the conflict were documented at particularly worrisome levels. Numerous incidents of attacks against schools and

⁹ Human Rights Council, *Report of the Commission on Human Rights in South Sudan*, A/HRC/40/69, 21 February 2019, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session40/Documents/A_HRC_40_69.docx, para. 37.

¹⁰ UN Security Council, *Report of the Secretary-General on South Sudan (Covering the Period from 2 September to 30 November 2018)*, S/2018/1103, 10 December 2018, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_1103.pdf, para. 13.

¹¹ *Ibid.*, supra note 6.

¹² *Ibid.*, supra note 10, para. 34.

¹³ UNMISS and OHCHR, *Report on Conflict-Related Sexual Violence in Northern Unity (September – December 2018)*, 15 February 2019, https://www.ohchr.org/Documents/Countries/SS/UNMISS_OHCHR_report_CRSV_northern_Unity_SouthSudan.pdf, para. 26.

¹⁴ UNMISS and OHCHR, *Report on Indiscriminate Attacks Against Civilians in Southern Unity April – May 2018, South Sudan*, 10 July 2018, https://unmiss.unmissions.org/sites/default/files/unmissohchr_report_on_indiscriminate_attacks_against_civilians_in_southern_unity_april-may_2018.pdf, paras. 21-42.

¹⁵ *Ibid.*, supra note 9, para. 38.

¹⁶ Special Representative of the Secretary-General on Sexual Violence in Conflict, *Special Representative of the Secretary-General on Sexual Violence in Conflict Ms. Pramila Patten Visits South Sudan to Demand an Immediate Halt to all Forms of Sexual Violence*, 11 July 2018, <https://www.un.org/sexualviolenceinconflict/press-release/special-representative-of-the-secretary-general-on-sexual-violence-in-conflict-ms-pramila-patten-visits-south-sudan-to-demand-an-immediate-halt-to-all-forms-of-sexual-violence/>, para. 3.

¹⁷ *Ibid.*, supra note 10, para. 35.

¹⁸ *Ibid.*, supra note 9, para. 40.

¹⁹ The six grave violations are: 1) recruitment and use, 2) killing and maiming, 3) rape and other forms of sexual violence, 4) attacks on schools and hospitals, 5) abductions and 6) denial of humanitarian access to children; see <https://childrenandarmedconflict.un.org/six-grave-violations/>.

hospitals were verified. In addition, high levels of denial of humanitarian access to children were documented.²⁰

Humanitarian Situation

9. Despite the signing of the R-ARCSS, the humanitarian situation in South Sudan remains grave.²¹ By the end of 2018, nearly 1.87 million South Sudanese were internally displaced and 5.7 million people were in need of life-saving assistance.²² Of the spontaneous refugee returnees to South Sudan who have been monitored by humanitarian actors, 85 per cent report to be living in IDP-like situations. They are unable to return to their places of origin or recover the property or land they left behind.²³
10. The conflict and associated economic decline have eroded the Government's ability to provide consistent basic services to its people. Currently, one primary health centre serves an average of 50,000 people. Only 40 per cent of nutrition treatment centres have access to safe water, a gap that puts more vulnerable people, particularly women and children, at risk of malnutrition and disease. Only about one in five childbirths involves a skilled health care worker and the maternal mortality ratio is estimated at 789 per 100,000 live births. Every third school has been damaged, destroyed, occupied or closed since 2013, and more than 70 per cent of children who should be attending classes are not receiving an education.²⁴
11. Years of conflict, displacement and underdevelopment have limited people's livelihood opportunities, marginalized women's formal employment opportunities, and weakened families' ability to cope with the protracted crisis and sudden shocks, like the death of a wage earner or loss of cattle. Over 80 per cent of the population lives below the absolute poverty line.²⁵ The food security situation continues to deteriorate due to conflict-driven displacement, low crop production, economic crisis, climatic shocks and humanitarian access challenges. According to the IPC Acute Food Insecurity and Acute Malnutrition Analysis, in January 2019 6.17 million people, or 54 per cent of the population, were estimated to have faced acute food insecurity (IPC Phase 3) or worse (IPC Phase 4 or 5).²⁶ The delivery of humanitarian assistance is often impeded due to violence against humanitarian workers, which continues unabated. In 2018, for the third consecutive year, South Sudan remained the most dangerous place in the world in which to provide humanitarian assistance.²⁷
12. In September 2018, the UN Secretary-General expressed his dismay "at the scale and brutality of grave violation committed against children in South Sudan".²⁸ Of the South Sudanese who have fled to the neighbouring countries, some 63 per cent are under the age of 18; of these, over 65,000 have been registered as unaccompanied or separated from their parents or usual caregivers.²⁹

International Protection Needs and Non-Return Advisory

13. In conclusion, the overall security, rule of law and human rights situation in South Sudan remains highly volatile and implementation of the R-ARCSS is lagging, in particular the foreseen cantonment and disarmament of armed groups. In such a context, persons fleeing South Sudan are likely to meet the criteria for refugee status under the 1951 Refugee Convention,³⁰ or would otherwise meet the criteria contained in the refugee definition in Article 1(2) of the 1969 OAU Convention Governing the Specific Aspects of

²⁰ UN Security Council Report, *Children and Armed Conflict in South Sudan*, S/2018/865, 25 September 2018, http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2018_865.pdf, paras. 14-58.

²¹ Ibid., supra note 9, para. 21.

²² OCHA, *Humanitarian Response Plan January-December 2019*, December 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/south_sudan_humanitarian_response_plan_2019_final.pdf, p. 6.

²³ Ibid., supra note 7.

²⁴ Ibid., supra note 22, pp. 4-5.

²⁵ Ibid., p. 5.

²⁶ Integrated Food Security Phase Classification, South Sudan: *Acute Food Insecurity and Malnutrition Situation January 2019 and Projections for February - April 2019 and May - July 2019*, January 2019, <http://www.ipcinfo.org/ipc-country-analysis/details-map/en/c/1151975/>.

²⁷ Ibid., para. 25.

²⁸ Ibid., supra note 20, para. 72, and see more generally paras 72-82.

²⁹ Out of the total figure in the region, 15,000 children remained separated from their families or are missing inside South Sudan at the end of 2018; see UNHCR, *South Sudan Regional Refugee Response Plan, January 2019 - December 2020*, 18 December 2018, <https://data2.unhcr.org/en/documents/download/67312>, p. 10.

³⁰ UN General Assembly, *Convention Relating to the Status of Refugees*, 28 July 1951, U.N.T.S. Vol. 189, p. 137, <http://www.refworld.org/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.refworld.org/docid/3ae6b3ae4.html>.

Refugees in Africa.³¹ In this respect, UNHCR welcomes the fact that South Sudanese fleeing the conflict continue to enjoy *prima facie* refugee status in all neighbouring states, in line with Article 1(2) of the 1969 OAU Convention.³²

14. Depending on the individual profile and circumstances of the case, exclusion considerations may need to be looked into.³³ Furthermore, States need to ensure the civilian and humanitarian character of asylum as a critical aspect of safety and security of refugees and an important international protection standard.³⁴
15. The security, rule of law and human rights situation that prevails 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, while UNHCR recognizes that political changes are underway in South Sudan, the impact of these changes on the ground are not yet such as to make return under conditions of safety and dignity feasible. Therefore, UNHCR reaffirms its April 2015 position on return to South Sudan – Update I,³⁵ recommending States to suspend forcible returns of nationals or habitual residents of South Sudan to the country.
16. 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 the human rights situation in South Sudan has significantly improved to permit a safe and dignified return of those determined not to be in need of international protection. Under the current circumstances, UNHCR cannot facilitate, promote or otherwise organize returns to South Sudan.

³¹ 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.refworld.org/docid/3ae6b36018.html>.

³² Ibid.

³³ 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.refworld.org/docid/3f5857684.html>.

³⁴ UNHCR, Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum, September 2006, <http://www.refworld.org/docid/452b9bca2.html>.

³⁵ Ibid., supra note 1.