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## Human Rights Council

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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani**

### **Mission to South Sudan**

#### *Summary*

The UN Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, visited South Sudan from 6 to 15 November 2013. This was the Mandate's first visit to the country after its independence in 2011 at a time where tensions were very high and indicative of the violence that broke out in December and unfolded into an armed conflict that not only worsened the dire situation of those who had been displaced before the crisis, but resulted in a large-scale displacement and protection crisis.

The UN Special Rapporteur's primary finding was the absence of adequate capacities and institutional preparedness to prevent and respond to internal displacement in the short-, medium-, and longer-term. As the primary responsibility to assist and protect internally displaced persons rests with authorities, necessary institutional capacity within the civilian government must be created for them to assume this wide responsibility. The current displacement situation also requires reconsidering necessary and institutional changes within the UN Mission in South Sudan as well as the humanitarian and human rights protection system in South Sudan. Most notably, utmost care must be given to preserve humanitarian space and ensure that humanitarian and protection principles are not further infringed.

Prevention must be a priority call now. In order to prevent a further increase of internal displacement and allow for dignified living conditions and a solution for the displaced, it is essential that all parties abstain from any act that results into arbitrary internal displacement and adhere to the Cessation of hostilities agreement of January 2014 and applicable rules of international law. The complexity and scale of the internal displacement situation also requires for a response based on a comprehensive policy framework and considering the different groups among the displaced as well as their immediate and longer-term needs to allow for a gradual process towards durable solutions for South Sudan's IDPs.

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## I. Introduction

1. In accordance with the mandate contained in Human Rights Council Resolution A/HRC/RES/23/8 (2013), and at the invitation of the Government of the Republic of South Sudan, the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, conducted an official visit to South Sudan from 6 to 15 November 2013. The Special Rapporteur undertook this visit in order to examine the situation of internally displaced persons (IDPs) in the country, including South Sudanese returning from the Sudan. The Special Rapporteur's conclusions and recommendations are based on his observations and information made available to him during the visit. However, the Special Rapporteur also considers events that started in December 2013 that were unfolding at the time of his visit to ensure the continued relevance of his findings. His observations are informed by the Guiding Principles on Internal Displacement (Guiding Principles)<sup>1</sup> and other international standards relevant to the protection and assistance of internally displaced persons.

2. The Special Rapporteur's official visit took place eight years after the Comprehensive Peace Agreement 2005 had brought an end to one of Africa's longest lasting armed conflicts that had resulted in widespread internal displacement in Sudan. It was the first visit of the UN Mandate on the human rights of IDPs to South Sudan since its independence from the Sudan in July 2011. After the independence of South Sudan, the Special Rapporteur undertook a visit to Sudan in November 2012. These visits followed earlier ones to Sudan by previous UN Mandate holders on internally displaced persons in 2002<sup>2</sup>, 2004<sup>3</sup> and 2005<sup>4</sup>, prior to the independence of South Sudan.

3. The Special Rapporteur expresses his appreciation to the Government of South Sudan for its invitation, constructive engagement and willingness for ongoing cooperation with the mandate. The Special Rapporteur met with various Government interlocutors, including the Minister of Foreign Affairs, the Minister of Interior, Under Secretary of Humanitarian Affairs in the Ministry of Gender, Child and Social Welfare, the Chairperson of the South Sudanese Return and Rehabilitation Committee, the Chairperson of the National Constitution Review Commission, the Chairperson of the South Sudan Human Rights Commission, the Chairperson of the South Sudan Land Commission, and the Chairperson of the South Sudan Commission for Refugee Affairs. During his travels to Jonglei state, Bor and Pibor, he met with the Acting Governor and other local authorities as well as with the SPLA Brigade Commander. Security and logistical constraints inhibited visits to other areas affected by internal displacement, including the three protocol areas. He wishes to express appreciation to the IDPs and South Sudanese returnees with whom he met and who shared their concerns and experiences with him.

4. The Special Rapporteur also met with the Special Representative of the Secretary General of the United Mission in South Sudan (UNMISS), and relevant units of the Mission in Juba and Bor, the UN Humanitarian Coordinator in South Sudan, the UN Country Team and the Inter-Cluster Working Group, representatives of UN and other

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<sup>1</sup> Guiding Principles on Internal Displacement, UN Doc. E/CN.4/1998/53/Add. 2, 11 February 1998.

<sup>2</sup> Report of the Representative of the Secretary-General on internally displaced persons, Francis M. Deng, Mission to the Sudan, UN Doc. E/CN.4/2002/95/Add.1, 5 February 2002.

<sup>3</sup> Report of the Representative of the Secretary-General on internally displaced persons, Francis M. Deng, Mission to the Sudan - The Darfur crisis, UN Doc. E/CN.4/2005/8, 27 September 2004.

<sup>4</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Mission to the Sudan, UN Doc. E/CN.4/2006/71/Add.6, 2006.

international organizations, the protection clusters in Juba and Bor, NGOs and civil society, as well as representatives of the donor community. The Special Rapporteur is grateful to the Office of the United Nations High Commissioner for Refugees (UNHCR), and UNMISS, which provided invaluable support during the preparations for as well as throughout the visit.

## **II. Context of internal displacement in South Sudan**

5. The situation of internal displacement in South Sudan is complex, multi-faceted and layered, and therefore needs to be addressed and resolved in light of the country's peace and security context and considering prevailing political, socio-economic, cultural and climatic vulnerabilities.

### **A. Peace and security context**

6. The Republic of South Sudan was declared an independent sovereign state on 9 July 2011 following the referendum in January 2011 and reflects the culmination of the six year long lasting peace process initiated with the 2005 Comprehensive Peace Agreement (CPA) that sought to bring an end to the long conflict between the North and the South.

7. The world's newest country at the time of drafting this report, had yet to recover from a history of decades of war. The armed conflict between the SPLM/A and the Government of Sudan lasted several decades, from 1956 to 1972, and resuming again in 1983<sup>5</sup>. While the Addis Ababa Peace Agreement of 1972 conceded some degree of autonomy to Southern Sudan, the fragile stability ushered by it barely allowed for recovery and stabilization as armed conflict resumed in 1983 when autonomy concessions granted to Southern Sudan were unilaterally withdrawn. The CPA formally ended this conflict in 2005, when a power-sharing government – the Government of National Unity – as well as an autonomous Government of Southern Sudan was formed in Khartoum and Juba respectively. Yet, peace remained fragile throughout the transition period that ended with the referendum in 2011.

8. The conclusion of the nine post-referendum agreements between Sudan and South Sudan in 2012<sup>6</sup>, marked an important step towards addressing outstanding CPA and post-secession issues between the two countries. Brokered peace nonetheless, high tensions within South Sudan, in the disputed area of Abyei, as well as conflicts in the protocol areas of South Kordofan and Blue Nile as well as along other borders continue to undermine the stability of South Sudan.

9. Following independence, the focus on the relations between Sudan and South Sudan had become more inward looking. This made internal armed conflict, inter-communal and ethnic violence, human rights abuses, or political instability as causes of internal displacement more visible, as demonstrated by the complex conflict in Jonglei state. While inter-communal violence in Jonglei state is recurrent, the dimensions and the extent of the politicized violence between the Dinka Bor, Lou Nuer, and the Murle reached heights in early 2012. Disarmament efforts by the SPLA further increased tensions and animosity between these population groups as the SPLA were perceived to be biased, selective, and

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<sup>5</sup> UN Doc. A/HRC/23/44/Add.2, para 14.

<sup>6</sup> These agreements are on matters such as security, the status of nationals of the other state, border issues, trade, banking and postal affairs, oil and other economic matters as well as cooperation.

abusive. David Yau Yau's rebellion and the respective counter-insurgency operation by the SPLA in Jonglei state brought another and significant layer of violence to the fragile area and reports over counter insurgency abuses against civilians created an atmosphere of fear and insecurity.

10. At the time of the Special Rapporteur's visit, political tensions in the Government and the SPLA were already high following the dismissal of the former Vice President and the entire Cabinet in July 2013. The end of the rainy season in November brought about the apprehension that armed conflict between the SPLA and David Yau Yau's armed group would resume in Jonglei. There were significant ethnic indicators in the patterns of flight. The Dinka Bor were fleeing into Uganda, the Lou Nuer into Ethiopia, and the Murle into the informal settlements in and around Juba and remote rural areas, alleging that they were being targeted, 'ethnically cleansed' and marginalized. The violence that broke out in Juba in December 2013 over an alleged military coup or mutiny was therefore indicated and foreseeable. Its fast spread<sup>7</sup> and increasing political ethnization brought to the fore the inherent fragmentation of the country's political movement and army and former liberation movement and the depth of the governance crisis in South Sudan. The violence in its intensity, scale and persistence today amounts to a non-international armed conflict<sup>8</sup>. Though simplistically portrayed as a two party conflict, its dynamics are fluid, fragmented and complex going beyond a binary conflict. The conflict has multiple impacts on all communities and reflects a deep governance crisis reminiscent of a political chasm on state building in South Sudan, and deeply rooted social and economic grievances.

## **B. Political and socio-economic context**

11. South Sudan is confronted with challenging tasks and ever competing priorities as part of its state building process. A crucial task not accomplished is the transformation of the SPLM/A from a liberation movement into an effective government with a functional capacity and public service delivery. It is clear that the SPLM/A was itself a coalition of political and military forces that were allied to the cause of Southern Sudan during the armed conflict and through the CPA transition from 2005 until independence in 2011, but suffered from a lack political cohesion and professional integrated military as an armed force. Against this background, the dismissal of the entire Cabinet and the Vice President in July 2013 laid bare existing political and military fissures in the SPLM/A political, governance, and military structures, leading to high political instability on the part of the young Government, furthered the political and military divide along ethnic lines and resulted in an endemic violent conflict that broke out within the SPLA in December 2013. The peace negotiations that started on 5 February 2014 in Addis Ababa facilitated by the Inter-governmental Authority on Development (IGAD) are urged to succeed and create hope for a resolution for the political and governance crisis in addition to the cessation of hostilities agreement concluded on 23 January 2014.

12. Efforts for national cohesion, reconciliation and accountability have been insufficient and opened fertile ground for tensions and violence along ethnic lines. The high ethnic diversity in South Sudan calls for the establishment of an effective civilian government with adequate and fair representation of all ethnic groups in public affairs at the national and local levels, an adequate diversified representation in state security bodies, such as the army or the police force, a transparent and participatory constitutional process,

<sup>7</sup> Seven out of 10 States are currently affected by ongoing armed conflict. See UN OCHA, South Sudan situation map of 4 January 2.

<sup>8</sup> "South Sudan now internal armed conflict, says UN", News Story, 17 January 2013.

equal and non-discriminatory access to social services and employment irrespective of ethnic origins, transparent planning for elections and abstinence from one-sided military or other state security interventions as essential measures to improve national cohesion in South Sudan. The transformation of the SPLA from a liberation movement into a vetted professional armed force of the state, with effective command-control structures and military discipline, is also essential and requires capacity building, training and restructuring. Of the same is required for the transformation of the police into a trained and accountable police service.

13. The State of South Sudan established itself on the basis of the exercise of the right to self-determination by the people of South Sudan and therefore on the fundament of human and peoples' rights. These rights are vital in building national cohesion and play an essential role in the statebuilding process as they reflect shared values of the people of South Sudan, the State, the region and the world as reflected in the UN Charter 1945 and the Constitutive Act of the African Union 2000. Justice and equity are primary values supported by human rights and fundamentals of national cohesion and statebuilding. While South Sudan is signatory to the major UN human rights treaties as well as the African Charter on Human and Peoples' Rights 1985, ratification and implementation of these instruments are vital to contribute to the stability of the country and the well-being of South Sudanese people.

14. South Sudan's economic oil dependence is a source of vulnerability as economic diversification is largely subsistence agriculture and pastoralism. The stop of oil production in 2012 following political and economic disagreement with Sudan significantly impacted the country's economy. Over 50% of South Sudan's 8.26 million people live below the poverty line<sup>9</sup>. With 83%, the South Sudanese being a predominantly rural population, out of which 78% depend on crop farming and animal husbandry as their primary source of income generation<sup>10</sup>, rural-based livelihoods are largely subsistent and therefore often vulnerable to climatic shocks. Its climatic variability is characterized by a high rainfall variability that causes annual and significant flooding in large parts of the country from April/May to October/November. Crop destruction and animal loss during rainy seasons is common and impacts on rural livelihoods. The rainy season provides a particularly difficult operational environment, where national and international actors alike face serious access constraints in the absence of logistical riverine support. Food insecurity is common and widespread during the rainy season and it is urgent that national and international actors address it as a humanitarian concern, including by pre-stocking food items during the dry season in preparedness for the impassable rainy season, but also through development activities such as diversification of crops and more broadly by diversification of subsistence livelihoods.

### **III. Internal displacement in South Sudan: Causes, dynamics and pattern**

15. Internal displacement in South Sudan is a complex crisis affecting the whole country also owing to a long displacement history. Outstanding resolution of disputes with Sudan, insecurity in neighbouring states, and politicized ethnic violence and armed conflicts within South Sudan, provide a fragile peace and security environment – internally and regionally. Indiscriminate attacks against the civilian population and lack of accountability for human

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<sup>9</sup> National Census, 2008.

<sup>10</sup> National Census, 2008.

rights violations add to an environment conducive to internal displacement<sup>11</sup>. Political instability, the absence of a transparent and inclusive process towards national cohesion, as well as South Sudan's climatic vulnerabilities contribute to internal displacement and provide significant obstacles to its resolution. The country's lack of economic diversity and in particular the large percentage of South Sudanese with subsistence livelihoods in the pastoral and agricultural sector render them vulnerable to displacement.

16. In such a complex displacement environment, the identification of who an IDP is, can be difficult and disagreement over notions and concepts can undermine coordinated planning and response. The definition of IDPs in the Guiding Principles provides a common understanding: Internally displaced persons are "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border."<sup>12</sup> This is a descriptive notion of an IDP and does not intend or suggest creating a legal or administrative status for such persons.

17. The identification of who an IDP is, is difficult in South Sudan, for the following reasons:

(a) A vast variety of causes of displacement are prevalent in South Sudan. Often, displacement cannot be allocated to one single cause, but must be considered multi-causal where causes overlap or have increased the negative impact on the displaced communities. Some of the causes are also recurrent, resulting into cycles of displacement often of the same communities. This creates complex layers of multiple displacements and further increases prevailing vulnerabilities.

(b) Internal displacement occurs not only as a reaction to such causes, but also pre-emptively, in particular in the context of the December 2013 violence. The IDP population itself is highly diverse and includes women, men and children, persons with disabilities, the wounded and sick, the elderly and youth. Some of the IDPs have lived in long-term protracted displacement, while others are newly displaced or for shorter periods. Pastoralists constitute a major group among the internally displaced population. In Jonglei, as the fighting between the SPLA and the group of David Yau Yau, dominated primarily over urban strongholds, internal displacement is predominantly rural as people fled into the bushes. However, urban displacement is a reality too, in Juba and elsewhere in the country especially as a dynamic of the conflict that broke out in December 2013. Not all IDPs are visible or accessible; some even chose to remain in hiding out of fear of further exposure to violence or persecution.

18. In the absence of a baseline, data on internal displacement is limited to newly displaced due to conflict and violence, who have been registered and assisted. Within these limitations, the Office for the Coordination of Humanitarian Affairs (OCHA) in South Sudan reported a total of 168'000 IDPs for 2012, and approximately 188'000 by 30 November of the year 2013<sup>13</sup>. The IDP numbers spiked in December 2013 and OCHA reported 194'000 displaced between 15 December and the end of 2013<sup>14</sup>. These figures reflect minimums only. Almost 330'000 persons were in need of assistance due to flooding,

<sup>11</sup> Guiding Principle 5 requests authorities and international actors to respect and ensure respect for international law so as to prevent and avoid conditions that might lead to displacement of persons.

<sup>12</sup> Guiding Principles, Introductory para. 2.

<sup>13</sup> OCHA South Sudan Humanitarian Snapshot, 30 November 2013.

<sup>14</sup> OCHA South Sudan Crisis Situation Update, January 2014.

including those displaced<sup>15</sup>. Gaps in data are primarily due to access restrictions, but is further complicated by the wide absence of documentation. The lack of a baseline compounded by a difficult terrain as well as an overall very mobile population makes movement tracking very difficult, which would be necessary for more accurate data. Coordinated data collection and management has remained an important challenge in the response to the current conflict and the lack thereof potentially undermines forward looking and proactive humanitarian planning.

19. This context requires a pragmatic approach to understand who IDPs in South Sudan are and formulate adequate policy and operational responses. Contrary to what the notion suggests, IDPs in South Sudan are not a homogenous group but highly diverse and includes those displaced by armed conflict, inter-communal and ethnic violence, human rights violations or cross-border incursions (section A); or by natural disasters (section B); IDPs due to evictions (section C); or long-term IDPs and returnees of South Sudanese origin (section D). Special considerations must be given to communities inhabiting borderlands (section E) as well as those displaced in or from the disputed Abyei area (section F).

## **A. Conflict-related internal displacement**

20. Armed conflict is the main driver of internal displacement in South Sudan and is related to inter-communal, politically ethnicized violence, human rights violations, and cross-border incursions. Cattle raids and other inter-communal violence flare up regularly across the country and in particular during the dry seasons when pastoral migration takes place. The nature of cattle raiding has also changed and today has little to do with traditional or cultural forms of raiding. While cultural habits or competition over resources continue to have its toll, inter-communal violence is essentially about political domination and power relations at local levels. Traditional dispute settlement mechanisms barely function anymore and rangeland management systems are equally undermined by the breakdown of social cohesion and generational structures in communities largely attributable to the militarization of communities during the civil wars<sup>16</sup>. The wide proliferation of small arms and weaponry as well as an increased ethnization of land are also significant contributors to such violence. It is clear that inter-communal violence has resulted in internal displacement in various states of South Sudan and was a recurrent phenomenon in Warrap, Lakes, Unity, Upper Nile and Jonglei states in 2012 and 2013.

21. In Jonglei state, inter-communal violence between Dinka Bor, Lou Nuer and the Murle communities have resulted in large-scale repeated internal displacement. However, restrictions to humanitarian access have made it difficult to assess the real scale. The conflict between the group of David Yau Yau (DYY)<sup>17</sup>, largely consisting of Murle youth, and the SPLA has added to the complexity and scale of internal displacement as civilians fled to rural areas as the counter-insurgency operations were primarily fought over urban strongholds, such as Boma, Likuangole, Gumuruk, Manyabol, Maruwa Hills or Pibor, leaving these towns almost deserted<sup>18</sup>. Targeted use of force against, and indiscriminate

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<sup>15</sup> OCHA South Sudan Humanitarian Snapshot, 30 November 2013.

<sup>16</sup> Norwegian Refugee Council's/Internal Displacement Monitoring Centre, South Sudan – A comprehensive response to internal displacement is crucial, 9 July 2013, p. 8.

<sup>17</sup> Small Arms Survey, Human Security Baseline Assessment for Sudan and South Sudan, David Yau Yau's rebellion, 4 June 2013, provides an analysis of the rebellion and the counter-insurgency operations.

<sup>18</sup> UNOCHA, South Sudan: Humanitarian Snapshot of Pibor region, Jonglei state, 18 July 2013.



attacks impacting on civilians<sup>19</sup>, rape<sup>20</sup>, lootings, destruction of homes and other property<sup>21</sup>, have been a constant feature of this conflict and resulted in widespread arbitrary displacement prohibited in international law<sup>22</sup>. The environment of fear created by these atrocities also resulted in preemptive displacement and remains a major obstacle to returns and the re-establishment of normality for IDPs. The generalized affiliation of the Murle with the DYY insurgency brought an ethnic dimension to this conflict and victimized the Murle. And despite a formal truce between the DYY Group and the SPLA, peace remains fragile. At the time of his visit, the Special Rapporteur noted that Pibor town appeared to be a SPLA military garrison, predominantly composed of Dinka and Nuer, with hardly any civilians inside. As the provision of humanitarian assistance outside Pibor town was hampered by access restrictions, this situation created a dilemma between the humanitarian imperative and the principle of do no harm. Among the recipients of humanitarian aid therefore are largely women and children, as Murle men were unable to access distribution points within Pibor town due to the risk of affiliation with DYY. This separation of women and children increased their exposure to violence, abductions and harmful traditional practices. The militarization of the communities, the readily available small arms and weapons and the levels of inter-communal violence in Jonglei state prompted the Government's disarmament efforts. However, the disarmament campaign "Operation Restore Peace" escalated in violence and was perceived as one-sided further increasing inter-communal tensions. Human rights violations reportedly were committed during disarmament campaigns adding to the widespread internal displacement in Pibor County. While a few SPLA soldiers have been court marshalled over human rights violations and despite condemning rhetoric by President Salva Kiir<sup>23</sup>, an overall and transparent investigation and establishment of effective accountability for acts committed against civilians remains outstanding, further deepening the extent of mistrust in the SPLA.

22. The armed conflict that unfolded in December 2013 has become increasingly entrenched along ethnic lines resulting in a large-scale displacement and protection crisis<sup>24</sup>, with severe regional impacts due to refugee influxes into neighbouring countries. Violence against civilians, rape and sexual violence against women, looting, or the destruction of property, mark the nature of the conflict<sup>25</sup> and populations reportedly believe they are targeted on account of their ethnic origin. 75'643 sought refuge within UNMISS premises in Juba, Bor, Bentiu, Pariang, Rumbek, Malakal, Melut<sup>26</sup>, and an estimated 716'500 became displaced elsewhere in the country<sup>27</sup>. The cessation of hostilities agreement of 23 January 2014 nonetheless violence undermines the agreement. All parties to the conflict are called upon to comply with international law<sup>28</sup>, refrain from attacking civilians and exercise

<sup>19</sup> Such indiscriminate attacks and other acts of violence against IDPs are prohibited in international human rights and humanitarian law as reflected in Principle 10 (2) Guiding Principles.

<sup>20</sup> Principle 11 (2) Guiding Principles on Internal Displacement.

<sup>21</sup> Principle 21 Guiding Principles on Internal Displacement.

<sup>22</sup> Principle 6 Guiding Principles on Internal Displacement.

<sup>23</sup> Statement by President of South Sudan, H.E. Salva Kiir, "End the Violence Against Civilians" of 17 May 2013 and his promise for accountability of perpetrators in Presidential statement of 2 July 2013.

<sup>24</sup> UN Special Rapporteur on the human rights of IDPs, Chaloka Beyani, News release, 20 December 2013.

<sup>25</sup> These acts are prohibited in international humanitarian and human rights law as reflected in Principles 10 (2), 11 (2) and 21 of the Guiding Principles on Internal Displacement and amount to arbitrary displacement. See UNMISS Interim report on human rights – Crisis in South Sudan (report coverage 15 December 2013 – 31 January 2014), 21 February 2014.

<sup>26</sup> UNMISS update, 26 February 2014.

<sup>27</sup> South Sudan Crisis, Situation report number 21, 20 February 2014.

<sup>28</sup> Principle 2 and 5 of the Guiding Principles.

utmost constrain in their belligerent activities in keeping with the principle of distinction between civilians and military targets in order to minimize the impact on the civilian population, including the IDPs.

23. Safety and security for IDPs and other civilians during flight as well as in places of refuge is a serious concern. By virtue of state responsibility, national authorities have the primary duty responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction<sup>29</sup>. Attempts by armed forces and Government officials and other armed groups to force their entry into UN protected areas for IDPs in Bor and the attack in Bentiu killing a significant number of IDPs are cause for alarm. It needs to be recalled that the Government is obliged to refrain from such acts<sup>30</sup>. Killings, arrests, abductions, rape and harassment impede safe passage of civilians in flight or on return and undermine their freedom of movement, in particular their right to seek safety<sup>31</sup>. IDPs seeking refuge outside UN premises are often difficult to reach due to logistical and security constraints to humanitarian access, looting of humanitarian convoys and compounds and lack of safety of humanitarian personnel. IDPs are often also unable to reach assistance and distribution points due to safety concerns. Even within UN bases, chronic needs for improved sanitation, shelter and health remain to be addressed. Family separations and child protection issues have arisen due to flight, and family reunification and tracing remains a critical, yet difficult activity in the current environment of insecurity. Reports over the recruitment of children, youth and adults, in formal military forces as well as youth militia, is of significant concern<sup>32</sup>.

24. IDPs who sought safety within UNMISS' protected areas, face a congested and overcrowded situation prone to politicized ethnic tensions and health hazards. The bases in Juba have become the refuge for 43'300 IDPs<sup>33</sup> and have difficulty to absorb new arrivals. While decongestion is a relevant, it is important that IDPs are not induced or pressured to leave UNMISS bases, but are allowed to voluntarily decide to do so. Decongestion should be based on a strategy embedded in a forward looking comprehensive approach to internal displacement. UNMISS may need to negotiate additional or alternative land in order to execute its mandate to protect civilians in line with the Security Council Mandate, the UNMISS Protection of Civilian Strategy and international standards<sup>34</sup>. Physical protection in the sites as well as in the vicinity must remain a priority. Recent violent events, including the attack in Bentiu, and firing into sites, rape and abductions just outside the UN base as well as the discovery of arms within the protected areas are of great concern. Commending the efforts to fortify the protected areas, perimeter security must be further strengthened with regular patrols. To ensure security within the site, civilian and community-based policing is required. Protective areas for civilians need to be fully disarmed, especially as tensions among IDPs are high and the risk of conflict within those areas exists. Due to the capacity constraints of UNMISS to address the humanitarian needs, humanitarian actors have started to assist IDPs despite the military premise on which the protective areas are located. Humanitarian independence and humanitarian principles, however, are also

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<sup>29</sup> Principle 3 (1) and 25 (1) Guiding Principles.

<sup>30</sup> Statement attributable to the Spokesperson of the UN Secretary-General on South Sudan, New York, 19 January 2014.

<sup>31</sup> Principle 15 (a) Guiding Principles.

<sup>32</sup> Article 15 of the Convention on the Rights of the Child of 1989 prohibits the recruitment of children under the age of 15. See also "The Prosecutor v Lubanga", ICC-01/04-01/06.

<sup>33</sup> UNOCHA, South Sudan Crisis: Humanitarian Snapshot, 14 February 2014.

<sup>34</sup> E.g. the Humanitarian Charter and Minimum Standards in Humanitarian Response ("Sphere Standards"), 2011.

important to maintain in light of the conflict dynamics, the integrated mandate of UNMISS and its relationship to the Government.

25. With regard to IDPs outside UN premises, the Special Rapporteur cautions against the establishment of camps<sup>35</sup>, which are an easy target, difficult secure, to manage and maintain, especially in light of the prevailing ethnic tensions, and such camps often become a significant impediment to durable solutions. Rather, communities in areas hosting IDPs should be factored in the planning of the response to ensure their absorption and hosting capacity. Full scale resumption of these POC activities outside UN bases must be a priority to increase physical safety of IDPs outside the bases as well as to secure or even pacify areas to which IDPs may consider to return to.

## **B. Displacement related to natural hazards**

26. Internal displacement due to natural disasters is a recurrent phenomenon in South Sudan. Such internal displacement sometimes is short-term and people return as soon as water recedes. However, recurrent displacement significantly impacts on the resilience of the people living in disaster-prone areas, including due to destruction of livelihoods and destruction of homes and basic infrastructure. In 2013, the rainy season affected over 313,000 persons in more than half of South Sudan's counties<sup>36</sup>. Among the affected states were Jonglei, Warrap, Unity, Upper Nile and Lakes, which are also most affected by conflict-induced displacement.

27. The Special Rapporteur takes note of the Government's proactive response to the flooding situation in 2013 and the allocation of seven million South Sudanese pounds for relief efforts. Disaster risk reduction and management and similar development measures as well as cross-border cooperation on riverine management can be effective means to prevent the displacement of persons as well as to protect their livelihoods. Reports on land allocation to returnees of South Sudanese origin in flood prone areas were received. While this land allocation scheme is commendable as a step towards durable solutions, flood prone areas should be excluded as this results into an increased risk of new displacement.

## **C. Internal displacement due to evictions**

28. Internal displacement may further occur due to development projects, in particular caused by evictions. Though not large-scale yet, eviction-related displacement was observed particularly in urban areas, including Juba, Aweil, Wau or Rumbek. While development is a legitimate aim, ensuing evictions need to be proportionate and justified by legitimate and overriding public interests, in order not to be arbitrary and thus illegal<sup>37</sup>. To facilitate the implementation of development projects and at the same time minimize related displacement, adherence to eviction guidelines in line with international standards<sup>38</sup> can be useful.

<sup>35</sup> Report to the Human Rights Council by the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, UN Doc. A/HRC/19/54, 26 December 2011, p. 7f.

<sup>36</sup> Displacement and Returns in South Sudan: Submission of the Protection Cluster South Sudan to the Special Rapporteur on the human rights of IDPs, November 2013, p. 5.

<sup>37</sup> Guiding Principles, Principle 6 (2) (c).

<sup>38</sup> Basic principles and guidelines on development-based evictions and displacement, UN Doc. A/HRC/4/18, 2007.

## D. Long-term IDPs and Returnees of South Sudanese origin

29. Among the internally displaced are further those displaced during the civil war and who have not found a durable solution yet. Those who were displaced within the current territory of South Sudan urgently require a durable solution to their protracted displacement and should therefore be included in a durable solution strategy for South Sudan. Among those displaced are also returnees of South Sudanese origin who have been unable to find a durable solution upon return.

30. The resumption of the conflict in 1983 left over two million dead and four million internally displaced southerners. Half of the IDPs sought refuge in Khartoum<sup>39</sup>. Overall, it is estimated that half of the population displaced during the civil war have returned to South Sudan<sup>40</sup> following the ceasefire in October 2002 and in particular after the conclusion of the CPA in 2005. Return monitoring was difficult as most IDPs were scattered outside camps and were displaced multiple times, but also on account of the vastness of the country, continued insecurity and traditional nomadic mobility<sup>41</sup>. The international operation facilitating voluntary returns of South Sudanese led by the International Organization for Migration (IOM) continues until today. Yet, South Sudanese returnees in way stations reported a harmful social climate, harassment and discrimination that urged them to return to South Sudan<sup>42</sup>.

31. Mere return is not equivalent to a durable solution and many returnees of South Sudanese origin lack a solution to their displacement just as IDPs do. The policy of the Government of South Sudan for returnees to go back to their rural areas of origin is overly restrictive, despite the incentive of free provision of land. Challenges in allocating and demarcating land, uncertainty over tenure security, lack of adequate services as well as absence of social networks remain impediments to the reintegration of returnees in rural areas. Many returnees have grown up and return from urban environments and often lack rural livelihood skills. Urban solutions must be made accessible and become part of urban planning schemes to avoid an uncontrolled growth of makeshift slum areas and sub-standard housing. This is particularly valid in light of the general rural-urban migration trends in South Sudan.

32. Local integration in the greater Khartoum area had been the preferred durable solution for others who were internally displaced during the second phase of the conflict<sup>43</sup>. Some of them have lived there well integrated as nationals for many years and generations. Their status following independence has become precarious especially after Sudan's amendments to its 1994 Nationality Act following the successful referendum for independence in South Sudan. The amendment provides for the automatic revocation of Sudanese nationality "if the person has acquired, de jure or de facto, the nationality of

<sup>39</sup> Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Mission to the Sudan, UN Doc. E/CN.4/2006/71/Add.6, 2006, para. 6.

<sup>40</sup> Norwegian Refugee Council's/Internal Displacement Monitoring Centre, South Sudan – A comprehensive response to internal displacement is crucial, 9 July 2013, p. 6.

<sup>41</sup> Ibid. para. 8.

<sup>42</sup> Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, on his mission to Sudan in 2012, paras. 54-59 on the situation of persons of South Sudanese origin.

<sup>43</sup> In the Report of the Special Rapporteur on the human rights of internally displaced persons, Chaloka Beyani, on his mission to Sudan in 2012, para. 54, estimates were at 220'000 to 350'000. This number has further decreased by those who benefited from the IOM-led return operation or who have returned spontaneously.

South Sudan.”<sup>44</sup> While states as a matter of sovereignty have a large discretion in deciding whom to admit as nationals of their country, laws and decisions must not be discriminatory nor arbitrary<sup>45</sup>, and in matters of state succession, there is a right of option as to the choice of nationality. This provision in Sudan’s Nationality Act creates a risk of statelessness, a situation that needs to be prevented in case of secession in good faith so as not to arbitrarily or discriminatorily deprive former nationals of any nationality. The Framework Agreement on the Status of Nationals of the other State and Related Matters 2012 (Four Freedoms Agreement) regulates (1) residence; (2) movement; (3) economic activity; and (4) the right to acquire and dispose of property, which each State has to ensure for the nationals of the other State. The issuance of national documentation is a condition for the implementation of the Framework Agreement and hence for the enjoyment of these rights and for South Sudanese to regularize their status in the Sudan. An acceleration of the cooperation to provide nationals with the relevant documentation as provided for by the agreed implementation matrix<sup>46</sup>, therefore remains a matter of urgency on the part of South Sudan. The implementation of this agreement is critical to prevent statelessness as well as to provide those who have been internally displaced in Sudan before independence with a durable solution through local integration.

## **E. Internal displacement in the borderlands**

33. Communities living in the borderlands, in particular nomadic communities regularly crossing the new borders as part of their traditional nomadic mobility, deserve special attention too. A forcible halt of their strategic mobility along their traditional migratory paths can result in the inaccessibility of their nomadic living space which equals the internal displacement of sedenterized populations. The maintenance of the soft border and facilitation of human and livestock mobility and the special arrangements for transhumance as provided for in the Agreement on Border Issues will be important to prevent the displacement of nomadic communities in the borderlands.

## **F. Displaced persons in the Abyei area**

34. The Special Rapporteur was unable to visit the Abyei area during both of his respective visits to Sudan and South Sudan. However, the situation in Abyei requires special consideration in light of its unresolved status as it is claimed by both states as part of their respective territory. While temporary arrangements for the administration and security of the Abyei area have been agreed by both states in the respective agreement (TASA), the Cooperation Agreement leaves the determination of the final status of Abyei to the Presidents of both states<sup>47</sup>, while the African Union High-Level Implementation Panel for Sudan’s Proposal on the Final Status of Abyei 2012 reinforced the need for a referendum to be respected by both states on the basis of soft borders. Therefore the

<sup>44</sup> The Sudanese Nationality Act 1994 and Sudanese Nationality Act (Amendment) 2011, para. 10 (2).

<sup>45</sup> The African Commission on Human and People’s Rights as well as the Human Rights Committee base a prohibition of the right to nationality and citizenship on article 3(2) and article 26 respectively. See also, African Commission on Human and People’s Rights, *Modise v. Botswana*, Communication no. 97/1993 of 2000. See also article 5 (d) (iii) CERD prohibiting distinctions in the area of nationality based on race, colour, or national or ethnic origin.

<sup>46</sup> Implementation Matrix adopted by the Republic of the Sudan and the Republic of South Sudan, Addis Ababa, 12 March 2013, para. 4.4.

<sup>47</sup> Section 1.4 Implementation Matrix for Agreements Between the Republic of the Sudan and the Republic of South Sudan, 2012.

unilateral referendum undertaken in October 2013 had no legal bearing on the situation. The fact that the final status of Abyei remains unresolved has created specific problems connected with the situation of those persons displaced in and from Abyei. According to the Guiding Principles on Internal Displacement, having crossed an internationally recognized state border is a key element to assessing whether internal displacement has occurred. A classification of this group of persons displaced in and from Abyei would not only prejudice the resolution of the status of Abyei, but also risks to make them pawns in the contesting claims to the territory of Abyei and thus expose them to unequal and discriminatory treatment and undermine their rights<sup>48</sup>. Until the status of Abyei is resolved, it is suggested to afford those displaced in and from the disputed area with the assistance and protection equal to other civilians with similar assistance and protection needs.

#### **IV. National and international response to internal displacement**

35. The scale and complexity of the internal displacement crisis in South Sudan requires a comprehensive approach to its resolution. This is even more necessitated by the regionalization of the displacement crisis as well as the security and stability impacts in the region. As a Member State of the International Conference of the Great Lakes Region, the ratification of the Pact on Security, Stability and Development in the Great Lakes region is advisable as this provide a framework for the resolution of internal displacement. The African Union's Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) can provide useful and constructive support to national and international actors in South Sudan in addressing internal displacement in a comprehensive manner. The complexity and multi-layered nature of the displacement situation requires a national policy framework in line with regional and international standards as an agreed upon basis to preparedness, prevention, response and solutions to internal displacement.

36. The primary responsibility to assist and protect IDPs rests with national authorities<sup>49</sup>. This requires a civilian and capacitated national institutional focal point entrusted with this all-encompassing responsibility. While acknowledging the important role of the Return and Rehabilitation Committee in the Ministry of Humanitarian Affairs and Disaster Management in particular, concerns remain over the weak civilian structures and the lack of an appropriate institutional set up to address internal displacement in its different dimensions. Despite the absence of an institutionalized response, the Government of South Sudan remains accountable to prevent internal displacement, to not arbitrarily displace people, assist and protect them and support durable solutions. Such responsibility must be exercised in an equal and non-discriminatory manner, irrespective of the ethnic origin of the IDP community and in full recognition that IDPs are civilians.

37. The international community plays an important role in the response to internal displacement where authorities are unable or unwilling to assist and protect IDPs. In South Sudan, this role is shared by the humanitarian system, including the clusters, UNMISS as well as the donor community. Based on the determination by the UN Security Council that the situation in South Sudan constitutes a threat to international peace and security, it established UNMISS in 2011<sup>50</sup> as an integrated mission with a wide mandate<sup>51</sup>

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<sup>48</sup> Medecins sans frontiers, Quarterly Newsletter, September 2013, p. 5. MSF suggests though that the reluctance of classification resulted in restricted access to humanitarian assistance.

<sup>49</sup> Guiding Principle 3 (1), UN Guiding Principles on Internal Displacement.

<sup>50</sup> UN Security Council Resolution 1996 of 8 July 2011.

<sup>51</sup> Ibid. para. 3.

encompassing state and capacity/building, conflict prevention and resolution as well as protection of civilians as a core function. During his consultations with the SRSG, the DRSG, and relevant units of UNMISS in Juba and in Bor, the Special Rapporteur expressed his concern over the limited institutional preparedness and capacity within UNMISS for an internal displacement situation. He concern particularly related to a displacement scenario within UNMISS Protected Areas. While welcoming the development of the Protection of Civilian Strategy in 2012 and Guidelines on Civilians seeking protection at UNMISS bases in 2013, he questioned the adequacy of these guidelines although recognizing that UNMISS considered this as a last resort scenario. The guidelines in particular failed to address the scenarios of large scale and medium- and long-term displacement. Should displacement of civilians in UN bases last more than a few days, the Guidelines suggest that “it is preferable for them to be provided physical protection in another settlement or with host families as well as somewhere where they are able to access humanitarian assistance.”<sup>52</sup> The current displacement situation in South Sudan’s UN bases demonstrates the clear need to revise these guidelines and adapt them to the reality of internal displacement.

38. The Special Rapporteur takes note of pressure by and on UNMISS urging the decongestion of UNMISS protected areas and relocate the IDPs. Appreciating the concern and the need to address the situation, in particular in light of the attack against the POC area in Bentiu, the safety and security of the displaced populations must be the absolute priority of the UN to safeguard. IDPs must not be forced or induced to leave the areas, but must be enabled to take a voluntary decision based on adequate information made available to them on the situation outside the bases including in their home areas or other safe options made available to them<sup>53</sup>. Decongestion should be based on a strategy embedded in a forward looking comprehensive approach to internal displacement and not undertaken as quick and standalone measure as consequences of such action can be severe for the displaced but also for the UN system.

39. Early January 2014, the UNMISS leadership suspended its statebuilding mandate in light of the armed conflict, to which the Government of South Sudan is a party. Such suspension was necessary in light of the circumstances to allow UNMISS to carry out its POC mandate. Implementation of POC activities is most critical, not only within UN bases but also outside, including by regular patrolling. Nevertheless the integrated mandate of UNMISS appeared to veer towards political proximity with the Government. This raised questions about the UN’s ability to abide by the imperative of humanitarian principles of neutrality, impartiality, and do no harm at all times, and to make the Government of South Sudan accountable for respecting and ensuring respect for international law. The implications of this appeared, as the events of and after 13 December 2013 showed, to have aggravated, most notably for the humanitarian system in South Sudan.

40. The humanitarian response to internal displacement in South Sudan is particularly challenged by lack of adequate data, limited humanitarian access and shrinking humanitarian space. Among key constraints to humanitarian access are the active and ongoing hostilities; restrictions on movement of affected populations due to targeted violence; safety risks for humanitarian personnel, supplies and assets; politicization and militarization of humanitarian assistance; or constraints provided by the physical environment in particular during the rainy season. The development of the humanitarian access action plan by the Humanitarian Country Team (HCT) that seeks “to establish and

<sup>52</sup> UNMISS, Guidelines on Civilians seeking protection at UNMISS bases, 30 April 2013, para. 12.

<sup>53</sup> “We must not fail in protection South Sudan’s IDPs”, Press statement by the UN Special Rapporteur on the human rights of internally displaced persons, 31 January 2014.

maintain neutral, impartial and independent humanitarian access in all areas affected by hostilities by engaging with all parties to the conflict” is an important effort to improve the constrained operating environment for humanitarian actors, UN as well as NGOs. Increasing the humanitarian and protection space must be a priority. It is incumbent on the UN Security Council, the Emergency Relief Coordinator (ERC), the Humanitarian Coordinator in South Sudan and the HCT, including the Cluster Leads, and the POC unit, to change and adjust the applicable modus operandi to ensure space for protection and humanitarian action operationally grounded in humanitarian principles. The Special Rapporteur welcomes the decision of the Inter-Agency Standing Committee on 14th February 2014 to request the ERC to appoint a Deputy Humanitarian Coordinator with a strong protection background.

41. Within the humanitarian response system as activated in South Sudan, the role of the Protection Cluster is central in protecting IDPs. The Special Rapporteur commends UNHCR and the Norwegian Refugee Council (NRC) in South Sudan for its expert leadership of the protection cluster. The scale and complexity of internal displacement in South Sudan requires a strong institutionalized and capacitated response that addresses not only the current displacement crisis, but also considers its long-term dimensions. As a forum where expertise, strategic vision and direction and response capacity are channelled, the Protection Cluster currently constitutes the urgently needed institutional focal point on internal displacement within the humanitarian system. Due to need for its expertise and direction for the entire humanitarian system, its role requires an elevated authority on all matters of internal displacement in this system in close coordination and cooperation with other clusters.

## **V. Conclusions and Recommendations**

42. **Based on observations made and the information made available to the Special Rapporteur, he concludes that the response to internal displacement in South Sudan needs:**

(a) **All parties to the conflict to demilitarize and adhere to the Cessation of hostilities agreement of January 2014 and applicable rules of international humanitarian and human rights law in order to protect civilians including IDPs, prevent new displacement and to allow for solutions for the displaced;**

(b) **Comprehensive approaches, based on a policy framework and considering the different groups among the displaced and their immediate and longer-term needs, yet based on rights- and needs-based priorities;**

(c) **Institutionally to be adequate, creating necessary institutional capacity within the civilian government; and reconsidering necessary structural and institutional changes within UNMISS as well as the humanitarian system and their respective relationship;**

(d) **To be based on humanitarian and protection principles to depoliticize the humanitarian response, improve humanitarian access and increase humanitarian space.**

### **A. Recommendations to the Government of South Sudan and other parties to the conflict as applicable**

43. **Capacity and institutional preparedness: In re-considering the primary responsibility of the Government of South Sudan to assist and protect IDPs, the**



Special Rapporteur strongly urges civilian authorities, in particular the Relief and Rehabilitation Commission and the Commission on Refugee Affairs, to plan and implement a process towards the establishment of a comprehensive policy framework on internal displacement in line with the regional and international standards drawing from the guidance of the Great Lakes Pact and its Protocols and the Guiding Principles on Internal Displacement. Ratification of the Kampala Convention is urgently required to provide a comprehensive basis for protecting and assisting IDPs;

44. **Prevention of internal displacement and accountability:** Prevention of new displacement must be a priority and requires the establishment of accountability for acts amounting to arbitrary displacement. Most notably, the Government of South Sudan including its armed and police forces and all other parties to the conflict must refrain:

(a) from creating conditions leading to internal displacement and from violations of human rights and international humanitarian law under all circumstances<sup>54</sup> and establish accountability for violations committed;

(b) from any military or other activity that arbitrarily displaces people, spare civilians from all violence, abstain from indiscriminate attacks and not target them, including during flight, in places of refuge<sup>55</sup> and upon return;

(c) from directly or indirectly inciting communities against each other for political or other reasons.

Other groups, such as David Yau Yau's movement, irrespective of their legal status, must also adhere to these obligations under all circumstances<sup>56</sup>.

45. **Authorities are also called upon to explore and implement other means to**

(a) prevent inter-communal violence, for example through the establishment of local peace committees, effective policing, grass root reconciliation initiatives, or awareness raising and reestablishment of pastoral governance systems and a system of game rangers to deal effectively with cattle raiding.

(b) Mitigate the adverse impact of natural hazards on communities, for example through effective disaster risk reduction and mitigation measures especially in areas prone to repeated natural disaster;

46. **Response to internal displacement:** Authorities at the national and local levels are to ensure a demilitarized and depoliticized response to all IDPs irrespective of their ethnic background, recalling that IDPs are civilians and must be protected on account of that.

47. **Facilitate durable solutions:** Internal displacement must not last longer than required by the circumstances prevailing in South Sudan and durable solutions must be enabled:

(a) The Government of South Sudan as well as all other parties to the conflict as well as any other group engaging in armed activities must contribute to this end;

<sup>54</sup> Guiding Principle 5, UN Guiding Principles on Internal Displacement. Para. 6 of the Status of Forces Agreements provides the obligation of the Government to ensure its military forces are acquainted with these rules of international law.

<sup>55</sup> Guiding Principles 6 and 10, UN Guiding Principles on Internal Displacement.

<sup>56</sup> Guiding Principle 2 (1), UN Guiding Principles on Internal Displacement.

(b) In addition to adherence to the Cessation of hostilities agreement 2014 and applicable rules of international law, they are called upon to demilitarize areas of return and local integration for IDPs and respect these civilian areas irrespective of the ethnicity of the community settling there;

(c) Documentation for all South Sudanese, including for all IDPs and South Sudanese residing in the Sudan, is essential to allow a process towards durable solutions. The issuance of national documentation is also a condition for the implementation of the Framework Agreement and the Implementation Matrix provides for an accelerated cooperation in providing nationals with documentation. Authorities are therefore strongly urged to ensure and facilitate access to documentation, including through simplified procedures to obtain such documentation throughout the entire country. Under no circumstances should IDPs be requested to obtain documentation in unsafe areas.

48. **Respect and ensure respect for protection and humanitarian principles and facilitate access:** All parties to the conflict must respect and ensure respect for protection and humanitarian principles as the fundament on which international and national organizations deliver assistance and protection to IDPs. International and national humanitarian personnel, their transports and supplies must be respected and protected. Parties to the conflict are called upon to respect these principles. Moreover, in order to facilitate the delivery of humanitarian assistance and protection, it is essential that authorities at the national and local levels, the SPLA and other parties to the conflict remove obstacles to humanitarian access, including administrative impediments.

49. **Respect Status of Forces Agreement (SOFA) 2011:** The Government and all its organs, including the SPLA, must adhere to its obligations under the Status of Forces Agreement of 2011. Most notably, the premises of UNMISS<sup>57</sup> throughout the country, including the POC Areas hosting IDPs, need to be respected and must not be intruded by armed forces and government officials. Concerns over the prevalence of armed elements in the protected areas of UNMISS, have to be addressed through the means provided by the Status of Forces Agreement<sup>58</sup> and in dialogue with the SRSG.

## **B. Recommendations to the international community**

50. **Recognition of the internal displacement crisis:** All parts of the international community in South Sudan are called upon to recognize the depth, complexity and real scale of the internal displacement crisis and of the need to deal address it as a matter of priority. Such recognition, must entail the crafting of an adequate short- and long-term response to internal displacement and the protection crisis in South Sudan.

51. **Institutional capacities and preparedness:** Institutional capacities on internal displacement must be established and strengthened, not only in the face of the current conflict, but also towards the long-term resolution of internal displacement and better preparedness for the future.

(a) Within UNMISS it is strongly suggested to establish an institutional focal point system with necessary expertise on internal displacement that is able to advise

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<sup>57</sup> Para. 48 of the Status of Forces Agreement 2011.

<sup>58</sup> Chapter VIII of the Status of Forces Agreement 2011.

the entire mission in implementing the mandate in relation to internal displacement as well as to effectively mainstream it throughout UNMISS;

(b) Given the importance of the POC component of UNMISS's mandate and its critical role and responsibility towards IDPs seeking refuge within POC areas, it is suggested to capacitate the POC-Unit of UNMISS in general, and more particularly with expertise on internal displacement that allows the Unit in collaboration with the Protection Cluster in South Sudan to (i) advise on all POC activities related to internal displacement within UNMISS bases as well as outside; (ii) review the PoC strategy of 2012 and in particular the Guidelines on Civilians seeking refuge at UNMISS bases 2013; (iii) determine a protection-sensitive approach to address the current situation of internal displacement within the POC areas.

(c) The Cluster system in South Sudan and its role needs to be elevated as well as the role of the Cluster leads strengthened to allow for the best possible humanitarian and protection response. This requires notably to ensure the inclusion of Cluster leads in relevant decision-making processes and a regular and standardized presence in the HCT.

(d) The protection cluster in South Sudan is central as the institutional focal point on the response to internal displacement within the humanitarian and protection system. The following measures are strongly recommended to enable the protection cluster to fulfill its central role: (i) Cluster lead organizations, UNHCR and NRC, to ensure a fully-dedicated lead and co-lead respectively; and to donors to support such a dedicated cluster lead; (ii) The Global Protection Cluster Advisor to undertake a technical visit in order to advise the South Sudan Protection Cluster on measures to further improve its functioning; (iii) The ERC to elevate the role of the Protection Cluster in South Sudan towards the HC and the HCT as a whole to ensure the analytical and strategic expertise, its early warning role and its response capacity are fully exhausted and as an important measure towards the high-level UN commitment to put rights upfront; (iv) The Protection cluster to ensure adequate protection mainstreaming within UNMISS.

(e) Access and capacity constraints vary among different humanitarian actors of the UN, international and national civil society. This calls for a differentiated approach in the response that should be based on an assessment on who is best placed to act where.

52. Increase humanitarian and protection space and reinforce humanitarian principles: The response to internal displacement needs to be depoliticized and be based on the rights and needs of the IDPs. Humanitarian space and humanitarian principles must not be compromised and humanitarian operational response be based on these principles. The following actions are recommended to this end:

(a) The SRSG in collaboration with the Inter-Cluster Working Group to re-examine the impact of the mandate of UNMISS, as an integrated mission, on the humanitarian response and the protection of IDPs in light of the current conflict, considering its former political proximity to the Government and the perception thereof and undertake mitigating measures;

(b) The SRSG to effectively prioritize and strengthen the PoC-component of UNMISS' mandate and respective activities within and outside POC areas and ensure these activities can be carried out without compromise on account of other mandate components or capacity constraints;

(c) The ERC to re-examine the relationship between the political and humanitarian structure in South Sudan, and in particular revisit the role of the triple-

hatted Resident Coordinator/Humanitarian Coordinator/Deputy Special Representative of the Secretary General and consider a separation of roles to ensure a neutral, impartial and independent humanitarian and protection response. The appointment of the Deputy Humanitarian Coordinator with a protection profile is welcome, but it should be contextualized in light of this recommendation and ensured that the additional layer does not delay or further marginalize protection from relevant decision making processes.

(d) The HC and HCT, including the Cluster leads, to affirm and ensure respect to protection and humanitarian principles as fundament of the response to internal displacement in South Sudan in relation to all parties of the conflict as well as adapt the modus operandi with UNMISS to ensure a principled humanitarian response to internal displacement.

(e) The HCT to implement the Humanitarian Access Action Plan.

53. **Improve data collection, analysis and management:** The absence of a baseline and restrictions to data collection are a significant challenge to the response to internal displacement in South Sudan. In order to improve data collection, analysis and management, the following measures are recommended:

(a) Establishment of a single collection platform for data on internal displacement managed by UNOCHA with the aim to improve coordination and use of single-agency data collection, to set up an agreed upon methodology for various forms of data collection, and to ensure standardized analysis and dissemination. The expertise of the Joint IDP Profiling Service (JIPS) may be sought;

(b) The Protection Cluster in collaboration with other organizations and clusters to consult with JIPS on options to (i) improve the current data capture mechanisms; and (ii) to advise on profiling options in particular to support a long-term response to internal displacement beyond the emergency phase. Donors are urged to support such initiatives involving JIPS;

(c) UNHCR in close coordination with the Protection Cluster to explore options to establish a population movement tracking system.

54. **Establishment of a framework for response:** The response to internal displacement has to be geared towards solutions early on. This requires to not only address the immediate assistance and protection needs but a strategic long-term response to avoid an increased protractedness of internal displacement and its prevention to the extent possible. It is therefore recommended that the Protection cluster in collaboration with other Clusters and members of the HCT and UNCT as well as relevant parts of UNMISS establishes a comprehensive framework on internal displacement in South Sudan with a strategic approach towards durable solutions with the following elements:

(a) Overall framework for response addressing internal displacement due to all causes, the situation of long-term protracted IDPs and of newly or short-term IDPs, IDPs in UNMISS premises and outside UN bases. Special considerations require those returning from Sudan, nomadic communities and those from the Abyei area;

(b) Clarification and reinforcement of the institutional response to internal displacement of the international community in South Sudan to ensure better preparedness and capacity for the short- and long-term response;

(c) A strategy that addresses the short- and long-term response to internal displacement for IDPs within UNMISS premises as well as those settling elsewhere in the country. Durable solutions need to be based on the premises of voluntariness and

**free choice and are therefore provided with access to true and adequate information relevant to durable solutions. The IASC Framework on Durable Solutions for IDPs provides important guidance towards durable solutions for IDPs in South Sudan. The planning and implementation of such a strategy needs to be informed by a profiling of the populations and a solutions intention survey.**

**(d) The New Deal and other relevant development planning instruments are encouraged to ensure that durable solutions for IDPs are adequately reflected.**

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