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Human rights situations that require the Council's attention

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), Arab Organization for Human Rights, Indian Movement "Tupaj Amaru", International-Lawyers.Org, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2017]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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The Worsening Situation in South Sudan*

Introduction and background

In 2011, South Sudan seceded from Sudan by popular vote as per a referendum stipulated in the 2005 Nairobi Comprehensive Peace Agreement to gain independence. In December 2013, disputes between South Sudan's President, Salva Kiir and Vice-President (VP) Dr. Riek Machar led to conflicts that erupted into violence and civil war. The disagreements and violence began between Sudan People's Liberation Army/Movement (SPLA/M), led by President Kiir and the rival Sudan People's Liberation Army/Movement-In Opposition (SPLA/M-IO), supporting VP Machar. SPLA/M is comprised of soldiers mainly of the Dinka ethnic group¹, whereas the SPLA/M-IO is comprised of soldiers mainly from the Nuer ethnic group².

Violence continued to escalate and spread across South Sudan where more and more civilians are being discriminately targeted, attacked, and killed resulting in large numbers of internally displaced persons (IDPs) and scores of dead women, men, and children. Only guesstimates of the death toll from the United Nations (UN) and other groups are available ranging from 10, 000 to approximately 300,000 dead respectively. As of 2015 an estimated 1.7 million people have been displaced³. Promptly tackling the issue of IDPs is crucial when addressing refugee flows and its causes.

The South Sudan crisis deserves more attention and peaceful action where the utmost priority must be protection of civilian lives. Little information received from on the ground sources on human rights violations already indicates 'genocide' is taking place. This warrants attention and assistance from the UN, civil society, and all relevant non-governmental organizations (NGOs) and stakeholders.

Warranted response based on crimes of genocide

The UN Commission on Human Rights in South Sudan (The Commission) issued a report⁴ on December 1, 2016 recognizing the atrocities in South Sudan as ethnic-cleansing⁵. The commissioners acknowledged that the violence is targeted affecting some 64 tribes across the country. Additionally, various crimes and human rights violations are going unpunished and/or ignored.

On 14 December, 2016 Yasmin Sooka, Chair of The Commission delivered a statement⁶ at the 26th Special Session of the UN Human Rights Council accentuating the growing severity of sexual violence⁷. With rising ethnic tensions and mass displacement violence continues to spread across the country to previously unaffected areas⁸.

¹ President Kiir's ethnicity,

² Of which, VP Machar is a part of.

³ South Sudan IDP Figures and Analysis (<http://www.internal-displacement.org/sub-saharan-africa/south-sudan/figures-analysis>). Over 41,000 IDPs have been recorded in the northwestern region of South Sudan (Wau County)

⁴ UN Commission on Human Rights in South Sudan, December 2016 Report (<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20970&LangID=E>)

⁵ This warrants a timely and active response to prevent further genocide and protect the civilian population.

⁶ <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21028&LangID=E>

⁷ For instance gang rapes, additionally, other growing concerns such as the overall stability of South Sudan amidst its 3 year civil war was also addressed.

⁸ Such as the Equatorial regions ; most notably Yei, Wau, Malakal and Bentiu cities.

Hate speech has incited deadly violence and horrendous crimes targeted towards specific groups demanding them to vacate the city/land⁹; “*in the absence of a specific law targeting it, countering hate speech should be a collective effort of politicians, women, youth and all South Sudanese citizens.*” Woman’s activist, Angelina.

Killing members of the group;

Ethnic Nuer, Darfuris, and even Dinka were systematically killed in the 2014 Bentiu Massacre in April, based on their ethnicities and loyalties¹⁰. Since, witness accounts and testimonies of targeted killings have been reported indicating that Nuer soldiers carried out targeted killings on north Sudanese traders¹¹. Ms Sooka’s Report noted the spread of violence resulted in “*targeted killings of Dinka women and children*”, further illustrating that discrimination was based on ethnicity and allegiance. Moreover, killings took place in hospitals, mosques and other places of refuge¹².

Violence eventually reached Yei River, in southwest Sudan, where farmers were expelled from their residence their property and villages looted and torched thereby losing their “homes and belongings, livestock and land”¹³. In Juba, 2016, non-Dinka civilians fell victim to targeted killings and shellings allegedly by SPLA/M forces; civilians were also raped, and their properties and humanitarian goods looted. Per witness testimony attackers identified civilians’ ethnicity before acting. Such atrocities are in violation of international human rights law and are crimes against humanity hence requiring international attention.

Causing serious bodily or mental harm to members of the group;

Women and girls carry a double burden as they are targeted for sexual violence due to their ethnicity and gender regardless of age. The horrendous crimes result in mental and emotional breakdowns. Already, in 2015 hundreds of women and girls were taken as “wives” or “slaves” to military bases or cattle camps where any resistance was met with death¹⁴. Adding to the emotional and mental trauma, victims are sometimes forced to witness the villainous atrocities that include tortures and murder.

Sexual violence during conflict constitutes crimes against humanity under Article 7 of the Rome Statute of the International Criminal Court. Moreover, protection of women against rape and other acts of sexual violence must be assured pursuant to Convention (IV) relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August, 1949), which South Sudan is party. In July 2016, the UN documented over 200 cases of sexual violence that includes brutal rapes and gang rapes on women and girls in Juba alone by uniformed and plain clothed men from both opposition forces; victims were selected based on ethnicity or allegiance while perpetrators enjoyed impunity. Some atrocities took place near UN bases, ‘protection of civilians’ camps, and UN peacekeeper’s bases.

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

⁹ “Understanding the Bentiu massacres in South Sudan”, May 2014. Radio Tamazuj <https://radiotamazuj.org/en/article/understanding-bentiu-massacres-south-sudan>

¹⁰ “South Sudan: Gruesome Targeted Killings in Bentiu Hospital” <http://www.doctorswithoutborders.org/news-stories/press-release/south-sudan-gruesome-targeted-killings-bentiu-hospital>

¹¹ (mainly Darfur and Dinka people) “Understanding the Bentiu massacres in South Sudan”, May 2014. Radio Tamazuj <https://radiotamazuj.org/en/article/understanding-bentiu-massacres-south-sudan>

¹² For instance, the UN base in Bor, capital of Jonglei State, that was attacked by soldiers resulting in the death of civilians seeking refuge.

¹³ United Nations Press release, Juba, 2016

<http://www.responsibilitytoprotect.org/Dieng%20Statement.pdf>

¹⁴ “Reliving the rape camps of South Sudan’s civil war”, September 2015, article on AlJazeera.

Per The Commission's report, "*targeted displacement along ethnic lines is taking place through killing, abductions, rape, looting and burning of homes*"; villages, livestock, and crops were set ablaze¹⁵ and land grabbing in parts of the country were reported. On a whole, these crimes constitute 'genocide' as defined under Articles 1a through 1c of the 'Convention on Prevention and Punishment of the Crime of Genocide'.

The growing violence is so rampant that families and communities are on the run to seek refuge. Therefore, more assistance to international organizations and the national government is needed to assist IDPs.

Forcibly transferring children of the group to another group;

UN reports have told of forced child recruitment by rival forces in Bor as child soldiers, which is prohibited under international law including and referenced in Security Council Resolution 2206 (2015). Moreover, they have been subjected to other human rights violations such as sexual violence. Rival forces deny children the enjoyment of education in a safe environment as they have turned schools into military grounds for attacks and occupation¹⁶.

Impunity and lack of accountability

"The rapes and killings of civilians continue, the impunity remains, and the Hybrid Court and other proposed measures to enhance protection and accountability have not yet been implemented," UN High Commissioner for Human Rights, Zeid Ra'ad Al-Hussein¹⁷

Promises, agreements, and resolutions have been made, however, serious human rights violations continue with impunity¹⁸. Under Article 3 of the 'Convention of Genocide' the crimes associated with and that provoke genocide are subject to punishment by law. To hold perpetrators accountable and to achieve justice the independent Hybrid Court for South Sudan (HCSS)¹⁹ must be strengthened. Commissioner Ken Scott reiterated the urgency to set up the hybrid court as much of the country lacks functioning courts and "traditional reconciliation methods" are breaking down²⁰.

"Impunity breeds contempt. That is why the only action that will curb these violations is bringing the perpetrators to justice both at a command and an individual level. Based on the interviews we have conducted, South Sudan's legal system is currently in shambles." Yasmin Sooka

Accountability is not only for the perpetrators who commit crimes; the United Nations Security Council must also be accountable in carrying out its duties especially when it comes to protection of civilians and accountability of crimes.

Conclusion and recommendations

¹⁵ These atrocities occurred in the cities of Nasir and Mathiang.

¹⁶ "Children and Armed Conflict", Monthly Update : February 2017

¹⁷ Statement by UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein

¹⁸ Furthermore, statements, agreements, and resolutions have been produced with well thought out recommendations and lists steps and procedures to take in carrying out such obligations.

¹⁹ Established through the "Agreement on the Resolution of Conflict in the Republic of South Sudan" on 17th August, 2015. Link to the HCSS 3.2. Jurisdiction Mandate and Supremacy 3.2.1. The HCSS shall have jurisdiction with respect to the following crimes: 3.2.1.1 Genocide; 3.2.1.2 Crimes Against Humanity; 3.2.1.3 War Crimes 3.2.1.4 Other serious crimes under international law and relevant laws of the Republic of South Sudan including gender based crimes and sexual violence.

²⁰ Statement by the Commission on Human Rights in South Sudan, 1 Dec. 2016 – Geneva/Juba - <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20970&LangID=E#sthash.7A19bdN3.dpuf>

As per the ‘Convention on the Prevention and Punishment of the Crime of Genocide’²¹ we must acknowledge, prevent, and punish all crimes of genocide under international law. Civil Society and NGOs are more than concerned about this situation and call for more action in a peaceful manner to prevent further loss and destruction of human lives and to protect civilian lives in South Sudan. All relevant parties and stakeholders must act immediately in solidarity to assist and support South Sudan.

NGOs Signatories to this statement make the following recommendations:

- Pressure the South Sudanese government and relevant stake-holders to uphold the “Agreement on the Resolution of the Conflict in the Republic of South Sudan” (Ch. 2) for an immediate and permanent Cease-fire.
- Impose an immediate arms embargo as recommended in Annex of Security Council Resolution 2304 (Sept. 2016) with the support of UNMISS.
- Pressure the South Sudanese government and all relevant stake-holders to activate and strengthen the independent Hybrid Court of South Sudan (HCSS).
- Enforce Geneva Convention (IV) relative to “Protection of Civilian Persons in Time of War.” specifically Article 27, paragraph 2. Geneva, 12 August 1949 and especially “Protection of women against rape and such assaults must be assured under Protection of Civilian Persons in Time of War” (Geneva, 12 August, 1949)
- Put in action Resolution 2206 (2015) concerning South Sudan on targeted sanctions that includes, travel bans and asset freezing for those responsible for human rights violations.
- Enhance psychosocial and mental health care services and equipment particularly for victims of sexual violence and child soldiers.
- Increase protection on sites of refuge such as UN bases and camps, camps of protection, and sanctuaries.
- Promptly address the situation and safety of IDPs as it relates to refugees.

*Geneva International Centre for Justice (GICJ), The Arab Lawyers Association- UK, The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organisation for Justice & Democracy in Iraq (OJDI), Women Will Association (WWA), Alliance to Renew Co-operation among Humankind, The Iraqi Centre for Human Rights, The Perdana Global Peace Foundation, The International League of Iraqi Academics (ILIA), Women Solidarity for an Independent and Unified Iraq, Organization for Widows and Orphans (OWO), International Anti-Occupation Network (IAON), Kuala Lumpur Foundation to Criminalise War, Spanish Campaign against the Occupation and for Iraq Sovereignty- CEOSI, Arab Cause Solidarity Committee, Iraq Solidarity Association in Stockholm, NGO without consultative status, also share the views expressed in this statement.

²¹ “Convention on the Prevention and Punishment of the Crime of Genocide” 9 Dec, 1948
<http://www.responsibilitytoprotect.org/Dieng%20Statement.pdf>