



## **South Sudan: Briefing Note for the UN Security Council Working Group on Children and Armed Conflict**

**February 2015**

### **1. Introduction**

Watchlist on Children and Armed Conflict ('Watchlist') welcomes the report of the Secretary-General on children and armed conflict in South Sudan (S/2014/884). Ahead of the Security Council's Working Group on Children and Armed Conflict ('Working Group') negotiations on South Sudan, we would like to highlight specific findings and recommendations.

Prior to the outbreak of renewed conflict in December 2013, the Government of South Sudan, with the assistance of the UN country task force on monitoring and reporting (CTFMR), had made tangible progress in implementing the 2012 action plan to end and prevent recruitment and use of children by the Sudan People's Liberation Army (SPLA). Unfortunately, these efforts have now been "not only suspended, but largely reversed, with a devastating impact on children."<sup>1</sup> From December 2013 to December 2014, the UN received 629 reports of grave violations by all parties affecting roughly 32,000 children. Due to insecurity, lack of access, and capacity constraints, verification by the UN has been limited, with only 492 incident reports verified.<sup>2</sup>

The SPLA, armed opposition groups, including the SPLA in Opposition, and the White Army, are all listed for the recruitment and use of children in the annex of the most recent Secretary-General's report on children and armed conflict (S/2014/339). The SPLA have been listed for recruitment and use since 2005, and are therefore considered persistent perpetrators. The SPLA and the White Army are also listed for killing and maiming of children.

### **2. Commitments**

In August 2013, the SPLA issued General Order No. 001, prohibiting recruitment and use of children, attacks on schools, and the military use of schools. The order also prescribes disciplinary and administrative penalties for any SPLA member in violation. In June 2014, the Government of South Sudan re-committed to the 2012 action plan (Recommitment Agreement) to end and prevent grave violations against children, in particular recruitment and use, attacks on schools and hospitals, and the military use of schools. In August 2014, with support from the UN, a one-year work plan with specific activities and timed benchmarks was developed to facilitate the implementation of the Recommitment

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<sup>1</sup> Report of the Secretary-General on children and armed conflict in South Sudan (S/2014/884), para. 67, December 11, 2014.

<sup>2</sup> UNICEF situation report No. 48, December 16, 2014.

Agreement. In May 2014, the SPLA in Opposition also signed a commitment with the Special Representative of the Secretary-General on Children and Armed Conflict (SRSG-CAAC) to end and prevent grave violations against children, in particular recruitment and use, through inter alia the appointment of a senior focal point to engage with the UN. Finally, under the Cessation of Hostilities Agreement, the Government and the SPLA in Opposition agreed to cease acts of recruitment and use of children, and rape and sexual violence. Unfortunately, these commitments have not been upheld, and children remain at risk. Peace negotiations are ongoing under the auspices of the Intergovernmental Authority on Development (IGAD).

### 3. Challenges

**Continued recruitment and use by all parties:** Recruitment and use of children has increased dramatically since December 2013. UNICEF now estimates the use of roughly 12,000 child soldiers.<sup>3</sup> Children are recruited through coercion and abductions. Others join voluntarily, many with support from their families, or because of economic pressures. Re-recruitment is also a significant problem in an environment where few opportunities exist for children and youth. One emergency education expert working in South Sudan described the appeal of armed groups or forces by saying, “the lure of a salary, a new uniform, shelter and food is very attractive and seems to hold more promise for these children than four years of literacy education.”<sup>4</sup> According to one child protection officer, children do not always have political affiliations, and will join both the SPLA and the SPLA in Opposition, sometimes in succession. The children are promised salaries, and some receive payment when they join, but are paid less than adults for their service, or they are not paid at all.<sup>5</sup>

Thousands of children, some as young as 10 or 12 years old, have been observed participating in the operations of non-state armed groups as cooks, porters, or combatants. Watchlist partners have also reported children participating within the ranks of the SPLA. In Malakal, Upper Nile State, children between ages 11 to 14 years were seen wearing uniforms that were made to “fit to size.” Human Rights Watch documented incidences of boys, as young as 12 years old, fighting for the SPLA in Bentiu and Rubkona, Unity State.<sup>6</sup> The number of children within the SPLA is difficult to assess, as access to military barracks and recruitment sites for child protection officers has been deliberately restricted.

**Cross border recruitment:** Refugee camps along the border are vulnerable to attacks and serve as recruitment grounds for armed groups. A worrying trend of cross-border recruitment by armed non-state actors has developed along the border of South Sudan and Sudan in Unity State and the Upper Nile. According to the UN, both the Justice and Equality Movement (JEM)<sup>7</sup> and the Sudan People Liberation Movement/Army North (SPLM/A-N)<sup>8</sup> from Sudan are responsible for cross-border recruitment of children in refugee camps on the South Sudanese side of the border. Children were also forcibly recruited by the South Sudan Liberation Movement/Army (SSLM/A) in South Sudan and brought for training across the border in South Kordofan, Sudan.<sup>9</sup>

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<sup>3</sup> UNICEF Situation Report No. 48, December 16, 2014.

<sup>4</sup> Interview with emergency education expert, January 26, 2015.

<sup>5</sup> Interview with child protection expert, January 23, 2015.

<sup>6</sup> HRW, “South Sudan: Child Soldiers Thrust into Battle,” August 20, 2014.

<sup>7</sup> Report of the Secretary-General on children and armed conflict in South Sudan (S/2014/884), para. 26, December 11, 2014.

<sup>8</sup> Annual report of the Secretary-General on children and armed conflict (S/2014/339), para. 132, May 14, 2014.

<sup>9</sup> Report of the Secretary-General on children and armed conflict in South Sudan (S/2014/884), para. 21, December 11, 2014.

**Disarmament, Demobilization and Reintegration (DDR):** UNICEF has worked with the National DDR Commission and their partners to screen armed groups for the presence of children, but the effective separation of children remains a significant problem. Additionally, insufficient resources for reintegration, including education and livelihood support, are compounding the recruitment and use of children, and demobilized children are at risk of re-recruitment. The ability of the South Sudanese Government and its partners to efficiently implement a viable DDR strategy sensitive to the particular needs of children will, to a large extent, determine the future of children associated with armed actors.

In view of the cyclical nature of the conflict and the entrenched militaristic culture in South Sudan, programs for the release and reintegration of children require a long-term commitment, and should respond to individual needs for psychosocial, educational, and livelihood support. Programs must also be designed to address social and cultural norms, in which the carrying of arms by young boys in South Sudan is often linked to rites of passage or to socio-economic roles. In designing programs for girls and boys, lessons learned from evaluations of the previous DDR process in South Sudan should be applied. To ensure sustainability, reintegration programs must also be linked to medium and longer-term socio-economic recovery and peace-building initiatives at community, state, and national level, which should include building and strengthening of education and child welfare services and systems, as well as security sector reform. As UNICEF and implementing partners are in the process of demobilizing approximately 3,000 children from the South Sudan Democratic Movement/Army (SSDM/A) Cobra Faction, support for these programs is even more urgently needed.

**Rape and other forms of sexual violence:** Children are subjected to rape and other forms of sexual violence within the context of recruitment and use, abductions and/or communal violence.<sup>10</sup> A worrying characteristic of this conflict is rape and sexual violence along ethnic lines with reports of collective punishments and reprisal attacks. Reported incidents of sexual violence include rape, gang rape, forced abortion, and sexual harassment by all sides.<sup>11</sup> Girls are sometimes abducted for sexual purposes. For example, in February 2014, 76 girls were reportedly taken for sexual purposes by the SPLA in Opposition in Malakala, Upper Nile State.<sup>12</sup> Cases of rape or other forms of sexual violence are most likely underreported due to the sensitive nature of the issue, limited availability of health services, lack of police capacity to investigate, and the total breakdown in the rule of law.<sup>13</sup> In 2014, the Government signed a Joint Communiqué with the Special Representative of the Secretary-General on Sexual Violence in Conflict that outlines clear steps to prevent and address rape and sexual violence, but full implementation is needed.

**Military use of schools:** Schools have been used as recruitment grounds, barracks, and weapons storage affecting the education of more than 50,000 children.<sup>14</sup> For example, according to the Secretary-General's report, two primary schools in Unity State reported the recruitment of 425 children by the SPLA in Opposition.<sup>15</sup> As part of the re-commitment to the action plan, the SPLA agreed to vacate all

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<sup>10</sup> Ibid., para. 39.

<sup>11</sup> Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, "UN Special Representative of the Secretary-General on Sexual Violence in Conflict Undertakes First Mission to South Sudan from 5 to 11 October 2014," October 3, 2014.

<sup>12</sup> Report of the Secretary-General on children and armed conflict in South Sudan (S/2014/884), para. 55, December 11, 2014.

<sup>13</sup> Ibid., para. 46.

<sup>14</sup> Ibid., para. 17.

<sup>15</sup> Ibid., para. 25.

schools and reinstate them as safe places for education. Several military directives have also been issued ordering SPLA units to vacate schools, including a punitive order issued in August 2013, and reinforced in September 2014. Advocacy efforts on the ground have led to individual schools being vacated; however, armed forces or groups reportedly still used 38 schools for military purposes (as of January 2015).<sup>16</sup>

Even when schools are vacated, remnants of war, including occasionally unexploded ordinances, rubbish and debris remain. This combined with the damage to learning and teaching materials means that rehabilitation of schools is challenging and, in the context of continued insecurity and risk of further destruction or damage, funding for rehabilitation is often not available. Communities are also often reluctant to send their children back to schools that have previously been used by armed forces or armed groups or where killings have taken place because they are perceived as being unsafe and tainted. As a result, there is greater focus on setting up Temporary Learning Structures in safer locations where communities can support their protection. While this represents a pragmatic short-term response, significant investment is required to rehabilitate schools and create an education system that is accessible to all of South Sudan's children, of which 400,000 are reported to be out of school.<sup>17</sup>

**Impunity and accountability:** A culture of impunity has pervaded South Sudan since the 2005 Comprehensive Peace Agreement (CPA). Reconciliation provisions of the CPA have been ignored, and instead *de facto* blanket amnesties have been issued and suspected perpetrators offered positions of power. Not only is impunity long-standing, but new serious violations of international human rights and humanitarian law have taken place since December 2013 by all parties. No investigations or prosecutions have taken place. Due to the lack of capacity and political will, the ability of the national police and judicial system to carry out fair, credible, and impartial investigations and prosecutions is under question.

As a result, other mechanisms have investigated violations of international humanitarian and human rights law. The African Union's Commission of Inquiry conducted field-missions in 2014, but has yet to make its findings and recommendations public. The UN peacekeeping mission in South Sudan (UNMISS) has issued three human rights reports, but has failed to include children and armed conflict issues as specific aspects of their reporting. UNMISS has also been criticized for lack of regular and public reporting. The inclusion of the rights and needs of children in these reporting mechanisms is vital to ensuring accountability for all victims.

Lastly, South Sudan lacks the necessary legal framework to prosecute alleged perpetrators, including individuals in government forces or non-state armed groups. The Children's Rights Act (2008) references recruitment and use as a criminal act, but it is more "informative" than "prescriptive" in its language. It, therefore, fails to provide the necessary legal backing to carry out any prosecutions under the law. Equally, the SPLA Act (2009) fails to clearly criminalize recruitment and use and other grave violations against children by SPLA members, but it does establish 18 years old as the minimum age for recruitment. In order to address legislative gaps, the Ministry of Defense and Veteran Affairs has presented a proposal to amend the SPLA Act (2009) that would provide punitive measures for SPLA officials who recruit children, use schools for military purposes, and commit other grave violations against children. The draft amendment has not yet been tabled before Parliament.

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<sup>16</sup> Interview with emergency education expert, January 26, 2015.

<sup>17</sup> UNICEF Situation Report No. 44, October 21, 2014.

## **Recommendations to the Security Council Working Group on Children and Armed Conflict:**

### Action plans:

- Urge the Government to implement its re-commitment to the action plan agreement in full and without delay; and encourage the wide dissemination of the action plan, work plan and related governmental directives prohibiting the recruitment and use of children and the military use of schools throughout the military chain of command, in particular to those battalions stationed in remote areas;
- Urge the SPLA in Opposition and the White Army, listed in the annexes of the Secretary-General's report, to promptly sign action plans with the UN for the purpose of ending and preventing grave violations against children;
- Call on donors to strengthen the capacity of the country task force on monitoring and reporting (CTFMR) to monitor and verify reports of grave violations against children in a timely fashion, and to advocate for and support the implementation of action plans.

### Recruitment and use of children:

- Call on all parties to allow unhindered access of child protection actors to barracks, detention facilities and recruitment sites for the purpose of age-verification, screening, and release of children;
- Encourage the CTFMR in South Sudan to monitor and report on cross-border recruitment and use, including by sharing information and coordinating with the CTFMR in Sudan;
- Call on the Government to establish effective age verification procedures based on international best practice to prevent underage recruitment. In support of this, the creation of a free and accessible birth registration system should be prioritized. Pending that, alternative determination procedures should be agreed which could include, for example, individual interviews and cross-checking of personal and public information;
- Call on the Government to develop a policy on the integration of armed groups into the SPLA which would be preconditioned on the release of children and exclusion of perpetrators of grave violations against children;
- Call on the Government to develop and implement a national strategy for sustainable reintegration of former child soldiers that is tailored to address the causes of recruitment and re-recruitment in South Sudan. Such a strategy should:
  - Be multidisciplinary and adequately funded;
  - Be accessible to children in all provinces affected by the conflict;
  - Identify girls and their children and provide them with assistance that meets their specific needs without stigmatizing them;
  - Involve children, parents and their communities in its elaboration;
  - Provide educational and livelihood opportunities to all children within the community rather than to former child soldiers only, because all children are at risk when the community is vulnerable.
- Call upon donors to provide funding to support long-term comprehensive release and reintegration programs for girls and boys that include medical and psychosocial support, and access to education and durable livelihood opportunities.

#### Rape and other forms of sexual violence:

- Urge the Government to promptly implement the Joint Communiqué on rape and sexual violence, and encourage its wide dissemination throughout the military chain of command, in particular to those battalions stationed in remote areas;
- Call on donors to provide funding for services, including medical and psychological support, for child survivors of sexual violence.

#### Military use of schools:

- Demand that all parties vacate all schools currently being used for military purposes and refrain from using schools and universities for any purpose in support of the military effort; and encourage the Government to adopt concrete measures to deter the use of schools by armed forces or groups, in accordance with resolution 2143;
- Call on the Government to enforce the existing ban on using schools for military purpose under General Order No 001 (Chief of General Staff, August 14, 2013).

#### Legislative reform:

- Urge the Government to expedite accession to the Convention on the Rights of the Child and its Optional Protocols, and ensure national legislation reflects South Sudan's obligations under international human rights law;
- Urge the Government to criminalize the recruitment and use of children by all parties; and to introduce and adopt the proposal for the amendment of the SPLA Act (2009), which details various punitive measures for SPLA officials who recruit children, use schools for military purposes, and commit other grave violations against children.

#### Accountability and impunity:

- Urge the Government to ensure that those responsible for grave violations against children are held accountable through prompt investigation and prosecution of parties alleged to have committed grave violations against children; if the Government is unable to carry out fair, credible, and impartial investigations and prosecutions, it should consider alternative justice mechanisms such as a mixed international-national hybrid court or extending the invitation to the ICC to investigate and prosecute war crimes, crimes against humanity, and other serious violations of international law. If the government is unable or unwilling to do so, the Security Council should consider referring the situation to the ICC;
- Stress the importance that peace negotiations systematically incorporate child protection concerns including: the cessation and prevention of violations against children; demobilization, rehabilitation, and reintegration of children separated from armed forces or groups; and accountability for perpetrators of grave violations against children. Ensure that any peace agreement does not include amnesty or de facto impunity for alleged perpetrators of recruitment and use and other serious crimes;
- Call on UNMISS to more actively investigate, document, and publicly report on human rights and humanitarian violations. Children and armed conflict issues should form a specific aspect of its reporting.