

III. Protection of civilians: the case of South Sudan

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It is not uncommon for civilians in conflict zones to seek the protection of United Nations bases in times of danger; it happened, for example, in Rwanda, Bosnia and Herzegovina and Timor-Leste. At the end of 2016, the UN Mission in South Sudan (UNMISS) was host to over 200 000 civilians in seven Protection of Civilian (POC) sites attached to its bases.

Nor is this the first time peacekeepers have failed to protect civilians in their care. After the Rwandan genocide in 1994 the general response was ‘never again’. Just one year later, however, most of the UN safe areas in Bosnia and Herzegovina fell to the Bosnian Serbs and a new genocide took place in Srebrenica. In 1999 a report by the Independent Inquiry on Rwanda placed the protection of civilians—in particular those under imminent threat—on the agenda of the UN Security Council. The report argued that the protection of civilians is consistent with ‘the perception and the expectation of protection created by [an operation’s] very presence’.¹ In that same year, the Security Council affirmed its intention to give all UN peace operations suitable mandates and adequate resources for the protection of civilians.² The UN Mission in Sierra Leone (UNAMSIL) was the first operation partly mandated under Chapter VII of the UN Charter to ‘take the necessary action . . . to afford protection to civilians under imminent threat of physical violence, taking into account the responsibilities of the Government of Sierra Leone’.³

While the protection of civilians during peace operations might seem an obvious obligation, the 2000 Brahimi Report on UN peace operations noted concerns ‘about the credibility and achievability of a blanket mandate in this area’. It pointed out that ‘if an operation is given a mandate to protect civilians . . . it also must be given the specific resources needed to carry out that mandate’.⁴

Concerned that UN peacekeeping operations have missed opportunities to protect civilians, in 2015 major troop, police and financial contributors met in Kigali, where they formulated the Kigali principles, a non-binding set of 18 pledges aimed at strengthening peacekeepers’ ability to protect civilians in armed conflict. The principles pledged: (a) to better train troops

¹ United Nations, Security Council, Report of the Independent Enquiry into the actions of the United Nations during the 1994 genocide in Rwanda, S/1999/1257, 15 Dec. 1999.

² United Nations Security Council Resolution 1265, 17 Sep. 1999.

³ United Nations Security Council Resolution 1270, 22 Oct. 1999.

⁴ United Nations, General Assembly and Security Council, Identical letters dated 21 August 2000 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, A/55/305-S/2000/809, 21 Aug. 2000.

and commanders in the protection of civilians; (b) to be prepared to use force for the purpose of protecting civilians, without caveats; (c) to communicate resource and capability gaps, and to contribute the enabling capabilities required; (d) to allow commanders to use force without consultation with capitals; (e) to not hesitate to take action in line with the rules of engagement; (f) to demand clarity on the rules of engagement; (g) to act as early as possible and proactively to mitigate threats to civilians; (h) to enhance existing rapid deployment arrangements; (i) to vigilantly report human rights violations in the field, and take disciplinary action against personnel who fail to act; (j) to review failures and learn lessons; and (k) to hold peacekeeping personnel to the highest standard of conduct and prosecute, where appropriate, any incidents of abuse.⁵

Protection of civilians in South Sudan

At the start of the civil war in South Sudan in mid-December 2013, fear of massive human rights violations led UNMISS bases to open their gates to tens of thousands of civilians who had escaped the fighting.⁶ Within two weeks 57 500 people were sheltering at 10 UN bases.⁷ Some analysts warned that these bases resembled the UN-protected safe areas in Bosnia and Herzegovina in the 1990s, and that they ran the risk of being overrun by combatants who believed that the UN was sheltering ethnic or political opponents, as occurred in Srebrenica.⁸ By the end of 2014, UNMISS POC sites were sheltering over 100 000 civilians.⁹ As the fighting continued in 2015, this number rose to approximately 200 000. The number remained stable at around this level throughout 2016.¹⁰

It is important to note that the POC sites were not planned, but the result of an urgent humanitarian need—large numbers of civilians looking to the UN to keep them safe. Consequently, each UN location dealt with the challenges differently. In all cases, however, the military component of the mission was given responsibility for protection against external violence, while

⁵ The Kigali principles on the protection of civilians, Report of the High-Level International Conference on the Protection of Civilians, Kigali, 28–29 May 2015.

⁶ UN Security Council Resolution 2132, 24 Dec. 2013.

⁷ UN Office for the Coordination of Humanitarian Affairs, 'South Sudan crisis: situation report as of 1 January 2014', Report no. 6, 1 Jan. 2014.

⁸ Giffen, A., 'How the UN should handle South Sudan', CNN World, 5 Feb. 2014; and Knodell, K., 'Under siege in South Sudan', War is Boring. On the safe areas in Bosnia and Herzegovina see Seybolt, T. B., SIPRI, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford University Press: Oxford, 2007), pp. 61–70.

⁹ South Sudan Protection Cluster, 'Protection Trends South Sudan, no. 6' (July–Sep. 2015), Nov. 2015.

¹⁰ United Nations, Security Council, Report of the Secretary-General on South Sudan, S/2016/138, 9 Feb. 2016; and UNHCR, 'South Sudan situation: regional update', 1–31 Dec. 2016.

UN police personnel were responsible for internal security.¹¹ Subsequently, UNMISS developed a three-tiered protection strategy: (a) protection through dialogue and political engagement; (b) protection from physical harm; and (c) the establishment of a protective environment, ranging from enforcing the rule of law to creating conditions conducive to return.¹²

In spite of the UN's efforts, the POC sites are far from safe. The February 2016 attack on the Malakal POC and the July 2016 events in Juba discussed below are not the first time that POC sites in South Sudan have come under attack. Since the attack on the Bor POC site in April 2014, these sites have seen violence not only from outside, but also linked to communal violence and an absence of the rule of law inside.¹³ From the start, there was a high incidence of domestic and sexual violence, and high levels of crime were reported. Internally Displaced Persons (IDPs) are often frustrated and traumatized, and displacement results in a breakdown of community structures. In addition, the sites cannot be insulated from the communal tensions outside, particularly in multi-ethnic camps. Civilians have also been harassed by the Sudan People's Liberation Movement/Army in Government (SPLM/A-IG) and other groups.¹⁴

UNMISS policy has been to keep living conditions in the POC sites basic to avoid providing incentives for civilians to stay long term or attracting additional civilians to the bases.¹⁵ This has led to increasing criticism from the humanitarian sector. Although initially intended as temporary solutions, the POC sites have become semi-permanent IDP settlements. This should require going beyond providing protection against physical violence to improving humanitarian and living conditions to meet IDP camp standards.¹⁶ As one critic argues: 'There is no point in protecting civilians from violence if they are then left to die from infectious diseases, malnutrition, or violence within the compound itself'.¹⁷

¹¹ Dönges, H., 'Protection of civilians needs to be understood as a collaborative strategy and not a campsite', *Global Peace Operations Review*, 23 June 2016.

¹² United Nations, Department of Peacekeeping Operations and Department of Field Support, 'The Protection of Civilians in United Nations Peacekeeping', DPKO/DFS Policy 2015.07, 1 Apr. 2015.

¹³ *Sudan Tribune*, 'UNMISS condemns attack on its camp in Bentiu', 28 Apr. 2016.

¹⁴ South Sudan Protection Cluster, 'Protection trends: South Sudan, no. 4, Jan.–Mar 2015', May 2015.

¹⁵ UNMISS, Guidelines: civilians seeking protection at UNMISS bases, Approved by Hilde Johnson, Special Representative of the Secretary-General, 30 Apr. 2013.

¹⁶ Heller Perache, A., Carpenter, S. and Lecarpentier, L., 'Opinion and debate: if basic life support is a pull-factor, let them come', Médecins sans Frontières, 23 June 2016.

¹⁷ Greco, J. and Rushton, S., 'Protecting civilians in South Sudan: time to revisit the mandate', *Global Observatory*, 30 June 2016.

The Malakal attack

Malakal is a town in northern South Sudan. It is at the heart of the conflict zone and has changed hands 12 times since the start of the conflict. The Malakal POC site was host to around 48 000 civilians and unique in that it accommodated IDPs from three ethnic groups: Dinka, Nuer and Shilluk. This was an inherent challenge, as Dinka tend to favour the SPLM/A-IG and Nuer and Shilluk generally support the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO) or other opposition groups. Tensions were increasing in the region due, among other things, to Executive Order 36 of October 2015, which increased the number of states in South Sudan and split Upper Nile State, as well Administrative Order number 1 of February 2016, which dismissed all Nuer and Shilluk civil servants in the newly established Eastern Nile State.¹⁸

On the evening of 16 February 2016, two Sudan People's Liberation Army in Government (SPLA-IG) soldiers tried to smuggle ammunition into the POC site. Small-scale inter-communal clashes broke out, followed by more intense violence the next evening. Shilluk youth attacked the Dinka quarters in the POC site. The next morning, the local authorities accused UNMISS of failing to protect civilians and SPLA-IG soldiers breached the fence and entered the site. UNMISS was unable to hold the SPLA-IG back and UNMISS commanders were reluctant to use lethal force. For several hours, the SPLA-IG and Dinka fighters controlled much of the POC site. They attacked Nuer and Shilluk civilians and burned down houses. More than 30 IDPs were killed, 123 injured and about one-third of the site destroyed before UNMISS finally expelled the attackers in the afternoon.¹⁹ Médecins Sans Frontières (MSF) later called UNMISS 'missing in action'.²⁰

After the incident, UNMISS did little to improve the situation and reconstruction was slow. It increased protection of the perimeter of the UNMISS core camp, but not the POC site. It also provided protection for returning Dinka, which contributed to a perception of partiality among the Nuer and Shilluk. An MSF survey of the POC site found that 83 per cent of the IDPs felt insecure and 81 per cent either had themselves or knew someone who had been subject to physical violence. Confidence in the UN was low.²¹ On 16 March 2016 the Under Secretary-General for Field Support established a UN Headquarters Board of Inquiry (the Malakal investigation) into the cir-

¹⁸ Center for Civilians in Conflict, *A Refuge in Flames: The February 17–18 Violence in Malakal POC* (Center for Civilians in Conflict: Washington, DC, 21 Apr. 2016); and United Nations, Secretary-General, 'Note to correspondents: Board of Inquiry report on Malakal', Statement, New York, 5 Aug. 2016.

¹⁹ Center for Civilians in Conflict (note 18); and United Nations (note 18).

²⁰ Médecins sans Frontières, *MSF Internal Review of the February 2016 Attack on the Malakal Protection of Civilians Site and the Post-event Situation*, June 2016.

²¹ Médecins sans Frontières (note 20).

cumstances of the clashes, led by Major General (retired) Patrick Cammaert (the Netherlands). Its findings were presented to the UN Security Council but a summary of the report was only made public in early August. It was highly critical of UNMISS and a number of troop contributing countries. In response, the UN Secretariat said that it was considering the repatriation of individual commanders and peacekeepers, as well as entire units.²²

Events in Juba

At the beginning of the conflict, some 37 000 IDPs found refuge in two POC sites at the UNMISS civilian and military headquarters, known as UN House, in Juba. During intense fighting on 8–11 July 2016, civilians, UN personnel and premises, and the POC sites came under attack. An additional 5000 civilians fled to the Tomping UN base near Juba airport. Although the SPLA-IO had located its base near one of the UN House POC sites, there was no clear military target nearby. Government forces in particular indiscriminately shot at and shelled POC sites and densely populated areas in the city. Attack helicopters flew over the UN bases, and artillery and gunfire hit UN bases and POC sites. Towards the end of the fighting and for weeks after, there were widespread reports of targeted killings, organized rape and beatings, looting of civilian premises and harassment—often of non-Dinka, along ethnic lines.²³

UNMISS clearly faced a difficult situation. However, even though these horrendous events often took place in the immediate vicinity of UNMISS camps and POC sites, it did not respond and largely complied with the restrictions on movement imposed by the government at the onset of the fighting. In some cases, the UN soldiers reportedly stood by and watched.²⁴ In the aftermath, the UN reported 73 confirmed civilian deaths, but believed the death toll to be much higher, and 217 documented cases of rape.²⁵

One incident has received particular attention in reports on the events, as it involved foreign nationals as well as UN and humanitarian staff. On 11 July, in a nearly four-hour rampage at the Terrain Hotel complex, soldiers

²² Center for Civilians in Conflict (note 18); Nichols, M., 'UN reaction to Malakal violence in South Sudan marred by confusion', Reuters, 21 June 2016; Tanza, J., 'UN Peacekeepers accept responsibility for massacre at Malakal', Voice of America, 24 June 2016; and United Nations (note 18).

²³ UNMISS, 'UNMISS urges parties to deescalate tensions and lift movement restrictions', Press release, Juba, 12 July 2016; Human Rights Watch, 'South Sudan: Killings, rapes, looting in Juba: Arms embargo, additional UN sanctions needed', 15 Aug. 2016; Patinkin, J., 'Witnesses say South Sudan soldiers raped dozens near UN camp', Associated Press, 27 July 2016; and Center for Civilians in Conflict, *Under Fire: The July 2016 Violence in Juba and UN Response* (Center for Civilians in Conflict: Washington, DC, 5 Oct. 2016).

²⁴ UNMISS (note 23); Human Rights Watch (note 23); Patinkin (note 23); and Center for Civilians in Conflict (note 23).

²⁵ Office of the High Commissioner for Human Rights, 'SPLA committed widespread violations during and after July fighting in South Sudan: Zeid', Geneva, 4 Aug. 2016.

wearing SPLA-IG attire shot dead a South Sudanese journalist, raped several foreign women, beat and robbed people, looted the premises and carried out mock executions. US citizens in particular were targeted. Many of the foreigners present were able to contact the relevant UN officials, departments and battalions, but these were unwilling to respond. The UNMISS Department of Safety and Security and its military command wing refused to send a team; and the Chinese, Ethiopian and Nepalese battalions were unwilling to send their quick reaction forces, which were intended to intervene in emergencies, even after assistance from the South Sudanese authorities was secured.²⁶

Another notable incident was the looting of the World Food Programme warehouse by SPLA-IG soldiers on 11–15 July. Goods worth around US \$30 million were stolen, including enough food to feed 200 000 people for one month. Again, UNMISS failed to intervene, in spite of the fact that one-third of the population of South Sudan faced severe food insecurity.²⁷

Alarmed by the preliminary findings of a fact-finding investigation by UNMISS, the UN Secretary-General launched an independent special investigation into the incidents and the mission's response, again led by Cammaert (the Juba investigation).²⁸ Even before the report on the Juba investigation was published, the Center for Civilians in Conflict (CIVIC) published a damning report, which concluded that UNMISS had been 'unable and, at times, unwilling to respond effectively' and that 'UNMISS clearly underperformed in fulfilling core parts of its mandate'. For example, when civilians fleeing one of the POC sites tried to shelter at the UN House core base, panicked peacekeepers fired teargas into the crowd with little or no warning. In addition, Chinese peacekeepers reportedly abandoned their posts, while peacekeepers from Ethiopia and Rwanda typically responded more appropriately and assisted civilians.²⁹ China rejected what it called the CIVIC report's 'malicious speculation'.³⁰ The Juba investigation, however, backed the NGO and was even more critical. The UN Secretary-General responded by dismissing the Force Commander, Lt Gen. Johnson Mogo Kimani Ondieki—a decision that eventually led Kenya to withdraw from the mission.³¹

²⁶ Patinkin, J., 'Rampaging South Sudan troops raped foreigners, killed local', Associated Press, 15 Aug. 2016; and Center for Civilians in Conflict (note 23).

²⁷ Center for Civilians in Conflict (note 23).

²⁸ United Nations, Spokesman of the Secretary-General, 'Statement attributable to the Spokesman for the Secretary-General on South Sudan', New York, 16 Aug. 2016.

²⁹ Center for Civilians in Conflict (note 23).

³⁰ Reuters, 'China denies allegations its peacekeepers abandoned South Sudan posts', 11 Oct. 2016.

³¹ BBC News, 'UN sacks South Sudan peacekeeping chief over damning report', 1 Nov. 2016.

Lessons learned

Based on the various reports on the events in Malakal and Juba, as well as some wider experiences, strategic lessons can be learned by the UN on the future of POC sites.

Protection mandates and resources need to be in sync. This lesson stands out. Very little has changed since the Brahimi report drew this conclusion. Protection mandates that lack the required funding, equipment and personnel have less chance of being successful and can even have a negative impact as populations are given false expectations.³² Both of Cammaert's investigations concluded that 'protecting the protection of civilian sites—effectively small cities of thousands of people—is beyond the capability of UNMISS or any peacekeeping mission and a task that raises unreasonable expectations'. The Malakal investigation recommended that 'UNMISS Senior Leadership, UNHQ New York and the Security Council should review the concept of Protection of Civilian sites, taking into consideration realities on the ground, related challenges and existing resources'. However, the Juba investigation recognized, 'that the protection of civilian sites will likely remain for some years and that UNMISS has a key role in providing security and maintaining their civilian character'.³³ Given the amount of resources invested, however, it is questionable whether the current approach is feasible in the long run. The attention required on the POC sites has limited the presence of UNMISS elsewhere.³⁴

Protection requires adequately prepared and trained troop and police contributors that are politically committed and acknowledge the risks involved. The Malakal investigation concluded that the inaction of UNMISS and its troops contributed to the incident. In particular, it saw the commanders asking for written confirmation that they should use lethal force, in contradiction of the Kigali principles discussed above, as proof that they lacked a sense of urgency. In fact, UNMISS troops in Malakal had been unwilling to carry out orders and implement the rules of engagement on previous occasions, but this had not been properly reported through the chain of command. The Juba investigation concluded that there had been instances during the fighting when UN peacekeepers had abandoned their posts or the response of peacekeepers had been substandard. This 'inward-looking posture' led to a loss of confidence by the local population and trust among humanitarian organizations that UNMISS was willing or able to fulfil its mandate to pro-

³² Van der Lijn, J., 'Protection of civilians: time to rethink the concept', SIPRI, 30 Aug. 2013; and Willmot, H., 'Protecting civilians: Can the UN break through?', Global Observatory, 8 June 2016.

³³ United Nations (note 18); and United Nations, Security Council, 'Letter dated 1 November 2016 from the Secretary-General addressed to the President of the Security Council', S/2016/924, 1 Nov. 2016.

³⁴ United Nations Security Council Resolution 2304, 12 Aug. 2016.

tect civilians. Both investigations concluded that the UN Security Council should not permit troop and police contributing countries to adopt risk-averse postures and that the personnel involved must be properly trained and prepared to make adequate responses. To this end, it is important to clarify with contributing countries what the expectations are, and to hold accountable commanders who fail to protect civilians.³⁵

Host-nation obstruction of the implementation of POC mandates cannot be allowed. Even before the outbreak of violence in July, the Security Council had failed to challenge the Transitional Government of National Unity of South Sudan (TGONU) on its repeated obstruction of the movement and functioning of UNMISS. UNMISS therefore required de facto SPLA-IG authorization in order to implement its POC tasks. Thus, once the fighting broke out in Juba, the mission was largely tied to its bases, making it almost impossible to protect civilians outside. UNMISS' acquiescence to the refusal of the TGONU to allow the use of armoured personnel carriers in certain areas further restricted the mission's mobility, as many peacekeepers deemed foot patrols to be too dangerous. The Security Council must put more pressure on host nations that obstruct the implementation of POC mandates, first and foremost by ensuring unrestricted movement.³⁶

More attention is needed on preventive action. MSF emphasizes the failure of UNMISS to prevent escalation in Malakal. It could have prevented the arms and attackers from entering the POC site. Despite warnings from organizations and IDPs, UNMISS was unwilling to deal with the initial incidents and called reports of tensions an 'exaggeration'. This allowed the situation to escalate.³⁷

Protection requires an integrated and coordinated approach in which all protection partners participate. Both UN investigations concluded that UNMISS had not responded effectively because the military and civilian sides had not cooperated well enough. In addition, the civilian components were fragmented and the military was not operating under a unified command.³⁸ These lessons are supported by findings from other peace operations that show that protection actors do not always share the same objectives and sometimes even undermine one another. An integrated approach to POC would include human rights, and humanitarian and development aspects in addition to military and political considerations. It should also be based on joint analysis and planning, and include the local population and local expertise.³⁹

³⁵ United Nations (note 18); United Nations (note 33); and Willmot (note 32).

³⁶ Center for Civilians in Conflict (note 23); United Nations (note 33); and Willmot (note 32).

³⁷ Médecins sans Frontières (note 20).

³⁸ United Nations, Secretary-General (note 18); and United Nations (note 33).

³⁹ Willmot (note 32); and International Organization for Migration (IOM), *If We Leave We are killed: Lessons Learned from South Sudan Protection of Civilians Sites, 2013–2016*, (IOM: Geneva,

Finally, protection needs to be accompanied by a long-term political and humanitarian strategy. Providing protection against physical violence can only be a temporary strategy. It must take place in the context of a political process in which long-term solutions are addressed, as ultimately political solutions are the best way to protect civilians.⁴⁰ In the absence of a productive political process, as in the case of South Sudan where the POC sites appear to have become more permanent settlements, long-term humanitarian planning and improving the conditions on site will be crucial. The sites are currently still regarded as temporary, but it is unlikely that many civilians will leave any time soon and more structural IDP solutions are now needed.⁴¹

5 May 2016).

⁴⁰ Willmot (note 32).

⁴¹ International Organization for Migration (note 39); Heller Perache, Carpenter and Lecarpentier (note 16); and Greco and Rushton (note 17).