



Security Council

Distr.: General
1 November 2019

Original: English

Note verbale dated 31 October 2019 from the Permanent Mission of South Sudan to the United Nations addressed to the President of the Security Council

The Permanent Mission of the Republic of South Sudan to the United Nations has the honour to transmit a response from the Transitional Government of National Unity of the Republic of South Sudan on the final report of the Panel of Experts on South Sudan released on 9 April 2019 (see annex). Additionally, it requests that the present note verbale and its annex be circulated as a document of the Security Council.



Annex to the note verbale dated 31 October 2019 from the Permanent Mission of South Sudan to the United Nations addressed to the President of the Security Council

Response of the Transitional Government of National Unity of the Republic of South Sudan to the final report of the Panel of Experts on South Sudan released on 9 April 2019

Introduction

The Government of the Republic of South Sudan has been cooperating with the Security Council Committee established pursuant to resolution 2206 (2015) concerning South Sudan, the Panel of Experts on South Sudan, the Commission on Human Rights in South Sudan, the United Nations Mission in South Sudan (UNMISS) and other United Nations agencies. The rationale behind this cooperation was to share the facts of the current situation in the country with the hope that these bodies would come up with just and balanced reports, but instead, they have been providing biased reports against the Government. It is therefore in our view that this good gesture of cooperation is being misunderstood and exploited to tarnish the image of the Republic of South Sudan.

Hence, below are the responses of the Government of the Republic of South Sudan to the issues and allegations raised in the final report of the Panel of Experts on South Sudan released on 9 April 2019.

A. Conflict dynamics: armed groups and the implementation of the peace agreement

The Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan, which has brought stability and raised hopes for a peaceful and lasting solution to the conflict in the country, is the outcome of a multiparty and multi-stakeholder review of an agreement that was itself negotiated by a multiplicity of parties and stakeholders, namely, the Agreement on the Resolution of the Conflict in the Republic of South Sudan of 2015. In addition, it was negotiated under the auspices of the Intergovernmental Authority on Development, as well as of regional and international partners, with the participation of all South Sudanese stakeholders. To that effect, the statement expressed by the Panel of Experts in paragraph 25 that “the revitalized peace agreement did not emerge from exhaustive multilateral negotiations centred on a collective and shared vision” is unfounded, erroneous and grossly irrelevant.

In paragraph 27, the Panel speculates by asserting that the most significant challenge to the sustainability of the Revitalized Agreement is the “reluctance of the Government to relinquish control of core components of South Sudan’s security and economic landscape”. This assertion is profoundly misleading. The most important impediment to the peace process, as assessed and reported by various institutions, including by those entrusted with the responsibility of implementation,¹ is the issue of the scarcity of resources in view of the country’s dire economic situation and the deliberate reluctance of the international community to support the implementation

¹ Such as the reconstituted Joint Monitoring and Evaluation Commission, the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism, the National Pre-Transitional Committee, the Joint Defence Board and the Joint Transitional Security Committee.

of the peace agreement. The report, either deliberately or inadvertently, ignored the fact that all the mechanisms for the implementation of the security aspects of the Revitalized Agreement, as detailed in chapter II thereof, have been established, and that the only factor militating against their successful operation is the problem of insufficient and delayed funding.

- As per the revitalized peace agreement, the Government agreed to share certain positions with the signatory parties. As a matter of procedure, the said sharing – be it in the security or economic domain – shall come about according to agreed timelines, the most significant of which commences upon the start of the interim period. Therefore, to make such pre-emptive assumptions even long before the actual start of the power-sharing process is not only to demean the Government of the Republic of South Sudan, but to demonstrate exasperation with malice beforehand at that highest global level. In the informed opinion of the Government, the paragraph in question is intended to misinform the Security Council in order to negatively shape its perception on South Sudan.
- In paragraph 28, the Panel alleges that the Government has “resisted ... in practice, the disengagement and separation of forces (2.2.2), their assembly and cantonment (2.2.3.3), the demilitarization of civilian areas (2.2.3.1), the collection of long- and medium-range heavy weapons (2.2.3.2) and the submission of force location, size and weaponry maps (2.2.3.4)”. It further goes on to claim that the fulfilment of the above-cited provisions is an expressed priority of the Sudan People’s Liberation Movement-Army in Opposition (SPLM/A-IO), as well as a stated precondition for the return of Dr. Riek Machar to Juba. On an equal footing with the previous allegations cited in the Panel’s report, paragraph 28 is a gross misinterpretation of the facts on the ground. Immediately following the signing of the Revitalized Agreement, the South Sudan People’s Defence Forces, together with the armed opposition, issued directives to all forces to disengage from the frontiers of battle, stay in separate locations and observe the ceasefire. Through the Joint Defence Board, the parties agreed to the number and areas of cantonment sites and training centres. By the beginning of February 2019, all civilian areas previously occupied by armed forces had been vacated. The parties also exchanged information on force location, sizes and weaponry maps. Now that the work of the Joint Military Ceasefire Commission has commenced, it is hoped that the collection of the long- and medium-range weapons, as stated in the Agreement, will be implemented. The Government would like to emphasize that the delay in the collection of the heavy- and medium-range weapons was because of the delay, due to resource inadequacy, in the commencement of the work of the Joint Military Ceasefire Commission and was not ill intentioned. For this reason, the Panel’s assertion on these issues is regrettably dubious and unrealistic.
- The experts, in this very report, acknowledged their meeting with the Honourable Minister of Defence and Veterans’ Affairs and the Chief of Defence Forces. In those meetings, the Panel was correctly informed of the practical steps already being taken by the Government in general and the Ministry and the South Sudan People’s Defence Forces in particular towards the implementation of the security provisions of the Agreement. The Panel was sufficiently informed of the implementation process, including of joint field visits by the Co-Chairs of the Joint Defence Board, namely, the Chief of Defence Forces, the Sudan People’s Liberation Army in Opposition (SPLA-IO) Deputy Chief of General Staff for Administration and Finance and the representative of the South Sudan Opposition Alliance, during which they continue to sensitize their respective forces on the ceasefire and the urgency of maintaining the peace process.

- The experts' claim of continued recruitment and training by the South Sudan People's Defence Forces in paragraph 29 is untrue. The experts misunderstood, perhaps deliberately, the orders by the command for the mobilization of all deserters of the South Sudan People's Defence Forces throughout the country, which commenced in the areas of Greater Warrap (Gogrial, Tonj and Twic states). Similarly, the allegations about the recruitment of child soldiers by units of the South Sudan People's Defence Forces, including by forces allied to the First Vice-President, are unfounded and derogatory. The South Sudan People's Defence Forces do not have children in their rank and file and are on record globally for having taken successful strides in that regard.

B. Case study on the National Security Service

With regard to the claim of the Panel of Experts in paragraphs 42–47 that it is highly probable that Aggrey Idri and Dong Samuel Luak were executed by Internal Security Bureau agents at the Luri facility on 30 January 2017, the Government would like to state that this claim is baseless and unfounded for the following reasons:

- The South Sudan National Security Service does not, has not and will not engage in the assassination of political dissidents, because political assassinations are not in the culture or in any policy of the Republic of South Sudan. Otherwise, the National Security Service could have assassinated both the South African mercenary William John Endley, who was sentenced by court of law for participating in the planning and execution of the military strategy of SPLA-IO under Dr. Riek Machar, and the South Sudanese national James Gadet Dak Lampuar, who was deported from Kenya and sentenced by court of law for inciting violence in the country that led to the fight at the State House (J1) between the Government guards and those of SPLA-IO on Friday, 8 July 2016. Both men were pardoned by the President of the Republic and released as a goodwill gesture for peace.
- At the height of the military confrontation in South Sudan before the signing of the revitalized peace agreement on 12 September 2018, some far more serious military personnel of the opposition swarmed over, seen flocking in the capitals of our neighbouring countries in plain sight, and yet none of them were targeted.
- The South Sudan National Security Service did not receive in its custody either Dong Samuel or Aggrey Idri and is therefore unaware of their whereabouts or disappearance. Anyone brought to the custody of the National Security Service is well taken care of and treated according to the laws of the land. For example, rebel members, namely James Gadet Dak and Marco Lokador, who were deported back to South Sudan from Kenya, were brought to the custody of the National Security Service and taken to court of law to face charges of treason, but later on were pardoned by the Head of State and released.
- The allegation that there have been some extrajudicial killing is a politically motivated accusation intended to target and intimidate the National Security Service and dissuade it from carrying out its mandate.
- The National Security Service has been cooperating with UNMISS and other bodies concerned with the issues of human rights in South Sudan to the best of its ability and will continue to do so in matters related to peacekeeping, protection of civilians, and humanitarian and security services for our people. **For this purpose, the National Security Service will make available its training facility in Luri for inspection by visitors from the international community.**

- Recent history has taught us that when United Nations experts start to use meaningless phrases such as “well-placed sources”, “highly credible” and “highly probable”, as is now the case with the Panel of Experts report accusing the National Security Service of killing Dong Samuel and Aggrey Idri, it is usually a prelude to the destruction of a country. Iraq, Syria and Libya are clear examples.
- The Panel of Experts’ act of publishing names of South Sudan security agents is a violation of privacy and individual rights. The publishing of the names of South Sudan National Security Service agents is a direct accusation that can be used for revenge against those listed. It is an unethical practice as per international standards to expose the names of the security agents of any country.

Concerning the allegations made by the Panel in paragraph 73 that there is a “continued presence of armed Uganda People’s Defence Forces in Central and Western Equatoria, in violation of the arms embargo established by the Security Council in its resolution 2428 (2018)”, the Government would like to state that there is no presence of Uganda People’s Defence Forces in the former Central and Western Equatoria States. The only Uganda People’s Defence Forces that were previously present in the Greater Western Equatoria were part of a joint force between South Sudan, the Central African Republic, the Democratic Republic of the Congo and the United States of America to combat the Lord’s Resistance Army. Therefore, there is no presence of Uganda People’s Defence Forces in South Sudan because the Forces left South Sudan after the accomplishment of their mandate.

C. Humanitarian access and food security

Concerning the issues raised by the Panel in paragraphs 75–85 regarding the contradictory allegations on the humanitarian situation in South Sudan, the Government would like to state the following:

- The humanitarian situation in South Sudan is not precarious as described by the Panel in the report and the number of people in need has significantly decreased.
- The Government, in 2014/2015, formed a committee that evicted the occupants of internally displaced persons’ houses in Juba. Those houses are now vacant and some are already occupied by their owners, while the others are ready for the rightful owners to move in.
- Humanitarian access has greatly improved, roadblocks/checkpoints have been removed, relief convoys have reached their final destinations unhindered, there are no extortions reported and humanitarian cargos and workers are reaching their desired destinations unhindered.
- The bureaucratic impediments quoted in the report are irrelevant as the Panel did not refer to any reports after January 2019 and most of the World Food Programme convoys pre-positioning food for humanitarian relief met their targets by 80 per cent before the end of April 2019.
- There are no delays of convoys as all humanitarian convoys are cleared instantly at entry points, including at the port of Mombasa.
- Hence, all indicators suggest that the humanitarian trend in the country has significantly improved due to the above-mentioned factors. There are no blockages in Yei as reflected in the report, blaming the security situation, and since February 2019 there have been no checkpoints or fees demanded along the Juba-Bentiu road.

D. Use and recruitment of child soldiers

On the statement by the Panel, in paragraphs 86–89, that it had received reports of the recruitment and use of children in Yambio and Bentiu, the Government would like to clarify that there are no children associated with the armed forces under the Government.

The Government is on record for having fully discharged former child soldiers and children associated with the armed forces from its rank and file. Furthermore, the Government, in coordination with the United Nations Children’s Fund and UNMISS, has taken steps to demobilize children who came with other armed groups during the process of the latter’s integration.

As per our early reports to the Human Rights Council, in Geneva in September, 2018 and 12 March 2019, about 834 children associated with SPLA-IO and other armed groups integrated into the South Sudan People’s Defence Forces were demobilized in both former Western Equatoria and Boma States, and 92 others associated with other armed groups were released in Bentiu.

Therefore, the Government has no policy on nor does it condone the recruitment and use of children as soldiers.

E. Sexual and gender-based violence

- The Penal Code of the Republic of South Sudan prohibits rape and sex with any person under the age of 18.
- Customary laws remain dominant in family relationships; however, the Government is working hard to change harmful practices.
- The Government, through its judiciary and the Ministry of Justice and Constitutional Affairs, in collaboration with the UNMISS Human Rights Division, has established mobile courts in the country for the sole purposes of trial and prosecution of sexual violence-related cases, including those that occur at the United Nations protection of civilians sites such as in Rubkona County in Northern Liech State.

F. Accountability

Concerning the statements made by the Panel of Experts in paragraphs 26, 99–101 and others that there has been “no meaningful progress made towards transitional justice or accountability for the crimes committed during the conflict”, the Government would like to state the following:

- The Government reaffirms its commitment to the establishment of a hybrid court through the Revitalized Agreement. Thus, the process for the establishment of the hybrid court will commence after the formation of the Revitalized Transitional Government of National Unity.
- The establishment of the Commission for Truth, Reconciliation and Healing shall commence after the establishment of the Revitalized Transitional Government of National Unity, as stipulated in the Revitalized Agreement.
- Similarly, the establishment of the Compensation and Reparation Authority awaits the formation of the Revitalized Transitional Government of National Unity.

As part of its constitutional obligation, the Government is working on strengthening its judicial system and has established military tribunals, namely:

- (a) General Court Martial for the South Sudan People's Defence Forces;
- (b) National Security Service Tribunal for the prosecution and trial of cases concerning acts committed by National Security Service personnel;
- (c) Police Court for the trial of cases related to human rights violations committed by police personnel against civilians.

G. Petroleum and finance

Concerning the Panel of Experts' claims on South Sudan pertaining to the financial aspects cited in the report in paragraphs 119–160 that focus on the mismanagement of oil revenues, crude oil pre-sells, the misappropriation of salaries, and payments made by the National Pre-Transitional Committee, as well as allegations on oil transactions with companies such as Lou Trading and Investment Company Ltd., China National Petroleum Corporation, Petronas and Trafigura, and the Global Group (Green Horizon and Smart City projects), the Government would like to make the following clarifications:

- Regarding the Panel's allegations on advance payments through crude oil pre-sells, specifically raised in paragraphs 135–138, the Government would like to acknowledge receipt of such payments, but wants to categorically state that the allegations on the mismanagement of proceeds accruing from the crude oil are not true. Instead, the proceeds are being used to finance the national budget, such as salaries, operation costs, capital spending and the revitalized peace agreement. Equally, a loan of \$150 million was secured through the Trinity Energy in partnership with the African Export-Import Bank (Afreximbank) and Glencore to settle government obligations to supplement national budget needs.
- On the \$1 billion crude oil advance from China National Petroleum Corporation and Petronas, the Government acknowledges receipt of that loan facility taken in 2012 during the shutdown of the oil production, but has managed to repay the loan except for the balance of \$154 million, which the Government is now in the process of paying.
- On the allegation raised in paragraphs 139 and 140 suggesting that reported spending does not match the actual use of public resources, leading to many government salaries not being paid in practice, plus instances of diversion or misappropriation, the Government acknowledges the existence of arrears arising from salaries and regional and international obligations. Furthermore, although the Government managed to secure loans from various lenders, these facilities were not sufficient to finance the budget due to the non-realization of projected oil and non-oil revenues. However, significant funds have been spent on salary arrears of 2017/2018, the revitalized peace agreement and the national dialogue.
- Regarding the allegations in paragraphs 141–143 on the nature of expenditures relating to the funds destined for the National Pre-Transitional Committee, the Government would like to state that in fulfilment of its obligations, the Ministry of Finance and Planning transferred an amount of \$11 million and 100 million South Sudanese pounds to the National Pre-Transitional Committee for the implementation of the peace agreement.
- On the claims raised by the Panel in paragraphs 144–150 on the various payments made in favour of Lou for Trading and Investment Company Ltd. and Mr. Kur Ajing Ater, owner and Chief Executive Officer of Lou for Trading and

Investment Company Ltd., the Government would like to state that these payments were made to meet contractual obligations between the Ministry of Defence and Lou for Trading and Investment Company Ltd.

- On the allegation of the Panel in paragraphs 151–160 on payments made to the Global Group towards the Green Horizon project, the Government would like to acknowledge having made payments of \$1 million to the Global Group companies for the Smart City project for its contractual obligation with the Ministry of the Interior (South Sudan National Police Service).

Therefore, on the basis of the above, the allegations made in the Panel of Experts report on South Sudan dated 9 April 2019 that there is mismanagement, diversion and misappropriation of the natural resource revenues of South Sudan are unfair and unfounded, as the primary functions of South Sudanese government institutions, including that of the Ministry of Finance cited in the report, are anchored in the Constitution, laws and regulations of South Sudan in line with the Public Financial Management and Accountability Act, 2011, the Petroleum Act, 2012, the Petroleum Revenue Management Act and the Appropriation Act.

Likewise, the allegation made in the report in paragraph 138 on the effective privatization of the Treasury and the Ministry of Finance is unrealistic, mindful of the fact that, as a key government institution governed by laws and regulations and charged with the responsibility of managing public finances, the Ministry of Finance and Planning will not be expected to mismanage, divert and misappropriate the natural resource revenues of the country.

H. Charcoal

All the teak forest plantations in Yei River State and former Western Equatoria were affected by insecurity caused by the crisis in 2013. The forestry staff were displaced from their duty stations in these forest reserves into the towns of Yei, Yambio and Juba. These teak plantations were then exposed to illegal logging by unauthorized groups, including armed groups, in the absence of the forestry staff. SPLM/A-IO has taken advantage of the insecurity situation in the country and exploited the plantations in Greater Equatoria. The Panel of Experts report has cited a number of activities carried out by SPLM/A-IO. Therefore, SPLM/A-IO and others should answer or be held accountable for what they did in these teak plantations in the absence of the government forestry staff.

The Government has introduced concession agreements with national and international investors for the sustainable management of the national teak plantations in South Sudan, including the Zaria teak forest mentioned in the Panel of Experts report. Based on the concession agreement, the revenue-sharing percentages are as follows: 80 per cent to the National Government and 20 per cent to the State Government. This 20 per cent is paid directly to the state authorities' accounts by the concessionaire. For example, Maridi state authorities can spend this money on whatever they see fit, including what the report has cited.

The Government of the Republic of South Sudan would like to reassure the United Nations that it is not its policy to log timber or trees for commercial purposes. To this effect, the Government has banned the export of charcoal and logging of natural forest trees, including *afzelia africana* and mahogany, in order to curb deforestation and forest degradation. In addition, the Government has directed households, schools and other relevant bodies to plant trees as a contribution towards the global fight against deforestation and climate change.

Charcoal is a major source of energy in South Sudan used for cooking and heating. Charcoal will remain a major source of energy for the unforeseeable future, until other alternatives are explored. Therefore, the usage of charcoal by South Sudanese households has no link to fuelling the conflict in the country.

I. Gold

Concerning the issues raised by the Panel of Experts in paragraphs 163 and 174 that gold produced in South Sudan is in effect produced illegally and that, in many cases, this illegality is a consequence of limited state capacity and reach rather than criminality, and, furthermore, that the trade in gold in South Sudan is almost entirely unregulated and there is no effective legal framework to regulate the export of South Sudanese gold, the Government would like to state the following in response:

- The experts did not get all the information from the right sources in the Ministry of Mining, leading to contradictions in some cases, as well as the mixing up of artisanal mining with small-scale mining.
- The Panel is in fact ignorant about all the existing mining laws in South Sudan. Actually, there are two legal documents governing exploration and mining in South Sudan: Mining Act, 2012 and Mining (Mineral Title) Regulations, 2015. The experts only mentioned the former. These laws are investor-friendly, as evidenced by investors flocking into South Sudan despite our relapsing instability.
- The mineral titles are given with the help of the “Flexi-Cadastre” system that is internationally corruption-free. It computes the size of the concession and the payable fees, leading to the title award on a first come, first served basis, with no favouritism, and many countries in Africa still do not use this system.
- In view of the fairness of the cadastre system, 63 exploration concessions have been registered in South Sudan, and some other applications are still being evaluated. The registered exploration companies come from Africa, Australia, Asia, Europe and the United States, to name a few.
- A Council of Ministers resolution in June 2016 directed the Ministry of Mining to fast-track gold mining operations and the Ministry of Finance to make available the funds required. It is not clear where the experts got the idea in paragraph 162 that an exploration company was not allowed to produce gold and that there are no production licences at the moment, and in paragraph 172 that some international companies supplement their exploration with gold production.
- Artisanal gold mining is not illegal in South Sudan; it is only unregistered and unregulated because it involves almost all the able-bodied in respective gold areas for their livelihood.

J. Travel ban and asset freeze

With regard to the travel ban violation cited in paragraphs 198–200 in the Panel’s claim that the two senior government officials, namely, Honourable General Malek Reuben Riak Rengu, Deputy Minister of Defence and Veterans’ Affairs, and General Gabriel Jok Riak, Chief of the South Sudan People’s Defence Forces, had travelled without obtaining permission from the Security Council, is uncalled for, since the two officials are engaged in peace implementation-related activities and are

therefore discharging their national duties. In addition, they are entitled to travel on humanitarian grounds.

Conclusion

While the people of South Sudan are coming to terms with their differences, the Panel of Experts in its report is trying to instigate more troubles and divisions, which is against the interest of this country and the spirit of the commitment to fully implement the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan.

In spite of challenges, significant progress has been made in the implementation of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan, signed on 12 September 2018. As a result, several opposition groups are in the country. Likewise, the mechanisms outlined in the Agreement have been established and operational. Some friends of South Sudan have come to aid and support the implementation of the Agreement.

We, therefore, appeal to the members of the international community who are hesitant to support the implementation of the peace agreement to do so.
