

Civilian protection in the Republic of South Sudan, whose responsibility is it?

Thursday 13 December 2012

By Magok Alier Akuot

December 12, 2012 - The International Humanitarian Law defines civilian as a person who is not a member of his or her country's armed forces or other militia. This definition is supplemented by The [Free Legal Dictionary](#) also defines civilian as a person who is not an active member of the military, the police, or a belligerent group. According to the Black's Law Dictionary, the definition of civilian is threefold: first, a civilian is a person who is not serving in the military; secondly, a civilian is a lawyer practicing in a civil-law jurisdiction, and finally a civilian is defined as a scholar in civil or Roman law. Our purpose is to use the most appropriate definition in light of the foregoing topic. In short, we should define a civilian as a person who is neither a member of his or her country's armed forces or other militia nor serving in the military. Precisely, a civilian is a non-military citizen who can be a doctor, a lawyer, a teacher, a professor, a cattle keeper, a columnist, a peasant or farmer; and/or a housewife to mention but a few. I am as enthused as everyone in knowing whose responsibility it is to protect civilians. Well, let's find out in the preceding paragraphs as the discussion gets tougher.

Ten months ago, our nation's president, Gen. Salva Kiir, launched the nationwide disarmament campaign in Jonglei State. The purpose was to take arms from those citizens who were, and some of whom are still, possessing them illegally. On that eventful day, I was privileged to have witnessed the occasion. Few words still linger in mind hoping that for sure the armed forces mandated to carry out the disarmament process would do their work in a professional fashion. The president was clear in his statement: "do not come to me until you have collected the last gun from the civilians". The rationale was, and still is, to consolidate civilian protection given an ever increasing scale of political instability in our nation. The defence of any nation is vested with the armed forces. And so in the case of South Sudan, the Sudan People's Liberation Army (SPLA) has an override legal obligation to protect all the peoples within the geographical confines of South Sudan. The SPLA Act, 2009 under Section 8 numerates the mission of the SPLA, in addition to its national duties. The principal mission is to defend the Constitution alongside protecting the Comprehensive Peace Agreement (CPA). In particular, Section 8(4)(5) provides that the SPLA shall protect the people of Southern Sudan; and undertake the responsibility for the defence of Southern Sudan against internal and external threats and aggressions. In light of this provision, Section 9 stipulates the roles and functions of the SPLA which include, among other functions, the function to serve as an armed force for Southern Sudan in the provision of assistance in maintaining law and order within the legal framework of Southern Sudan.

In the least of our expectation, no one wishes to criticise the national army unless the circumstances are too compelling. The paradox is the complexity of defending the nation without violating citizens' fundamental rights and freedoms which are enshrined in Part Two of the Transitional Constitution, 2011. This claim counter supports Article 151(6) of the Transitional Constitution of South Sudan, 2011 which provides: "The national armed forces shall respect and abide by the rule of law and respect the will of the people, the civilian authority, democracy, basic human rights and fundamental freedoms". Therefore, it is axiomatic to see through the lenses of national laws in order to guarantee the protection, respect for and promotion of citizens' fundamental rights and freedoms. I am undoubtful that insignificant progress has been made along this line given the nature of internal disturbances which keep common citizens locked in constant fear for their lives and property.

The impression is less unenviable especially in volatile states such as Jonglei, Lakes; Western and Northern Bahr El Ghazal States, Unity, and Upper Nile States respectively. We shall take Jonglei State as our case study in respect to civilian disarmament launched on 12th March, 2012 in Bor Town by the President of the Republic, Gen. Salva Kiir. Since the disarmament campaign began in March, almost all people belonging to Greater Bor, Akobo and Fangak as well as part of Greater Pibor have successfully surrendered their guns. It means that the army (SPLA) is under legal obligation to provide protection to such citizens who can no longer protect themselves. It is clear that the Government, before taking guns from civilians, should have had a comprehensive protection policy otherwise it is unfortunate if it was done under the illusion that the army is capable of taking guns at the same time without facing some sort of resistance from certain group of citizens who are less convinced of the reasons for handing over guns.

Precisely, Jonglei State has witnessed more cases of cattle raids and civilian deaths since the disarmament process began. For instance, three cases of cattle raids have been witnessed in Jalle Payam, Bor County in the recent month of November. In particular, all the cases were from Akuai-deng Boma under Jalle Payam in Bor County. The genesis of these raids is blamed on civilian inability to protect themselves and their property since they have been disarmed by the SPLA. A total of Five thousand four hundred and ninety-one herds of cattle have been raided from the said Boma between November 8th and November 29th, 2012. Although the army has been promptly informed on each of the three occasions, they were not able to either recover the stolen cattle or provide protection to the local population. In particular, in the last incident of cattle raid on

29th November 2012, a total number of 5,308 herds of cattle were raided and seven (7) herders were killed while other eight injured. The SPLA was promptly informed of the incident but while they pursued the raiders, they were less successful in recovering the stolen cattle. There is serious allegation that the SPLA who pursued the raiders returned with excuse that they were given only four hours to pursue the raiders and so by the time they returned the four hours given to them had elapsed!

This is no surprise at all given the nature of our politics. The situation is totally deploring given the government's less involvement in curbing cattle raids related crimes. Besides, the government's proactiveness is one sided particularly the return of 480 herds of cattle alleged to have been raided by Bor County youth criminals from Murle in the month of September, 2012. The historicity of cattle raids in Jonglei State is as old as the civil war but on no single occasion have cattle been compensated. Nevertheless, this recent approach is peace-oriented and sounds politically rewarding especially in relation to the May Peace Accord signed between and by Local Chiefs of Jonglei State in Bor Town.

We have seen herein above that civilian protection is vested in the armed force in particular the SPLA. On the other hand, the United Nations Mission in the Republic of South Sudan (hereafter, UNMISS) has an international mandate to guarantee the protection, promotion and respect for citizens' human rights and fundamental freedoms enshrined in International legal instruments ratified by the Republic of South Sudan. But like other missions, the UNMISS mandate has its own shortcomings in terms of civilian protection. Accordingly, UNMISS is to work in partnership with the Government of the Republic of South in ensuring civilian protection. The implication is apparent in recent cases where most civilians have been exposed to wanton security threats both to their lives and property. Significant progress has been seen in areas of incident monitoring, reporting, investigation and documentation but that is how far it goes without adequate protection mechanism. In a nutshell, the civilians are tired of such questions being asked by UNMISS personnel: how many cattle were taken? How many raiders did you see take the cattle? Where the raiders armed? What clothes were they wearing? What language were they speaking while communicating? One begins to wonder if the mandate of UNMISS is to simply report incidences without engaging the government in a practical manner geared towards civilian protection. The allegation is to have as much as possible consolidated information free from biasedness and with coherent analysis of vague arguments. But I am less impressed that all these questions may not ensure or guarantee civilian protection with UNMISS as UN-mandated mission thereon.

Recommendations

The notion of civilian protection generates a sense of ownership and intervention in particular it calls for an urgent response, one that has a concrete base and which focuses on addressing the peculiarities of ethnic conflicts in form of cattle raids. One is motivated to recommend the following to address the causes of cattle raids.

Recommendation One

The Government needs to work towards creating more job opportunities with a view to engaging youths involved in cattle raids. It is true some of the cattle raids are caused by idleness and absence of other options of life. And so some youths find it a game to kill people of other ethnic communities in the process of cattle raids. In this sense, such category of youth shall be engaged in jobs without having to think of cattle raids.

Recommendation Two

The government needs to increase the number of SPLA troops in communities where arms have been disarmed. Normally, raiders are attracted to such areas where disarmament has been successfully conducted. The impression is that such people are less dangerous in terms of containing any armed attacks against them and their property. Therefore, it is appropriate to deploy adequate number of SPLA soldiers to areas where there are cattle because raiders are mostly attracted to such areas.

Recommendation Three

UNMISS needs to provide areal monitoring of raiders and report any movement of raiders to government so that communities closer to where raiders are spotted can be on alert knowing that raiders might attack anytime. Besides, such reports will always help the government to deploy SPLA strategically with a view to containing any unnecessary attacks by the raiders. Moreover, this recommendation lies within the mandate of UNMISS although there is premeditated argument that areal monitoring will imply the helicopter will fly at low altitude which is not a big ask given the incessant deaths of innocent civilians.

Recommendation Four

The government should create mobile force having the competency to pursue and hold raiders accountable before any competent courts of law in the Republic of South Sudan. Normally, the mobile force needs to be equipped with the necessary protection mechanisms in order to be able to fulfil their duties professionally and/or adequately.

Recommendation Five

The government should build or construct feeder roads for easy accessibility between and among counties. In light of this recommendation, it will be easy to connect and reconnect from one county to another. The roads will enhance inter-counties

trade with a purpose of creating peaceful relations. Nevertheless, raiders will always find it hard to raid and hide without being spotted by relevant counties or state authorities.

Recommendation Six

The government should raise massive awareness in relation to negative impact of cattle raids. The idea is to create peaceful co-existence between and among counties throughout the state. It will also open new ways for improving cattle keeping as an economic activity by adopting modern way of cattle keeping. In other words, it will help the government in its responsibility of civilian protection.

Conclusion

In conclusion, the recent cases of cattle raids involving civilian deaths have sparked intermittent campaign against the act of governmental non-intervention in ensuring civilian protection. On the one hand, the government approach is unable to make any significant progress in terms of civilian protection, and on the other the fight against David Yau Yau's rebellion has not been tactfully handled. Otherwise, any initiative to protect civilian is almost out of hand. One ponders into the prospect of having civilians protect themselves until the government is able to guarantee that by taking guns from civilians it is ready to protect them adequately. This is not to suggest that disarmament is not by its own a good approach, it is but again of what use is it to the government if it is able to disarm civilians but fails to protect them after disarmament. It is totally unacceptable that such should be the fate of people who fought for twenty-one years hoping to enjoy the fruits of having to live in an independent state such as South Sudan. Of course, the government is young and the legal mechanisms are still weak but seeing civilians die on the basis that the government is young is the least of one's expectation. Time is ripe for the government to stand up and shoulder its responsibility of ensuring civilian protection.

Undoubtedly, Article 36 sub-clause 2(b) (c) of the political objectives enshrined in the Transitional Constitution, 2011 provide for unity and peaceful co-existence among the people of South Sudan, in particular they should inculcate the culture of peace, unity, cooperation, understanding, tolerance and respect for customs, traditions and beliefs of each other; sub-clause 3 provides: "the security and welfare of the people of South Sudan shall be the primary duty of all levels of government". In light of this political objective, all levels of government have shown high degree of failure in ensuring civilian protection in Jonglei State against cattle raiders who are in most cases either supporters of the Renegade Major General (RMG) David Yau Yau. The government has not been proactive in fighting the RMG. In particular, fewer armed forces have been deployed to fight his rebellious militia group. In this sense, the government should deploy more troops with a purpose to fight the RMG which in turn shall see a successful civilian disarmament process as well as guaranteeing civilian protection in Jonglei State.

Magok Alier Akuot is a former student of Law at Dr. John Garang Memorial University of Science and Technology. He can be reached at: uncloulouish@gmail.com