



International Institute of Humanitarian Law
Institut International de Droit Humanitaire
Istituto Internazionale di Diritto Umanitario

41st ROUND TABLE ON CURRENT ISSUES OF INTERNATIONAL HUMANITARIAN LAW

“Deprivation of liberty and armed conflicts: exploring realities and remedies”

Sanremo, 6-8 September 2018

Implementing the legal framework relating to the deprivation of liberty by peacekeeping forces: a practical example

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Eight years ago, in January 2010, the United Nations (UN) Secretariat issued a landmark set of interim procedures for detention in UN peacekeeping

¹ The views expressed in this paper are those of the author in his personal capacity and do not necessarily reflect the opinion of his office or of the United Nations. Also in their personal capacity, many colleagues of the author at the United Nations Secretariat in New York and in field operations provided input and helpful comments on various versions or in regard to specific sections of this paper. In particular, the author wishes to acknowledge the contributions of Messrs. David Hutchinson and Keiichiro Okimoto of the Office of Legal Affairs (OLA), and Charles Briefel, Michael Langelaar and Viktor Jovev of the Office of Rule of Law and Security Institutions (OROLSI) in the Department of Peacekeeping Operations (DPKO). The author also wishes to express his gratitude to the Senior Legal Advisors of the UN peacekeeping operations in Mali, Abyei, Darfur, the Central African Republic, the Democratic Republic of the Congo and Lebanon (Thierry Kaiser, Sibangilizwe Ndovu, Manuel Calzada-Pla, Sylver Ntukamazina, Alexandros Zervos, and Rachid Arfi), as well as the Head and the Deputy Head of the Rule of Law Section of UNMISS, the United Nations Mission in South Sudan, James Arguin and Anees Ahmed. Any errors are those of the author.

operations – hereinafter, the “ISOP” or “ISOP on Detention”, for Interim SOP on Detention.²

These procedures were the first effort within United Nations Headquarters, to provide consolidated guidance to all UN peacekeeping personnel in respect of the temporary detention of individuals.³

Before considering some of the challenges that a recent review process of the ISOP has revealed (IV), I would like to provide you with an overview of the main detention guidelines under the ISOP and some internal procedures adopted by UN peacekeeping operations under the ISOP (I).⁴ This will lead me to refer to two situations that are the subject of specific operational guidance: UNMISS’s *ad hoc* holding facilities for internally displaced persons (II) and MONUSCO’s internments of captured persons (III).⁵

² “Interim Standard Operating Procedures on Detention in United Nations Peace Operations”, issued by the United Nations Departments of Peacekeeping Operations and Field Support (DPKO and DFS), ref. 2010.6, 25 January 2010. Possibly because of its interim nature, the ISOP on Detention has remained a confidential document since it was issued by DPKO and DFS. It can therefore not be accessed online.

³ I will assume, for the purposes of this presentation, that it is not a matter of dispute that all UN peacekeeping operations with a mandate to use force, and the inherent right to use force in self-defense, may, as required and consistent with their rules of engagement, temporarily detain individuals. Readers interested in this issue may wish to consider the article: *Some controversies of detention in multinational operations and the contributions of the Copenhagen Principles*, by Bruce ‘Ossie’ Oswald, in: *International Review of the Red Cross (IRRC)* (2013), 95 (891/892), pp. 707–726. In this article, the author discusses among other issues whether detention can be justified on the basis of a UN Security Council mandate. He refers to a “practice of implying an authority to detain [which] can be traced to UNEF I”. UNEF I, the United Nations Emergency Force in the Sinai, was the first United Nations peacekeeping operation comprising armed military contingents. Its mandate spanned the years 1956 to 1967. It was established by the United Nations General Assembly in resolution 1001 (ES-I) of 7 November 1956.

⁴ A comprehensive analysis of the ISOP on Detention and related issues, including the application of the ISOP in situations of non-international armed conflict, was published by my OLA colleague Katarina Grenfell, in the article, *Detention in United Nations Peace Operations*, Chapter 15, in: “Detention of Non-State Actors Engaged in Hostilities, The Future Law”, *International Humanitarian Law Series*, vol. 49 (2016), Brill Nijhoff pub., ed. By G. Rose and B. Oswald, pp. 345-351.

⁵ MONUSCO is the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo. UNMISS is the United Nations Mission in South Sudan.

I. Overview of the ISOP and some internal procedures of UN peacekeeping operations implementing the ISOP

Definition

The ISOP provides a broad definition of detention, as the temporary deprivation of liberty of a person by United Nations personnel, until such person is released or handed over to appropriate authorities.

To ensure reporting of all detentions, the Mission in Mali, MINUSMA,⁶ strengthened that definition in its internal circular implementing the ISOP.⁷ The internal MINUSMA SOP provides that: “[a]ny person unilaterally restricted by [the Mission], against their will, in their freedom of movement, shall be deemed “detained”.⁸ The MINUSMA internal SOP adds that this is regardless of the duration of that person’s detention.⁹

Operational accountability: Focal Point, Reporting and Registries

The ISOP makes it clear that the responsibility for UN detentions does not only lie with the element, unit or component of a UN peacekeeping operation that carries out the detention. Ultimately, this responsibility lies with the Head of Mission, and through him or her in the Secretary-General, who reports to the Security Council.

A key feature of the ISOP, in this regard, is the designation by Heads of Mission of a senior official in the civilian component to monitor, receive reports and coordinate as required the detentions carried out by the Missions’ uniformed personnel.

⁶ MINUSMA is the United Nations Multidimensional Integrated Stabilization Mission in Mali.

⁷ MINUSMA Detention Procedures, No. 2015/4, issued on 3 May 2015 by the MINUSMA Chief of Staff, p. 2 under “General principles on detention” (hereinafter, ‘First MINUSMA SOP’). On 1 June 2018, the Special Representative of the Secretary-General and Head of MINUSMA, Mr. Annadif, issued a revised version of the MINUSMA Detention Procedures (No. 2015/4/Amd.3) (hereinafter, ‘Second MINUSMA SOP’). MINUSMA is the first UN peacekeeping operation to have issued internal procedures implementing the ISOP on Detention.

⁸ First MINUSMA SOP, p. 2; and Second MINUSMA SOP, Section D, para. 6.1.

⁹ Id.

To ensure his or her independence, the Detention Focal Point, or DFP, may not be under the authority, command and control of the Head of the Military or the Police Component of the Mission. The DFP reports directly to the Head of Mission and is selected on account of his or her substantive legal background. He or she is authorized to inquire as to any matter related to detention by United Nations personnel and to provide advice in connection therewith to the Head of Mission or any other personnel of the Mission. The ISOP on Detention also provides that he or she shall have unimpeded access to all records relating to the handling of any detained person. Usually, the Mission Senior Legal Adviser assumes that role. Sometimes, it is the Head of the Rule of Law Unit. It would not be the Head of the Human Rights Division, because of the independent monitoring tasks of that Division under the ISOP. The DFP also consults with the Director of Mission Support, who has the obligation under the ISOP to ensure that all necessary resources are provided.

Under the ISOP, the commanding officer of the apprehending and detaining unit(s) must report the detention through the chain of command and to the Human Rights Division, the Detention Focal Point and the Head of Mission. The Head of Mission is also expected to send regular formal reports to UN Headquarters.

Provisions are also made for the keeping of registers and logbooks accounting for the person's information, the grounds of detention, significant details including any incidents while detained and health concerns. The logbooks and registers account for the detainee's chain of custody while in UN detention. A register of property seized must also be kept, and detaining units must ensure that every item confiscated remains secure, ready for handover to the detained person upon release, or for transmission to the host authorities to serve as evidence (for example, a weapon). Finally, a logbook is maintained for detainee complaints.

The designation of a focal point on the civilian side of the Mission's infrastructure and the various reporting and accounting obligations under the ISOP have helped provide a fuller picture of the UN's practice concerning detention. This is one of the main contributions of the ISOP. These measures seek to ensure accountability for all involved, and traceability of actions, while protecting the detainees' integrity and their rights.

Detainees' Rights

The ISOP also includes a detailed body of rules aimed at ensuring the fundamental rights and the health, the well-being and the safety of all detained persons throughout their detention; and also beyond, if handed over to host country authorities.

These measures are inspired by international law, including international humanitarian law, international human rights law, and international refugee law. The United Nations Standard Minimum Rules for the Treatment of Prisoners, also known as the Mandela Rules,¹⁰ were also a major source of inspiration. The measures range from access to a medical professional, the provision of clean, dedicated detention facilities, with adequate natural light and airflow and clean bedding, separation of men and women, the availing of water, food and hygiene supplies, the right to contact or be contacted by a family member or relative, and so forth. Children, under the ISOP, are not to be detained unless for a brief period and in their own interest (for instance, to allow them to remain with a detained parent).

The ISOP also provides for the receipt of necessary information by detainees through two pre-formatted statements annexed to it. One of the statements is to be provided at the beginning of the detention; and the other at the time of release or handover. These statements list a number of detainee rights under the ISOP, including the right to be examined by a medical professional, the right to be informed of the reasons and factual basis for their detention, the rights to make complaints regarding their treatment, and the right to seek compensation for wrongful bodily injury or damage to their property by UN personnel. The detainees are also advised, through the statement of detention, that they may refuse to be subjected to a medical examination, and that they may be photographed and have their information recorded for the purposes of their identification and to record any injuries. Upon their release or handover, the statement issued to the detainees provides them with a formal

¹⁰ Available on <https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf>. For the history and context against which the Nelson Mandela Rules were adopted, see: "UN Nelson Mandela Rules (revised SMR), Penal Reform International", <https://www.penalreform.org/priorities/prison-conditions/standard-minimum-rules/> (accessed October 2018).

record of the reasons for their detention, and the date and location(s) of their detention, and their release or their handover.

Timelines

Importantly, the ISOP introduced clear timelines for all UN peacekeeping detentions. At their expiration, a detained person must be either released or handed over to national authorities. The maximum length of detention chosen in the ISOP is 48 hours, unless a person apprehended is being transferred from one location in the mission area to another, to enable a handover to competent host authorities. In such cases, the individual may remain up to 72 hours in the Mission's custody. Detentions beyond 72 hours are utterly exceptional and need a specific mandate from the Security Council, a written request from the Government, and the formal agreement of the Head of Mission.¹¹

Handing over detainees to host authorities

In November 1961, the Security Council gave ONUC, the United Nations Force in the Congo, the authority to apprehend and detain all foreign mercenaries, and military and paramilitary personnel not under the United Nations command, pending legal action and/or deportation.¹² Referring to Article 3 Common to the Geneva Conventions, the Office of Legal Affairs (OLA) advised at the time that the Secretary-General should only hand over such persons to the Congolese authorities if he is satisfied that they

¹¹ Article 74 of the ISOP provides : “A detained person may be kept in United Nations custody for more than 72 hours if: a) the relevant national authorities make a written request to the Head of Mission asking that the Mission temporarily detain such person on their behalf; b) the Mission has a mandate to assist national law enforcement authorities in the apprehension and detention of alleged criminal offenders; and c) the Head of Mission considers such temporary detention to be a reasonable and appropriate manner of discharging such mandate in relation to the particular case”.

¹² UN Security Council resolution No. 161 of 21 February 1961, U.N. doc. S/4741, in which the Council *inter alia* “[u]rges that the United Nations take immediate and appropriate measures to prevent the occurrence of civil war in the Congo, including (...) the use of force, if necessary, in the last resort” (operative paragraph 1), and “that measures be taken for the immediate withdrawal and evacuation from the Congo of all Belgian and other foreign military and paramilitary personnel and political advisers not under United Nations Command, and mercenaries” (operative paragraph 2).

would be properly treated by those to whom they would be surrendered.¹³ This may well be the first expression, within the United Nations, of a principle whereby the handover of UN detainees to national authorities should only occur if the Organization is satisfied that this would not place them at risk of harm or of a serious violation of their fundamental rights.¹⁴

The same concern is reflected in the ISOP on Detention, which provides that an assessment must be carried out by the Detention Focal Point in consultation with all relevant heads of component before any handover of individuals to national authorities. The assessment focuses on protection concerns and takes into account the personal circumstances of the individual.¹⁵

The ISOP also provides that the United Nations should seek to sign a general agreement with the host Government to ensure that minimum standards would be met by the host country, protecting the rights and the integrity of any persons handed over. Since the ISOP was adopted, OLA has contributed a number of draft handover agreements for peacekeeping operations. Among those, an agreement with Mali, for persons handed over by MINUSMA, and an agreement with the Central African Republic, for persons handed over by MINUSCA.¹⁶ (MINUSCA is a mission that has effected a relatively large

¹³ “Legal Policy Concerning the Detention by the United Nations of Mercenaries and Other Persons Referred to in Paragraph A-2 of the Security Council resolution of 21 February 1961 - Interpretation of paragraph 4 of the Security Council resolution of 24 November 1961 - Interpretation of article 5 of the 1949 Geneva Conventions - Right of communication and contact of consular officials with respect to persons placed under detention”, Note to the Under-Secretary for Special Political Affairs and the Under-Secretary for General Assembly Affairs, in: United Nations Juridical Yearbook 1962, Fascicle 1, UN doc. No. ST/LEG/8, accessed at <https://documents.un.org>.

¹⁴ See also, on this point, “Transfers of detainees: legal framework, non-refoulement and contemporary challenges”, Cordula Droegge, IRRRC (2008) Vol. 90, No. 871, pp. 669-701.

¹⁵ Specifically, the ISOP on Detention provides that detained persons shall not be handed over to any authority in situations where there are substantial grounds for believing that there is a real risk the detained person will be tortured or ill-treated, persecuted, subjected to the death penalty or arbitrarily deprived of life and that, in such cases, detained persons shall be released (para. 80 of the ISOP).

¹⁶ Respectively: « Avenant à l’Accord entre l’Organisation des Nations Unies et le Gouvernement de la République du Mali relatif au traitement des individus appréhendés et remis au Gouvernement du Mali par la Mission multidimensionnelle intégrée des Nations Unies pour la stabilisation au Mali (MINUSMA) », signed in Bamako on 1 July 2013, available in the French original version and in an English translation in the United Nations Treaty Collection database (<https://treaties.un.org>), UNTS No. 51015 ; and « Avenant à l’Accord entre l’Organisation des Nations Unies et le Gouvernement de la République Centrafricaine relatif au statut de la Mission

number of detentions, given its robust mandate in support of national authorities for the maintenance of basic law and order and the fight against impunity.¹⁷⁾

The handover agreements would typically include clauses whereby the Government agrees to provide to the United Nations access, at all times, to those handed over; and that similar access would also be provided to the International Committee of the Red Cross (ICRC). The United Nations would reserve the right to monitor the trials of persons handed over; and the Government would undertake to inform the United Nations of the outcome of the case, and if a concerned person has been released. The Government would also commit to respecting the rights of the person handed over under national and international law, to treat such person humanely and not to seek or impose the death penalty if the person is tried and convicted of an offence. The UN would also reserve the right to hold private and confidential interviews with the transferred person and to access national registers of detention.

multidimensionnelle intégrée des Nations unies pour la stabilisation en République Centrafricaine (« MINUSCA »), relatif au traitement des individus appréhendés et remis au Gouvernement de la République Centrafricaine par la MINUSCA », signed in Bangui on 2 September 2014, Id., UNTS No. 52177.

¹⁷ MINUSCA is among the rare UN peacekeeping operations mandated to arrest individuals. This is under its exceptional mandate to “adopt, within the limits of its capacities and areas of deployment, at the formal request of the CAR Authorities and in areas where national security forces are not present or operational, urgent temporary measures ... to arrest and detain in order to maintain basic law and order and fight impunity”. The Security Council has indicated that these urgent temporary measures (UTMs) must be limited in scope and time-bound, among other criteria; that they do not create a precedent and that they are “without prejudice to the agreed principles of peacekeeping operations”. See, resolution 2448 (2018) of 13 December 2018 at operative paragraph 40(e)(iii). MINUSCA is otherwise authorized to apprehend individuals (as opposed to arresting them, which is language indicative of the exercise of sovereign, or executive, authority), at its own initiative, among other things to protect civilians and to support national authorities in the restoration and maintenance of public safety and the rule of law. See, *Ibid.*, at operative paragraph 40(a)(v). A previous example of a specific mandate to arrest individuals in the practice of the Security Council is the United Nations Operation in Somalia, UNOSOM II, which, under resolution 837 (1993) of 6 June 1993 at operative paragraph 5, was authorised to take all necessary measures against all those responsible for unprovoked armed attacks against the personnel of the Mission on 5 June 1993, “including against those responsible for publicly inciting such attacks” and “to establish the effective authority over Somalia, including to secure the investigation of their actions and their arrest and detention for prosecution, trial and punishment” (emphasis added). See also, in this connection, Oswald, IRRC (2013) (*ibid.*) at pp. 714 and 715.

The undertakings typically include that the Government will not extradite the person handed over or transfer his or her custody to foreign authorities without first obtaining similar guarantees to those provided by the host country to the United Nations (in the case of the agreement with Mali), or without the written consent of the Special Representative of the Secretary-General (in the case of the agreement with the Central African Republic).

Currently, negotiations remain ongoing in respect of handover agreements with Sudan and South Sudan, respectively, for handovers by UNISFA, the Mission in Abyei.¹⁸ In the absence of an established Abyei Police Service in the disputed territory, the Mission in Abyei has indeed conducted handovers of persons to either Sudanese or South Sudanese authorities, depending on the background and ethnic affiliations of the person apprehended and the context of each particular case.

In the absence of and pending an agreement on handover, as in the case of UNISFA and UNMISS, a peacekeeping operation would typically be advised to seek formal and reliable individual assurances from appropriate local authorities prior to each handover. The assurances would reflect the main contents of the handover agreement including assurances regarding the non-application of the death penalty.

II. UNMISS's detention challenge: IDPs who pose a security threat in "POC Sites"

A unique situation has developed in South Sudan, which had not been envisaged in the ISOP. The situation arose following the displacement of hundreds of thousands of persons as a result of the conflict which broke out in December 2013, many of whom sought the protection of the UN Mission, UNMISS, in internally displaced persons (IDP) sites near its camps (the "POC Sites").

Some among the IDPs have on occasion become a threat to other IDPs or to UN and humanitarian personnel. In the most serious of these cases, UNMISS has had to separate them, on a temporary basis, from the IDPs in the POC Sites by detaining them in *ad hoc* holding facilities. To give a concrete idea of the

¹⁸ UNISFA is the United Nations Interim Security Force for Abyei.

scale of the problem, a recent Secretary-General report to the Security Council revealed that 126 persons had been detained by UNMISS in Bentiu, Juba and Malakal between February and May 2018.¹⁹ Figures available in the UN Secretariat suggest that as many as 5,007 persons may have transited through the UN holding facilities in South Sudan since the beginning of the POC Sites in 2014.²⁰ While that figure may seem high, it should be compared with the overall population of IDPs in the POC Sites (close to 200,000 according to the latest Reports of the Secretary-General).²¹

The majority of the IDPs detained are typically released within 24 hours. Many others are held for over 24 hours and later released, through an Informal Mediation and Dispute Resolution Mechanism, back into the POC site, when

¹⁹ Report of the Secretary-General on South Sudan (covering the period from 17 February to 3 June 2018), 14 June 2018, UN doc. No. S/2018/609, at para. 34. See also, Report of the Secretary-General on South Sudan (covering the period from 4 June to 1st September 2018), 11 September 2018, UN doc. No. S/2018/831, at para. 33, in which the Secretary-General advises that, during the relevant period, a total of 133 persons suspected of involvement in serious security incidents had been detained at UNMISS holding facilities in Bentiu, Juba and Malakal. In his most recent report to the Security Council on South Sudan, in December 2018, covering the period from 2 September to 30 November 2018, the Secretary-General advised that, “[d]uring the reporting period, a total of 391 crimes and security incidents were recorded at the protection of civilians sites (136 at Wau, 105 at Bentiu, 65 at Juba, 71 at Malakal and 14 at Bor)”, and that “[a] total of 96 persons suspected of involvement in serious security incidents were detained at UNMISS holding facilities in Bentiu, Juba and Malakal”. (UN doc. No. S/2018/1103, 10 December 2018, at para. 31).

²⁰ Estimate provided to the author by the Office of Rule of Law and Security Institutions of DPKO (OROLSI) for the period of May 2014 to 31st December 2018. OROLSI added that the total number of persons detained in the year 2018 stands at 497 individuals including 32 juveniles and 18 females.

²¹ See, for instance: UN doc. S/2018/1103 (ibid.) at para. 30: “...as at 30 November, UNMISS was protecting 195,747 internally displaced persons in five Mission protection of civilians sites. That total included 115,525 internally displaced persons in Bentiu, 32,113 in Juba, 29,190 in Malakal, 2,267 in Bor and 16,652 in Wau.” The challenges which the POC Sites represent for UNMISS should be stressed. In his Special Report to the Security Council on the renewal of the mandate of UNMISS of 20 February 2018 (UN doc. S/2018/143, at para. 13), the Secretary-General noted that “[t]he operation of the protection of civilians sites continues to dominate the related activities of UNMISS” and that, “by a conservative estimate, 50 per cent of the Mission’s efforts, in time, money, staffing and energy, are devoted to managing and protecting those sites”. The Secretary-General also noted that, “while the vast majority of the people in the protection of civilians sites are there for their physical protection, the sites present their own sets of problems”. Among the problems, he referred to “a level of criminality that is extremely difficult to manage without adequate resources, notwithstanding sustained efforts to improve security”.

they no longer constitute a threat to others. Several detainees have however also been held, and continue to be held, in longer-term detention, well beyond 72 hours. Those remaining in long term detention are usually suspected of having committed grave crimes in the POC sites, including murder and rape.

As vulnerable persons originally, the Mission may not always be in a position to expel them from the POC Site. Given this predicament, in consultation with UN Headquarters, UNMISS is currently looking at alternatives which would involve *ad hoc* joint interventions with local authorities, including prosecutors, to collect information and refer a case against an IDP, without necessarily handing over the physical custody of the detained person, at least initially.²² In the absence of an agreement on handover with South Sudan, UNHQ has also recommended that the Mission seek formal and reliable assurances regarding their integrity and their rights prior to any physical handover.

It is yet to be seen whether the situation of the long-term detained IDPs will be solved in this manner. The recent signing of a peace agreement²³ may also open the prospect of a different, and possibly a better solution for these detained persons, as well as for the overall IDP population in UNMISS's POC sites.

²² For more information on such *ad hoc* interventions, See, Secretary-General's Report to the Security Council No. S/2018/831 of 11 September 2018 (ibid.) at para. 33: "Under the second phase of the UNMISS project to promote accountability, the national director of public prosecutions accepted 16 cases of alleged sexual violence committed at the Juba, Malakal and Bentiu sites for uptake into the formal justice system." See also, Secretary-General's Report to the Security Council No. S/2018/1103 of 11 September 2018 (ibid.) at para. 31: "As part of the UNMISS project to promote accountability, the Mission referred nine cases to national authorities for possible criminal investigation and prosecution. National authorities, with logistical support provided by UNMISS, constituted a mobile court to prosecute five persons charged with sexual violence crimes committed in the Malakal protection of civilians site. Those trials resulted in convictions and sentences to a term of imprisonment ranging from 18 months to 10 years. UNMISS handed over the convicted persons to national prison officials on 24 October. On the basis of the success of the mobile court in Malakal, a mobile court is scheduled for December 2018 to prosecute referred cases from the Bentiu site".

²³ A "Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS)" was signed on 12 September 2018 in Addis Ababa, Ethiopia. A scanned version of the R-ARCSS can be can be uploaded from the Website of the Intergovernmental Authority on Development (IGAD), at <https://www.igad.int/>. See also, " 'Chance for peace' in South Sudan finally within reach, declares UN Peacekeeping chief", UN Communiqué, 18 December 2018, consulted at <https://news.un.org> in January 2019.

III. The MONUSCO Internment SOP

I should also mention that OLA was involved in developing internment procedures for MONUSCO, distinct from the ISOP on Detention. The MONUSCO internment procedures only apply in relation to those captured in the context of offensive operations of the MONUSCO Force Intervention Brigade (FIB)²⁴. They were issued by the Under-Secretary-General for Peacekeeping Operations in March 2014²⁵ and are meant to reflect specific core requirements of international humanitarian law in addition to the requirements of human rights law. They provide detailed rules to ensure that members of armed groups are not held arbitrarily and are interned by MONUSCO only for as long as there is justification for doing so under the terms of MONUSCO's mandate and international humanitarian law and only where there is no alternative way of lawfully dealing with them.

A key mechanism in the MONUSCO Internment SOP is the establishment of a Review Board, independent from the MONUSCO Force Component, whose task is to keep decisions to hold members of armed groups who are

²⁴ At paragraphs 9 and 12(b) of resolution 2098 (2013) of 28 March 2013, the Security Council created an "Intervention Brigade" within the Force Component of MONUSCO, with the task to carry out targeted offensive operations either unilaterally or jointly with the *Forces Armées de la République Démocratique du Congo* (FARDC) to prevent the expansion of and neutralize all armed groups, and to disarm them in order to contribute to the objective of reducing the threat posed by armed groups on state authority and civilian security in eastern DRC and to make space for stabilization activities. On the MONUSCO FIB, see, "The Intervention Brigade: Legal Issues for the UN in the Democratic Republic of the Congo" by Scott Sheeran and Stephanie Case, International Peace Institute Report of November 2014, accessible at <https://www.ipinst.org/wp-content/uploads/publications/ipi_e_pub_legal_issues_drc_brigade.pdf>. In subsequent extensions of MONUSCO's mandate, starting in 2016, the Security Council has expressly required that captured persons be handled in accordance with the MONUSCO Internment SOP. See, resolution 2277 (2016) of 30 March 2016 at operative paragraph 35(a)(d) and subsequent Security Council resolutions on MONUSCO's mandate.

²⁵ Full title: DPKO/DFS "Standing Operating Procedures on Internment by the United Nations Stabilization Mission in the Democratic Republic of the Congo", issued on 25 March 2014 by then-Under Secretary-General for Peacekeeping Operations Mr. Hervé Ladsous. The document does not have an internal UN reference number unlike other UN SOPs and administrative issuances.

interned under review. A first review by an Initial Review Panel is required within three days from the time of arrival at the initial holding facility (the “transit centre”), then by the Review Board within seven days from their arrival at an internment facility, and thereafter, no less than every three months.

When reviewing the decisions, a number of options will be considered to remove captured persons from MONUSCO custody, including:

- release if the captured persons no longer pose an imperative security threat;
- enrolment in a disarmament, demobilization and reintegration (DDR) programme managed by the DRC authorities with their consent and if there is no real risk that they will leave the programme and return to fighting; or
- in the case of persons who are not DRC nationals, enrolment in a DDR programme with repatriation and resettlement, or DDRRR, programmes which are managed by MONUSCO (again, this is with their consent and if there is no real risk that they will leave the programme and return to fighting);
- handover to the DRC authorities.

The preferred approach is to resort to one of these options as soon as possible so as to remove captured or interned persons from MONUSCO custody. The standing operating procedures also provide detailed safeguards in the event that MONUSCO decides to hand over the captured persons to the DRC authorities.

IV. The ISOP Review and Key Challenges

The ISOP on Detention was meant to be reviewed after one year of its entry into force. The review, conducted at UN Headquarters throughout 2016 under the lead of the Department of Peacekeeping Operations by an integrated team consisting of different UN agencies and departments, was completed in November 2016 with the adoption of a report highlighting a number of key issues faced by Missions in the ISOP’s implementation (the “Review Report”).

Based on the recommendations in the Review Report, a revision of the ISOP is currently on-going with the aim of issuing a final SOP. The revision

process has been guided by the need to make the ISOP more practical and user-friendly, while at the same time outlining a more logical structure with respect to the sequencing of the different stages of detention and the timelines; providing greater clarity in relation to the roles and responsibilities of different mission actors and the various decision-making processes; simplifying previously cumbersome procedures and processes; and ensuring consistency with existing structures and processes within UN peace operations.

One of the main conclusions of the review is that the timelines before a handover or a release must be reviewed. This is on account of the time needed by Missions to process detainees and to ensure their transfer to the handover points agreed with the Government. In MINUSMA and MINUSCA in particular, persons apprehended in remote areas are transferred under escort to the capital city or a main regional city prior to their handover, due to the absence of national authorities to properly receive such individuals in remote locations and for security concerns. Reviewed timelines would also allow more time for the assessment prior to handover. The ISOP review group is thus looking at increasing the timeline by another 24 hours, and it has proposed allowing detentions for up to 96 hours instead of 72.

Other issues include the scarcity of reports from Missions to UN headquarters on their detentions and handovers, combined with a possibility that some missions may be under-reporting instances of detention. These challenges would require strengthening implementation and oversight mechanisms at Headquarters level, including by devoting time (and resources) to the monitoring of UN detentions across all missions .

An issue frequently reported by Missions is that their uniformed personnel often fail to provide timely notification of detentions and that they have difficulties filling out the required forms under the ISOP. They also have a limited knowledge and understanding of the steps they must follow when detaining an individual. Confusion is sometimes apparent, with a detaining unit reporting the detention of individuals who merely sought protection from the Mission, or failing to report a detention on the basis that a person was “immediately” handed over to national authorities.

These gaps point, in part, to a lack of training of military contingents and formed police units and sensitization of contributing countries, rather than to deficiencies of the ISOP. A key factor would be to ensure, at mission level,

regular detention training for contingents and formed police units, including in field presences away from the Mission's headquarters.

The issuance of detention cards summarizing key actions, in a language the personnel understand, should also be systematized.

MINUSMA and MINUSCA have developed their own internal SOPs or circulars implementing the ISOP.²⁶ More missions should follow this example, with UNHQ support. The MINUSMA's internal SOP, first issued in 2015 and revised last June, is a particularly interesting model in my view. It provides, in summary form, the key principles of the ISOP, and distributes concrete tasks and actions among Mission personnel and units in a table rather than a narrative, with deadlines for each action. It includes a list of focal points in the Mission who must be informed of every detention, including their telephone and email. The list also includes ICRC focal points.

A specific MINUSMA initiative should also be mentioned. The Mission in Mali recently introduced a 24/7 telephone hotline with personnel trained to provide real time guidance to any Mission personnel confronted with a detention and unsure of the process and of their responsibilities.²⁷ This has the potential to significantly improve the reception and the understanding of the ISOP by uniformed and civilian personnel alike, while providing crucial, real time support to uniformed contingents assuming custody of individuals. The MINUSMA hotline should also significantly improve any reporting gaps.

Another issue is that few missions, as far as I could establish for this presentation, have had the required resources to install and equip fully fledged detention centres as envisaged in the ISOP on Detention and internment facilities as envisaged in the MONUSCO Internment SOP. More should be done to mobilize and earmark the required resources at Mission level and in UN Headquarters.

I would also point out that it may not always be realistic to expect that if a person is to be handed over by the United Nations to competent national authorities, he or she would be detained by the host country in conditions that reflect the standards set by the ISOP, thus necessitating his or her release.

²⁶ For MINUSMA, See *supra*, at Fn 7. For MINUSCA, See: "Standard Operating Procedure on Detention and Handover for MINUSCA Police and Military", ref. MINUSCA.2017.2, issued by SRSG Parfait Onanga-Anyanga on 13 January 2017 (effective date: 1st February 2017). At the time of writing, MINUSCA was revising its first internal SOP on Detention.

²⁷ The Detention hotline is part of the Second MINUSMA SOP of June 2018.

Addressing this gap would require significant mobilization of funds to support host countries. UNISFA, among other missions, has done this by dedicating a quick impact project to the renovation of a detention centre and police station in Abyei. A larger mobilization strategy may be required for other host authorities.

These are only some of the challenges. The new SOP on Detention will hopefully help address some of the issues. That, and appropriate resources, as well as the dedication and commitment of all those directly involved in detentions and handovers will be required to continue improving the UN peacekeeping temporary detention system.