

**Human Rights Council****Forty-third session**

24 February–20 March 2020

Agenda item 4

**Human rights situations that require the Council's attention****Report of the Commission on Human Rights in South Sudan\*,\*\****Summary*

The Commission on Human Rights in South Sudan notes with grave concern a sustained lack of political will in the signatories to implement in good faith the key provisions of the Revitalized Agreement on the Resolution of the Conflict in South Sudan, which would allow the Revitalized Transitional Government of National Unity to be formed. Political elites remained oblivious to the intense suffering of millions of civilians for whom they were ostensibly fighting. As facilitators and guarantors of the Agreement, neither the Intergovernmental Authority on Development nor the African Union have been able to exert decisive influence on the parties. Even though regional efforts yielded an extension of the pre-transitional period, States often pursued divergent goals in relation to South Sudan. Having missed two deadlines in May and November 2019, and with a third now looming, unresolved issues remain: the training and deployment of the Necessary Unified Forces, establishing the number of states and boundaries, the restructuring of the Council of States and the enactment of the Constitutional Amendment Bill.

Government forces moreover continued to forcibly recruit men and boys into their ranks through extensive campaigns in Warrap, Western Bahr el-Ghazal and Unity States, while opposition forces forcibly recruited men and boys in Unity and Central Equatoria States. Hostilities involving the South Sudan People's Defence Forces, local militias and the National Salvation Front— a non-signatory to the Revitalized Agreement— also continued in flashpoint areas, including Yei and Lobonok (Central Equatoria) and Maiwut (Upper Nile). Incidents of armed conflict confirmed an ongoing threat to peace and security, and the urgent need to address comprehensively issues relating to accountability, entrenched impunity and the arming of local militias and holdout groups.

Beyond the fragile peace at the national level, localized and often ethnically-based tensions intensified, leading to an increase of nearly 200 per cent in the number of civilian casualties over 2018. Between late February and May 2019, the United Nations Mission in South Sudan recorded some 531 deaths and 317 injuries in 152 incidents of localized violence. Of grave concern, brutal attacks, often premised on cattle raiding, involved members of the State apparatus or the Sudan People's Liberation Army in Opposition (pro-

\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.

\*\* The annexes to the present report are circulated as received, in the language of submission only.



Riek Machar) (SPLA-IO (RM)) and drove displacement at alarming rates, including in Western Bahr el Ghazal, Unity and Jonglei States.

Sexual and gender-based violence, including conflict-related sexual violence, continued to be widespread and pervasive, characterized by a recognizable pattern of terror and subjugation used as a tactic of war. The environment remained insecure and deadly for South Sudanese women and girls, as bodily integrity was not guaranteed. Denial and stigmatization, compounded by the lack of accountability for sexual and gender-based violations, remained a grave challenge.

Meanwhile, more than 55 per cent of civilians countrywide, mainly women and children, faced acute food insecurity due to wilful impediments of humanitarian aid by different parties, climate-induced factors and large-scale conflict-induced displacement.

Millions of dollars were diverted from the National Revenue Authority, depleting resources that could have been used to protect, fulfil and promote the vital economic, social and cultural rights of millions of vulnerable civilians. Such a diversion of State funds may amount to economic crimes.

Acute food insecurity, coupled with lack of access to basic services, including water and education, rendered substantial segments of the population utterly disenfranchised, too concerned with day-to-day survival to participate effectively in public life.

The systematic denial of fundamental rights and freedoms, including overt threats by government forces against journalists, activists, human rights defenders and political dissidents, further significantly undermined participation in the public sphere, violating the freedoms of expression, opinion and assembly. The National Security Service continued to play a pivotal role in such censorship through surveillance, suppression and arbitrary arrests.

More than 1.4 million civilians remained displaced internally, languishing in camps unfit to meet their basic needs and subsisting on diminished humanitarian aid. In addition, the conflict has made approximately 2.2 million people refugees and asylum seekers. In more than six years, the State has done little to ameliorate the suffering of displaced persons. The Commission acknowledges, however, that the cessation of major hostilities did lead to the voluntary return of tens of thousands of internally displaced persons and refugees to their homes.

Corruption, embezzlement, the delayed formation of the Revitalized Transitional Government of National Unity and the lack of service provision for vulnerable populations countrywide coincided with the strengthening by the Government of President Salva Kiir of its military forces and the entrenchment of political and military control. Fragile State control was also maintained through the instrumentalization of localized conflicts and the suppression of fundamental rights and freedoms, factionalizing further ethnic communities perceived as dissident, and highlighting the imperative need for the State to promote a shared national identity.

Today in South Sudan, civilians are deliberately starved, systematically surveilled and silenced, arbitrarily arrested and detained and denied meaningful access to justice. Redress for these violations and related crimes is a precondition for sustainable peace and security, and will remain elusive unless all the parties to the conflict, with the support of the international community, prioritize the needs of civilians, honour their international obligations, and implement, without further delay, the Revitalized Agreement on the Resolution of the Conflict in South Sudan, in particular with regard to transitional justice mechanisms and the hybrid court for South Sudan.

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## I. Introduction

1. In its resolution 31/20, the Human Rights Council established the Commission on Human Rights in South Sudan for a period of one year. The Commission submitted its first report to the Council at its thirty-fourth session (A/HRC/34/63).
2. In its resolution 34/25, the Human Rights Council extended the mandate of the Commission for another year, and requested it to continue to monitor and report on the situation of human rights in South Sudan, to make recommendations to prevent further deterioration of the situation, and to report and provide guidance on transitional justice, including reconciliation.
3. The Human Rights Council also requested the Commission to determine and report the facts and circumstances of, to collect and preserve evidence of, and to clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability. The Council further requested the Commission to make such information available to all transitional justice mechanisms, including those to be established pursuant to chapter V of the Agreement on the Resolution of the Conflict in South Sudan, including the hybrid court for South Sudan, to be established in cooperation with the African Union.<sup>1</sup>
4. In its resolution 37/31, the Human Rights Council extended the mandate of the Commission for an additional year, and again in its resolution 40/19. The current members of the Commission, appointed by the President of the Council, are Yasmin Sooka (Chair), Andrew Clapham and Barney Afako.
5. The Commission was supported by a secretariat based in Juba. It conducted missions to several locations within South Sudan, including Akobo (Jonglei), Akouyo (Western Bahr el Ghazal), Bentiu (Unity State), Bor (Jonglei), Gedi (Western Bahr el Ghazal), Luri (Central Equatoria), Kuajena (Western Bahr el Ghazal), Kuajok (Warrap), Mankien (Unity State), Pibor (Jonglei), Rocrocdong (Western Bahr el Ghazal), Wau (Western Bahr el Ghazal) and Yei (Central Equatoria). It also conducted missions to Addis Ababa, Kampala and Entebbe (Uganda), Nairobi, Cairo and Europe (undisclosed location). The Commission met with a range of victims, witnesses, government officials, members of civil society and other key stakeholders. In addition, it organized a workshop on transitional justice in Addis Ababa between 16 and 18 December 2019, and another on sexual and gender-based violence, to be held in Kampala in February 2020.
6. During the current mandate, the Commission took more than 216 detailed individual witness statements and gathered more than 3,340 documents, including confidential records, covering incidents in South Sudan since December 2013. All of the evidence collected is preserved in the Commission's confidential database and archives.
7. The Commission extends its gratitude to the Government of South Sudan for facilitating its missions and is grateful for the cooperation that it received from the Governments of Ethiopia, Uganda and Kenya during its missions to those States. It also appreciates the assistance and contributions of the African Union, the United Nations Mission in South Sudan (UNMISS), United Nations agencies, civil society organizations and experts.

## II. Methodology

8. The Commission submits the present report to the Human Rights Council pursuant to Council resolution 40/19. In the report, the Commission focuses primarily on establishing the facts and circumstances of incidents occurring between the signing of the Revitalized

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<sup>1</sup> In pursuance of its mandate, the Commission collects and preserves evidence that it stores in a database and that it catalogues by a unique evidence registration number (ERN). Reference is made to these numbers throughout the report so that States may use them when requesting to consult the evidence.

Agreement on the Resolution of the Conflict in South Sudan in September 2018, and December 2019.

9. In the light of the mandate's emphasis on accountability, the Commission also focused on establishing responsibility for violations and identifying individuals bearing responsibility for those violations and crimes. To clarify responsibility for international crimes, in particular command or superior responsibility under international law, the Commission sought to identify command structures, patterns of conduct and indicators of control and discipline.

10. Factual determinations on specific incidents and patterns of conduct provided the basis for the legal qualification of human rights violations, crimes under the law of South Sudan and, where appropriate, international crimes, including war crimes and crimes against humanity.

11. The Commission adopted a "reasonable grounds to believe" evidentiary standard. Its work was informed by the requirement to collect and preserve evidence to a standard that would support future accountability mechanisms, including criminal accountability.

12. Where the Commission found information linking alleged perpetrators to specific violations or to patterns of violations that was sufficient to warrant future criminal investigations or prosecutions, such information was retained on a strictly confidential basis. In some instances, there was insufficient information to identify individuals responsible for violations; in such cases, the armed forces or armed groups to which these individuals belong have been identified as responsible.

13. The Commission employed best practices of fact-finding aimed at assuring the safety, security, confidentiality and well-being of witnesses. Accordingly, information has been included only where sources granted informed consent and where disclosure would not lead to the identification of sources or result in harm. The Commission thanks the victims and witnesses who shared their experiences, and at all times remained guided by the principle of "do no harm".

### **III. Political and security developments**

#### **A. Implementation of the Revitalized Agreement on the Resolution of the Conflict in South Sudan**

14. Pursuant to the Revitalized Agreement on the Resolution of the Conflict in South Sudan of September 2018, President Salva Kiir and Vice-President designate Riek Machar agreed to form a Revitalized Transitional Government of National Unity by May 2019; failure to implement key provisions, including security arrangements and state boundaries (see paras. 17–19 below), however, led to a six-month extension on 3 May, facilitated by the Intergovernmental Authority on Development (IGAD). Following an invitation by President Kiir, the two leaders met in Juba on 9 and 11 September 2019 to discuss outstanding issues. They were unable, however, to reach a compromise.

15. President Yoweri Museveni (Uganda) convened a tripartite summit on 7 November, attended by Sovereign Council Chair General Abdel Fattah al-Burhan (Sudan) and envoy Kalonzo Musyoka (Kenya), as well as by both President Kiir and Vice-President designate Machar, to avert a crisis threatening the ceasefire and to hold up the formation of the Revitalized Transitional Government of National Unity. The summit resulted in the extension of the pre-transitional period for 100 days, effective from 12 November 2019 to 22 February 2020, thereby offering more time to, inter alia, address the incomplete critical tasks relating to security arrangements, including the formation of the Transitional Government.<sup>2</sup>

<sup>2</sup> Overall, 63 activities during the pre-transitional Period were to be finalized by 12 November 2019. In early November, only 31 had been completed, 22 others were still ongoing and 10 not yet started. See the report on the status of implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan for the period 1st July to 30th September 2019 (available

16. One key to resolving the impasse is an agreement on the number and boundaries of states, which will ultimately determine the distribution of power across the country. Resolving the issue will be crucial to addressing security arrangements for the capital Juba, establishing a unified army, the restructuring of the Council of States and the enactment of the Constitutional Amendment Bill, in addition to other security laws reviewed by the National Constitutional Amendment Committee.<sup>3</sup>

## 1. Cantonment

17. The cantonment, registration, screening, selection, training and redeployment of fighters with a view to forming the Necessary Unified Forces, a unified army of 83,000 soldiers (see annex I, map 1) are a cornerstone of the Revitalized Agreement on the Resolution of the Conflict in South Sudan. Only limited progress was made during the period under review.<sup>4</sup> By early November, 24 of the 25 cantonment sites designated for opposition forces were operational with registration ongoing, with all 10 barracks for the South Sudan People's Defence Forces (SSPDF) also undertaking registration.<sup>5</sup> Furthermore, some 69,000 of the 83,000 Necessary Unified Forces had been registered in designated cantonment sites and barracks, although they were still waiting to be screened, selected, trained and redeployed. A critical factor in the success of the screening, selection and training process is proper financing. Given the Government's failure to honour its pledge to make \$100 million available to support the process and other security mechanisms, however, most garrison sites lacked access to adequate water, food or medical services, with deplorable living conditions. Concerns have also been raised at the proximity of these sites to civilians, in particular women and girls (see annex II, para. 49).

## 2. Administrative boundaries

18. In October 2015, President Kiir unilaterally declared the creation of 28 states in South Sudan to replace the original 10,<sup>6</sup> and announced the creation of four additional states in January 2017, bringing the total number of states to 32.<sup>7</sup> The demarcation of 32 states by President Kiir exacerbated tensions concerning access to natural resources, as it effectively ensured the control of the President's Dinka ethnic group over valuable resources, in particular oil. The President's actions are perceived by many, including the Fertit and Luo (Western Bahr el Ghazal), Shilluk (Upper Nile) and Equatorians, as gerrymandering to promote Dinka interests.

19. The Independent Boundaries Commission began its work on 28 February 2019, supported by the African Union High-level Ad Hoc Committee for South Sudan, comprising Algeria, Chad, Nigeria, Rwanda and South Africa, its members having been appointed by the Executive Secretary of IGAD.<sup>8</sup> The Independent Boundaries Commission considered the number of states and their boundaries, and the composition and restructuring of the Council

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from <https://jmecsouthsudan.org/index.php/reports/rjmec-quarterly-reports/155-rjmec-quarterly-report-to-igad-on-the-status-of-implementation-of-the-r-arcss-from-1st-july-to-30th-september-2019/file>), p. ii.

<sup>3</sup> Ibid.

<sup>4</sup> Breakdown of the Necessary Unified Forces: Military (35 per cent) 29,050; National Security Service (10 per cent) 8,300; National Police (8 per cent) 6,640; State Police (26 per cent) 21,580; Wildlife Service (7 per cent) 5,810; Prisons Service (10 per cent) 8,300; and Fire Brigade Service (4 per cent) 3,320, totalling 83,000. The figures do not include the VIP Protection Unit, estimated to comprise 3,000 personnel.

<sup>5</sup> See the report on the status of implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan for the period 1st July to 30th September 2019, p. ii; See also the report on the status of implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan for the period 1st January to 31 March 2019 (available from [www.jmecsouthsudan.com/index.php/reports/rjmec-quarterly-reports/133-rjmec-quarterly-report-to-igad-on-the-status-of-implementation-of-the-r-arcss-from-1st-january-2019-to-31st-march-2019/file](http://www.jmecsouthsudan.com/index.php/reports/rjmec-quarterly-reports/133-rjmec-quarterly-report-to-igad-on-the-status-of-implementation-of-the-r-arcss-from-1st-january-2019-to-31st-march-2019/file)), p. iv.

<sup>6</sup> Establishment Order, No. 36/2015, 2 October 2015.

<sup>7</sup> Republican Order, No. 02/2017, 14 January 2017.

<sup>8</sup> Pursuant to article 1.15.1 of the Revitalized Agreement.

of States,<sup>9</sup> but was unable to reach consensus or to obtain the support of at least seven members.<sup>10</sup>

20. Although the National Constitutional Amendment Committee had submitted a new draft constitution to the Minister for Justice and Constitutional Affairs in April 2017, it is still pending review. Moreover, by late January 2018, the Committee had further completed five amendment bills for the security laws, including the Sudan People's Liberation Army Act (2009), the National Security Act (2014), the Police Services Act (2009), the Prison Services Act (2011) and the Wildlife Service Act (2011), although none had been adopted at the time of writing.<sup>11</sup> During the period under review, it also began its review of the Public Finance Management and Accountability Act (2011), the National Audit Chamber Act (2011) and the South Sudan Anti-Corruption Commission Act (2009).<sup>12</sup> Laws that address a number of issues relevant to human rights, the rule of law and democratic governance, while the amendments aim to ensure fair and inclusive recruitment and accountability.

21. The Commission notes with concern that stipulations enumerated in the Revitalized Agreement are being dealt with by signatories in an entirely formalist manner, as a "tick the box" exercise. Given this lack of political will, which led to minimal progress during the period under review, only meaningful engagement exercised in good faith can achieve the objectives enshrined in the Revitalized Agreement.

## B. Sanctions

22. Sanctions continued to be used, mainly by the United States of America, as a means of enforcing compliance with human rights standards and to ensure implementation of the Revitalized Agreement. In September and December 2017, the United States had announced targeted sanctions against four South Sudanese officials for their roles in threatening the peace, security and stability of South Sudan.<sup>13</sup> During the period under review, the United States sanctioned an additional eight South Sudanese, including First Vice President Taban Deng Gai, for alleged involvement in human rights violations and abuses or for "obstructing the reconciliation process or peace talks".<sup>14</sup>

## C. Ongoing conflict and holdout rebel groups

23. The Commission remains concerned that the State apparatus is absent in large swathes of territory within South Sudan, which has not only exacerbated civilian suffering owing to the lack of effective service provision but has also enabled holdout groups and the opposition to take control. Because of the State's absence, this dynamic led to a series of armed hostilities during the period under review.

24. Hostilities involving the SSPDF, local militias and the National Salvation Front (a member of South Sudan Opposition Movements Alliance) continued in flashpoint areas, including Yei and Lobonok (Central Equatoria) and Maiwut. Since November 2018, the National Salvation Front and the South Sudan United Front – both non-signatories of the Revitalized Agreement on the Resolution of the Conflict in South Sudan – continued to fight

<sup>9</sup> Ibid., art. 1.15.7

<sup>10</sup> Ibid., art. 1.15.9.

<sup>11</sup> The National Constitutional Amendment Committee also drafted the National Fire Brigade Act (2019) during the period under review.

<sup>12</sup> See the report on the status of implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan for the period 1st July to 30th September 2019, p. 6.

<sup>13</sup> See conference room paper containing the main findings of the Commission (A/HRC/40/CRP.1), available on the webpage of the Commission at [www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx).

<sup>14</sup> See press releases of the United States Department of the Treasury, "Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses", 10 December 2019, "Treasury Sanctions Two Senior South Sudanese Officials for Obstructing Reconciliation Efforts", 16 December 2019, and "Treasury Sanctions South Sudanese First Vice President for Role in Serious Human Rights Abuse", 8 January 2020.

government forces in Equatoria. While parts of Central Equatoria State were controlled by elements of the National Salvation Front and the Sudan People's Liberation Army in Opposition (pro-Riek Machar) (SPLA-IO (RM)), others remained under the control of government forces. The fragmentation of armed actors in Greater Upper Nile and Central Equatoria also contributed to ongoing violence and human rights violations, including conflict-related sexual violence.

#### **IV. Human rights context**

25. Years of armed conflict before South Sudan gained independence left a legacy of a divided country in which predatory and unaccountable political elites have pursued violent struggles for power and resources at the expense of the security and well-being of their citizens. The consequent dire situation of human rights throughout South Sudan is characterized by the deliberate starvation of civilians, the largest refugee and internal displacement crises in Africa, and sexual and gender-based violence. The norm has become increased securitization of State institutions that sow fear and terror in an environment in which citizens are deprived of their fundamental human rights, and where torture, intimidation, unlawful and arbitrary detention and enforced disappearances have become the norm.

26. During the period under review, government forces were responsible for most of the attacks against civilians, including pillaging, conflict-related sexual violence together with other forms of sexual and gender-based violence, arbitrary arrest and detention, denial of the freedoms of expression, opinion and assembly, the recruitment and the use of children in armed forces and arbitrary restrictions on humanitarian aid, in violation of human rights law and international humanitarian law. Armed groups have also committed serious violations of human rights law and international humanitarian law, including through the recruitment and the use of children.

27. Since independence, South Sudan has been mired in ethnic conflict, with hardly any investment in state-building or any infrastructural development in the country. Entrenched and systemic corruption is the greatest hindrance to peace and stability. Weak institutional capacity to deliver the most basic services expected of a functioning and accountable government undermine the resilience of the State. Deeply entrenched impunity is manifested in the lack of accountability for serious crimes; the failure to establish transitional justice mechanisms; the prioritization by the State of financing for the military and security apparatus over investment in public service, infrastructure and livelihoods; and rentierism, characterized by economic crimes, including corruption and embezzlement, severely weakening the functionality of the State.

28. While domestic law and the international treaties to which South Sudan has voluntarily acceded contain key safeguards to protect human rights and promote accountability, respect for and implementation of these provisions has remained inadequate. As the lack of effective rule of law institutions contributed to destabilizing safety and security, accountability for atrocity and other crimes remained deficient during the reporting period. The statutory court system in South Sudan continued to suffer from a trust deficit among citizens. Inadequate infrastructure, resources and capacity further diminished the ability of the State to provide civilians with access to meaningful justice. The Commission learned in a confidential meeting on 20 August that vacant judicial positions and unpaid salaries paralyzed the functioning of certain courts, including in Juba.

29. In Bor (Jonglei) and Bentiu (Unity), the prevalent use of customary law courts not mandated to hear serious criminal cases, which lacked procedural safeguards and exhibited deeply entrenched cultural biases towards women and girls, also impeded meaningful access to justice. Beginning in October 2018, the United Nations-supported mobile court system, however, improved access to justice in at least 10 locales.<sup>15</sup>

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<sup>15</sup> See United Nations Development Programme (UNDP), "Mobile Courts in South Sudan", 25 March 2019, available from <https://reliefweb.int/report/south-sudan/mobile-courts-south-sudan>; and "Mobile

30. Additional initiatives aimed at remedying critical gaps within the judiciary included the formation of a specialized chamber in Juba to address cases of sexual and gender-based violence to be functional by 31 October 2019 (annex II, para. 64). At the time of writing, only the property for locating the chambers had been identified. While the establishment of a chamber specialized in addressing sexual and gender-based violence is a welcome development, the Commission notes that the chamber envisaged will operate at the national and not the state level. Moreover, although mobile courts have adjudicated cases of sexual and gender-based violence, they do not appear to be linked to the specialized chamber, depriving thousands of victims countrywide of access to justice, including victims of conflict-related sexual violence, which falls outside of the specialized chamber's narrow mandate. Despite these commitments, very few perpetrators have been prosecuted for sexual and gender-based violence or conflict-related sexual violence.

31. In December 2019, the National Security Service also announced the establishment of a special five-judge tribunal to try its members responsible for criminal acts, breaches of the National Security Act and any other laws and regulations. According to the National Security Service Director of Legal Affairs, the tribunal will also have the "power to try and punish officers of the National Security NCO [non-commissioned officers] as an individual or as a member of the National Security [Service] if they are charged with offenses which include human rights abuses."<sup>16</sup>

32. Despite certain developments, the Commission also remains deeply concerned at the lack of progress in establishing transitional justice mechanisms pursuant to chapter V of the Revitalized Agreement on the Resolution of the Conflict in South Sudan, including for sexual and gender-based violence. Little progress was made in establishing the hybrid court during the period under review. In December 2019, the Office of the Legal Counsel of the African Union, in consultation with Judge Theodor Meron and Professor Bongani Majola, noted that the draft statute of the hybrid court had been finalized, and that the drafting committee would be preparing the draft rules of the Court. No progress was made, however, in establishing the commission for truth, reconciliation and healing or the compensation and reparation authority, which should be complemented by customary and other community-centred mechanisms (annex II, paras. 87–94).

## V. Economic, social and cultural rights

33. Extreme levels of poverty and lack of access to essential services were exacerbated by economic crimes perpetrated by members of the State apparatus.<sup>17</sup> Corruption has made several officials extremely wealthy at the expense of millions of starving civilians, resulting in acute socioeconomic inequality. Over time, corruption has been so lucrative that it has infected every sector of the economy and every State institution.<sup>18</sup> The illicit diversion of revenues has robbed the Government of critical resources to fund the realization of economic, social and cultural rights, such as health, education, food and agriculture, and water.<sup>19</sup>

34. The misappropriation and diversion of public funds are made easier by the predominantly cash economy of South Sudan, and are facilitated by nepotism in appointments to senior government positions. An overall lack of transparency and civilian oversight in accounting exacerbates the problem. Deeply flawed prioritization means that

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court concludes proceedings in Malakal", United Nations Peacekeeping, 23 September 2019, available from <https://peacekeeping.un.org/en/mobile-court-concludes-proceedings-malakal>.

<sup>16</sup> Dimo Silva Aurelio, "South Sudan Creates Tribunal to Try Security Operatives", VOA, 5 December 2019.

<sup>17</sup> See conference room paper on ... (A/HRC/40/CRP.1), available on the webpage of the Commission at [www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx).

<sup>18</sup> Alex de Waal, "When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan", *African Affairs*, vol. 113, No. 452 (2014), pp. 347–369.

<sup>19</sup> See for example Sam Mednick, "Sprouting Weapons of War" Organized Crime and Corruption Reporting Project, 17 July 2019, available from [www.occrp.org/en/investigations/sprouting-weapons-of-war](http://www.occrp.org/en/investigations/sprouting-weapons-of-war).

South Sudan spends its money on its military and governing elite, not to improve infrastructure or public services.

35. Since the Comprehensive Peace Agreement of 2005, the economy of the South has depended primarily on oil revenues, accounting for the vast majority of exports and currently 73 per cent of government revenues.<sup>20</sup> The cumulative effect of such reliance raised the nation's geopolitical profile and gave rise to a rentier model of statehood, whereby substantial revenues derived from crude petroleum were commissioned for the benefit of external clients, including China, India and Malaysia. Accrued profits, however, continued to be appropriated by political elites rather than reinvested into the country and its citizenry, as stipulated in relevant laws.<sup>21</sup>

36. Parties to the Revitalized Agreement sought to address this accountability gap by devoting chapter IV provisions to reforms and measures designed to promote greater accountability and transparency in the use and management of public resources, with an emphasis on oil revenues. Chapter IV measures are largely based on the national laws of South Sudan, notably the Petroleum Act and the Petroleum Revenue Management Act of 2012. Other relevant legislation aimed at ensuring transparency regarding public finances includes chapter 9 of the Petroleum Revenue Management Act (2013),<sup>22</sup> chapter 5 of the Investigation Committees Act (2006)<sup>23</sup> and chapter 11 of the Bank of South Sudan Act (2011).<sup>24</sup>

## 1. Non-oil revenues

37. Also pursuant to chapter IV, the National Revenue Authority became primarily responsible for the collection and administration of non-oil revenues,<sup>25</sup> which had previously been collected by the Ministry of Finance. The Commission was informed in a confidential meeting that, during the first half of 2019, the Authority steadily increased revenue collection,<sup>26</sup> curbed excessive tax exemptions, streamlined recruitment of senior National Revenue Authority posts,<sup>27</sup> widened the tax base and enhanced transparency by providing public monthly statistics on the revenue collected.

38. Collection efforts were stymied on 23 August 2019, when the Minister of Finance and Economic Planning, Salvatore Garang Mabiordit, dismissed the Commissioner General and the Board of Directors of the National Revenue Authority on the basis of multiple allegations that both parties have denied.<sup>28</sup> On 28 October 2019, the Minister alleged that the Commissioner General had illegally opened and was operating a single treasury account in Mombasa, Kenya<sup>29</sup> to divert funds from the Authority's operation account. The Board rejected this allegation of wrongdoing and confirmed that it knew and had authorized opening the account and subsequent transactions.<sup>30</sup>

39. The Commission has reasonable grounds to believe that, since the unlawful dismissal of the Commissioner General and the Board, there has been a steady diversion of non-oil revenue funds to the operation account of the National Revenue Authority managed by the

<sup>20</sup> United Nations Children's Fund (UNICEF), National Budget Brief, May 2019, available from [www.unicef.org/southsudan/reports/national-budget-brief](http://www.unicef.org/southsudan/reports/national-budget-brief).

<sup>21</sup> See for example Petroleum Revenue Management Act (2013), art. 29.

<sup>22</sup> Chapter 9 on transparency and accountability.

<sup>23</sup> Chapter 5, § 21: Public Access to Investigation Proceedings and Information.

<sup>24</sup> Chapter 11: Accounts, Financial Statements, Audits and Reports.

<sup>25</sup> Revitalized Agreement, arts. 4.10.1.4–5.

<sup>26</sup> Annual statistics on file with the Commission.

<sup>27</sup> The Committee learned in a confidential meeting that the Board of the National Revenue Authority had retained the Tanzania Tax Authority to conduct a recruitment exercise for top posts in the National Revenue Authority. All recruitment, however, has been frozen for the past year to allow for the National Security Service vetting process.

<sup>28</sup> Ministerial order RSS/MoF&P/MO/3/08/19 and documents on file with the Commission.

<sup>29</sup> As South Sudan is a landlocked country, many of its imports arrive at Mombasa port and are taxed there.

<sup>30</sup> See press statement made by the Board available from <http://updm-rss.org/press-statement-by-the-defunct-national-revenue-authority-nra-board>.

Bank of South Sudan on behalf of the Authority.<sup>31</sup> The National Revenue Authority (NRA) Act mandates that, of the total amount collected, only 2 per cent is to be retained by the Authority<sup>32</sup> for its operations – the only payment due to the Authority by law – while the remainder is to be remitted to the Government’s consolidated account. The Commission has in its possession credible evidence indicating that, for September 2019, 56 per cent of total non-oil revenue collected in South Sudan was remitted to the Authority account, while only 42 per cent was remitted to government account.<sup>33</sup>

40. Evidence in the Commission’s possession for October and November 2019 confirmed that almost 80 per cent of non-oil revenue collected was diverted to the operation account of the National Revenue Authority, while only 20 per cent was sent to the government account maintained in Nairobi.<sup>34</sup> The Commission received confirmation in a confidential meeting held on 2 September 2019 that funds diverted to the operation account of the Authority do not reach the Government as required by law. In October 2019, the acting Commissioner General further claimed that the public release of monthly statistics itemizing the collections made by the Authority, as published from January to mid-August 2019 (a practise initiated by the former Commissioner), was not required by law, and therefore discontinued the initiative, increasing State secrecy surrounding revenue collection and expenditures.

41. By mid-July 2019, the National Revenue Authority had reportedly collected more than \$36 million (7 billion South Sudanese pounds) from non-oil sources.<sup>35</sup> The Commission received credible information in a confidential meeting held on 2 September 2019 that millions in dollars of incoming public revenues had vanished in September and October and were not paid into the regular account of the Authority. For the past 10 years, the Auditors-General of South Sudan have been unable to effectively carry out their functions or to submit reports in compliance with auditing norms and standards owing to the Government’s refusal to publish and receive such reports, thereby undermining the State’s capacity to achieve the Sustainable Development Goals.

## 2. Violations and alleged crimes: findings

42. South Sudan acceded to the United Nations Convention against Corruption in January 2015, and signed (but has not yet ratified) the African Union Convention on Preventing and Combating Corruption in January 2013. Both treaties prohibit Member States from engaging in or pursuing policies that encourage corruption or the embezzlement of public resources. South Sudan has also established an anti-corruption commission, the role of which is to protect public resources and investigate cases of corruption and the misuse of public resources.<sup>36</sup>

43. On the basis of the foregoing information, the Commission has reasonable grounds to believe that members of the Government have engaged in acts that amount to economic crimes, including tax evasion, money laundering, bribery, using one’s position to influence decisions in the allocation of State resources, and using public funds for personal gain and advantage, while having direct knowledge that their conduct would not only unduly enrich them but would also deprive the Government of resources essential to providing vital services to civilians and improve social welfare.

44. The Commission will release its detailed findings on economic crimes, including lack of transparency and civilian oversight, national revenue diversion and illicit financial flows, in a conference room paper (A/HRC/43/CRP.2), with an emphasis on how economic crimes frustrate the enjoyment of key economic, social and cultural rights, including access to adequate food, education and health care, and their disproportionate impact on children, leading to high levels of infant mortality.

<sup>31</sup> Confidential documents on file with the Commission.

<sup>32</sup> Confidential meeting, 23 October 2019.

<sup>33</sup> Confidential documents on file with the Commission.

<sup>34</sup> Ibid.

<sup>35</sup> “South Sudan collects 36 mln USD tax from non-oil sources”, Xinhua, 12 July 2019.

<sup>36</sup> Anti-Corruption Act (2009); Transitional Constitution, para. 147.

## VI. Recruitment and use of children in armed conflict<sup>37</sup>

45. Delayed progress and the selective implementation of the Revitalized Agreement on the Resolution of the Conflict in South Sudan had a disproportionate impact on the lives of children during the period under review. Severe acute malnutrition, absence of critical services and the ongoing brutality of intercommunal, internecine and sexual and gender-based violence continued to victimize South Sudanese boys and girls on multiple grounds. As at late July 2019, some 19,000 children were thought to still be in the ranks of the SSPDF and armed opposition groups.<sup>38</sup> Of concern, the estimated number of children recruited by parties to the conflict has remained the same since at least December 2017.<sup>39</sup>

46. During the period under review, members of SPLA-IO (RM) Division 6A (based in Achot (Wau)), and government forces, including the National Security Service and SSPDF Tiger Division,<sup>40</sup> SSPDF Divisions 3 (based in Northern Bahr el Ghaza (Winejok) and Warrap (Panachier) States), 4 (based in Rubkona (Unity)), 5 (based in Girinty Barracks (Wau), Western Bahr el-Ghazal State) and 10,<sup>41</sup> as well as Taban Deng-allied SSPDF<sup>42</sup> continued to recruit, train and use children aged as young as 12 years in Wau, Warrap, Unity and Central Equatoria States, the latter the powerbase of the National Salvation Front. Despite provisions enumerated in the Revitalized Agreement on the Resolution of the Conflict in South Sudan, the Sudan People's Liberation Army Act and the National Service Security Act, the Commission received credible information that recruitment drives carried out by government forces sought to enlist 10,000 men and boys,<sup>43</sup> with some estimates reaching 17,000.<sup>44</sup>

47. Even though article 2.1.10.3 of the Revitalized Agreement on the Resolution of the Conflict in South Sudan reaffirmed the commitment made in articles 3 (2) (f), 9 (1) and 10 (a) of the Cessation of Hostilities Agreement of 2017 to refrain from using children and recruiting them into armed forces or militias, only modest progress has been made since its signing. With planning beginning as early as September 2018, and recruitment continuing through at least the following July, the National Security Service and SSPDF bolstered their forces, particularly in Warrap, including through the forced recruitment and use of children (Training for the forces reportedly began in Yithkuel, Tonj South (Warrap) in August 2019). Child conscripts reported being transferred between SSPDF Division 3 in Warrap and SSPDF Division 5 Girinty Military Barracks in Wau,<sup>45</sup> Yithkuel (Tonj South) and the National Security Service training facility in Luri (near Juba) (see annex II, paras. 3–5). In some instances, transfers and training involved SSPDF Tiger Division Forces. After some recruits were trained and issued arms, they were reportedly brought closer to Juba to be deployed by the National Security Service and the SSPDF, notably by its Tiger Division.<sup>46</sup>

48. In most instances documented by the Commission, the recruitment of children was intentional, as the children were abducted by the SSPDF, including in Gogrial (Warrap) (annex II, paras. 1–12). Beyond government forces, county commissioners and local chiefs

<sup>37</sup> Certain information undisclosed in accordance with the principle of “do no harm”.

<sup>38</sup> See UNICEF, “32 children released from opposition groups in South Sudan”, 24 July 2019. In 2018, the United Nations verified 102 incidents of recruitment or use affecting 453 children (365 boys, 88 girls), 14 per cent of whom were under 15 years of age at the time of their recruitment (A/73/907–S/2019/509, para. 152).

<sup>39</sup> “Children are the face of conflict-fuelled humanitarian tragedy in South Sudan – UNICEF”, UN News Service, 15 December 2017.

<sup>40</sup> The Commission heard credible allegations during a confidential meeting on 19 October 2019 that Tiger Division forces were sent by the President himself to oversee recruitment..

<sup>41</sup> The Commission was informed during confidential meetings on 16 and 17 September 2019 that, in April 2019, an estimated 800 Division 10 soldiers were deployed to and established a headquarters in Warrap (Panachier) State to conduct disarmament.

<sup>42</sup> Refers to SPLA-IO (TD) forces.

<sup>43</sup> ERN 102837 – 102841; ERN 102850 – 102857.

<sup>44</sup> ERN 103459 – 103468.

<sup>45</sup> ERN 102536 – 102540.

<sup>46</sup> ERN 103459 – 103468; see also annex II, paras. 71–86.

in Warrap also systematically organized the recruitment and the use of children for the National Security Service and the SSPDF through recruitment drives. In other cases, the commissioners extorted cattle from families who were unable to provide a fighting-age male, leaving them destitute.<sup>47</sup> The Commission observed a similar pattern of conduct in Tonj (Warrap), where orders stemming from the SSPDF went down to commanders and local chiefs, who then solicited families to propose at least one family member. If no men were available, boys were sought instead.<sup>48</sup>

49. In Unity State, boys who had lost or were separated from their parents due to the conflict joined the SSPDF or SPLA-IO (RM) “voluntarily” owing to lack of financial means to support themselves.<sup>49</sup> Once they enlisted, however, the boys faced difficulties being released.<sup>50</sup> Children received from 30 to 50 lashes for failure to follow orders.<sup>51</sup>

50. Despite their traumatic experiences, all child conscripts interviewed by the Commission who had escaped demonstrated resilience, with most emphasizing the desire to continue their education.<sup>52</sup> One boy expressed his hope of becoming a doctor in order to alleviate “the suffering of my people” who, in his view, were made to travel long distances for adequate medical treatment.<sup>53</sup> Another boy hoped to become a lawyer one day, to “give people their rights”.<sup>54</sup>

51. In addition, a youth bulge compounded by rampant unemployment coupled with lack of access to education continued to fuel violent crime and instability. During the period under review, the unemployment rate for boys and men aged 15 to 24 years remained close to 20 per cent.<sup>55</sup> Some 2.2 million children did not attend school, while 30 per cent of schools countrywide remained damaged, destroyed, occupied or closed as a result of conflict.<sup>56</sup> Although the number of functioning schools has increased substantially since independence in 2011, young people in Aweil (Bahr el Ghazal), for example, cited lack of access to employment and education as a key factor for engaging in criminal activity.<sup>57</sup> As one youth told the Commission, “Owning a gun is beneficial because it can make a youth valuable when he might otherwise be idle.”<sup>58</sup>

## 1. Disarmament, demobilization and reintegration

52. The fact that at least 19,000 children are said to be associated with government forces and armed groups in South Sudan highlights a serious deficiency in the implementation of the disarmament, demobilization and reintegration process. On 31 January and 21 February 2019, 40 children, including two as young as 8 years of age, were released by the SSPDF in Tonj North (Warrap).<sup>59</sup> The Commission received information about SSPDF Division 3 releasing 14 children from Aguok, Kuac West and Kuac East in June 2019.<sup>60</sup> In July, the Ceasefire Transitional Security Arrangements Monitoring and Verification Mechanism

<sup>47</sup> Confidential interviews corroborated a systematic effort by government forces to recruit children in Warrap State; ERN 103200 – 103204.

<sup>48</sup> ERN 102837 – 102841.

<sup>49</sup> ERN 103320 – 03323; ERN 103315 – 103319.

<sup>50</sup> ERN 103315 – 103319.

<sup>51</sup> ERN 103315 – 103319.

<sup>52</sup> ERN 103205 – 103209; ERN 102530 – 102535; ERN 103200 – 103204.

<sup>53</sup> ERN 103200 – 103204.

<sup>54</sup> ERN 102530 – 102535.

<sup>55</sup> See <https://data.worldbank.org/indicator/SL.UEM.1524.ZS?locations=SS>.

<sup>56</sup> See [www.unicef.org/southsudan/media/1831/file/UNICEF-South-Sudan-Education-Briefing-Note-Mar-2019.pdf](http://www.unicef.org/southsudan/media/1831/file/UNICEF-South-Sudan-Education-Briefing-Note-Mar-2019.pdf).

<sup>57</sup> Emmanuel Kele, “Aweil youth say unemployment makes them engage in criminality”, UNMISS, 7 May 2019.

<sup>58</sup> ERN 103445 – 103448.

<sup>59</sup> ERN D120808 – D120810.

<sup>60</sup> ERN 103364 – 103370.

oversaw the release in MirMir (Unity) of 32 child soldiers between the ages of 13 and 17 years, who since 2016 had been with SPLA-IO Division B.<sup>61</sup>

53. During the week of 16 September 2019, armed groups in Northern Bahr el Ghazal State reportedly released almost two dozen children to the National Disarmament, Demobilization, and Reintegration Commission,<sup>62</sup> which President Kiir had reconstituted by presidential decree 123/2019. The 12-member National Disarmament, Demobilization and Reintegration Commission, mandated by the Revitalized Agreement on the Resolution of the Conflict in South Sudan to take charge in managing the reintegration of former soldiers. While the disarmament, demobilization and reintegration of children in certain locations is a positive development, the Commission notes with concern that recruitment is ongoing in Wau Warrap, Unity and Central Equatoria States, the latter by the National Salvation Front. All children, irrespective of where or into which faction they have been recruited, must be released immediately and with appropriate safeguards.

54. The Commission expresses its concern at the link between ongoing recruitment and ongoing hostilities, in particular regarding recruitment by the National Salvation Front in Central Equatoria. The acceleration of recruitment drives by signatories of the Revitalized Agreement on the Resolution of the Conflict in South Sudan and the forced recruitment of children during the period under review may further be linked to the need to meet the numbers stipulated for the cantonment of the Necessary Unified Forces (see para. 17 above).

## 2. Violations and alleged crimes: findings

55. Members of both SPLA-IO (RM) and government forces, including the National Security Service and the Taban Deng-allied SSPDF, conscripted children under 15 years of age into their ranks. The Commission learned in a confidential meeting held on 8 January 2020 that, while some of these children were used as cooks, guards and couriers, others actively participated in hostilities. Some recalled being trained, supplied with weapons, forced to loot and prevented from leaving training camps and battlefields in the form of death threats and intimidation.

56. The above-mentioned recruitment of children was contrary to domestic and treaty law, including the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, to which South Sudan acceded in September 2018, and is listed as a crime (in article 5 (b)) for children under 15 years of age in the draft statute of the hybrid court for South Sudan.

57. Similarly, article 4 (3) of the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Additional Protocol II) prohibits the participation of children under 15 years of age in hostilities. The domestic laws of South Sudan further require the State to protect and ensure that the best interests of the child are always considered whenever any decision relating to him or her is made. Despite the State's obligation to prevent, investigate and punish violations of the law and to provide redress, the Government of South Sudan has failed to uphold its duties.

## VII. Localized conflicts

58. Despite a general reduction in major hostilities since the signing of the Revitalized Agreement on the Resolution of the Conflict in South Sudan, and demonstrating further the fragility of the State apparatus, violent competition over pastoral resources escalated in localities where the rule of law was totally absent, such as in the Jur River area (Western Bahr el Ghazal), Twic (Warrap), Mayom (Unity) and Jonglei (see annex II, paras. 13–36).

59. In vast swathes of rural society where wealth is largely measured in cattle currency, adverse weather conditions characterized by bifurcated rainy and dry seasons, including

<sup>61</sup> Report on the status of implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan for the period 1st July to 30th September 2019, para. 21.

<sup>62</sup> Emmanuel Kele/Deng Mou, "Government forces hand over captured child soldiers", UNMISS, 24 September 2019.

periods of flooding and draught, provoked conflicts from December 2018 to November 2019 between pastoralists and farmers over access to water and grazing crop fields. Competition over such resources was strained not only by climate-induced factors but also by struggles for dominance and allegiances along ethnic, tribal and subclan lines.

60. Localized conflicts countrywide have largely been characterized by the absence of the State and of the rule of law, the proliferation of light and heavy weaponry and the State's failure to establish and encourage a shared national identity. For some communities, their ongoing experiences with ethnic and intercommunal violence is so intense and localized that the independence of South Sudan may have little meaning for them in terms of their day-to-day security. Many communities say that independence has only ended a certain kind of war.

61. The Commission notes with deep concern that, during the period under review, parties to the conflict exploited local rivalries, manipulating historical divisions between communities and instrumentalizing ethnic identities in order to marginalize and drive the displacement of populations presumed dissident to one party or another. For example, it received credible information that members of government forces armed militias with light and heavy weapons, including AK-47 assault rifles (Kalashnikovs), rocket-propelled grenades and PK machine guns, to carry out brutal attacks against neighbouring communities, often during periods of cattle migration. The intentional failure of the State to provide security or to hold perpetrators accountable for these acts reportedly forced civilians to organize their own self-defence mechanisms and to join or align with armed actors for protection. As armed conflict at the national level mostly transformed into localized conflicts at the beginning of December 2018, the Commission documented several incidents emblematic of this prevailing violence (see annex II, paras. 13–36). Between late February and May 2019 alone, UNMISS recorded 152 incidents of localized violence resulting in some 531 deaths and 317 injuries, a 192 per cent increase in casualties compared with the same period in 2018 (S/2019/491, para. 27).

62. Attacks across the Jur River area in Western Bahr el-Ghazal were characterized by killings, rape and sexual violence, abduction and the looting and destruction of property (see annex II, paras. 13–36). The Commission was informed in a confidential meeting on 12 October 2019 that, similarly, conflict between the Apuk and Aguok communities in Gogrial (Warrap) reportedly resulted in more than 300 civilians being killed, abductions of women and children, the burning of homes and the destruction of civilian property and medical facilities.

63. Between December 2018 and May 2019, the border area between Unity and Warrap States was marked by numerous attacks and counter-attacks between the Bul Nuer from Mayom (Unity) on one side, and the Dinka from Tonj and Twic (Warrap) on the other.<sup>63</sup> These attacks resulted in hundreds of civilian casualties and thousands of cattle looted by both sides.<sup>64</sup> Lou Nuer, Dinka and Murle pastoralist communities similarly clashed in Jonglei (see annex II, paras. 13–36).

64. As groups of cattle keepers continued to be mobilized by military and civil authorities, the Commission examined the extent to which such groups fell under a formal organizational structure and found that numerous cattle camps had established a formal hierarchy, including to carry out attacks in Kuajena, Rocrocdong, Udici and Alur in Wau (Western Bahr el Ghazal). As one witness told the Commission, “the cattle keepers started organizing themselves in groups, and every two to three days, we would hear about another incident.”<sup>65</sup> The Commission found that, in instances where cattle keepers fell under a formal hierarchy and were provided with heavy or light weapons by parties to the conflict, such groups of civilians operated as organized militias under the command and control of parties to the conflict.

<sup>63</sup> ERN 103303 – 103309; ERN 102974 – 102977; ERN 102978 – 102981; ERN 102982 – 102985. Information also sourced from a confidential field mission report.

<sup>64</sup> ERN 103303 – 103309.

<sup>65</sup> ERN 103249 – 103254.

65. While the Revitalized Agreement on the Resolution of the Conflict in South Sudan focuses largely on conflict resolution at the national level, parallel efforts were made by local actors to quell violence at the subnational level (see annex II, paras. 13–36). The Commission notes with concern that, while parallel measures aimed at reducing violence at the local level continued to serve as a welcome development, such measures did not link up to the national level and the national Government did not meaningfully engage in them.

#### **Violations and alleged crimes: findings**

66. Although localized conflict is often characterized as traditional ethnic clashes over cattle or criminality involving private citizens, militias benefited from personnel and arms, including military grade weapons supplied by parties to the conflict. Violence against civilians perpetrated by members of both government forces and armed opposition groups violated article 3 of the Geneva Conventions and provisions of Additional Protocol II, as well as customary international law, and constituted war crimes, including murder, pillage, destruction of property and sexual violence.<sup>66</sup>

67. Gross human rights violations and abuses and serious violations of international humanitarian law have been committed in the context of localized conflict, often with the participation of armed militias affiliated with the SSPDF and SPLA-IO (RM). Direct violations against civilians included abductions, forced recruitment, including of children, murder, sexual violence, ill-treatment, abduction, looting and the destruction of property, crops and other means of livelihood, apparently to acquire wealth or cattle (see annex I, map 2). Many of these attacks revealed a shocking disregard for civilian life.

68. Incidents of violence further violated the right to life and property ownership as guaranteed in articles 4 and 14 of the African Charter on Human and Peoples' Rights. They also violated the Transitional Constitution, notably the right to life, freedom from inhuman and degrading treatment and the right to property ownership, in addition to the Penal Code of 2008 and sections 57 and 206 of the Sudan People's Liberation Army Act, which prohibit the destruction and plunder of property. The Commission has reasonable grounds to believe that these acts may amount to war crimes<sup>67</sup> and other serious crimes under international law,<sup>68</sup> which are criminalized under the draft statute of the hybrid court for South Sudan.

## **VIII. Starvation**

69. During the period under review, some 6.35 million individuals, accounting for 54 per cent of the population, were classified as "in crisis" or, even worse, "in acute food insecurity" (see also annex II, paras. 37–47).<sup>69</sup> The Greater Upper Nile region is currently the most food insecure, followed by the Bahr el Ghazal region.<sup>70</sup> In 2019, the Human Development Index, which measures basic dimensions of human development, ranked South Sudan as the third worst nation State – 186th out of 189 countries – in which to reside.<sup>71</sup>

70. The Commission notes with grave concern that, beyond climate-induced factors, both government forces and armed groups have pursued policies responsible for the starvation of the population in Wau and Unity States. Such policies were envisaged and implemented as part of a wider strategy to deprive enemy communities of resources and thus force their capitulation, allow soldiers and militias to reward themselves, forcibly displace communities from ancestral lands that could then be expropriated or simply to compel individuals to join different factions engaged in the conflict. The denial of humanitarian access and displacement brought about by unlawful tactics have significantly exacerbated famine in

<sup>66</sup> International Committee of the Red Cross, rule 156.

<sup>67</sup> Under article 4 (a), (b), (e) and (h) of the draft statute.

<sup>68</sup> Under article 5 (a)-(c) of the draft statute.

<sup>69</sup> [www.fao.org/in-action/kore/news-and-events/news-details/en/c/1208338](http://www.fao.org/in-action/kore/news-and-events/news-details/en/c/1208338).

<sup>70</sup> See [www.fao.org/south-sudan/news/detail-events/en/c/1207694](http://www.fao.org/south-sudan/news/detail-events/en/c/1207694).

<sup>71</sup> <http://hdr.undp.org/en/countries/profiles/SSD>.

different parts of the country, depriving hundreds of thousands of civilians of vital needs, including access to food.<sup>72</sup>

71. On the basis of the information collected, the Commission concludes that incontrovertible and sufficient evidence exists to hold to account individuals both in the Government and in the armed opposition under international and national laws who have pursued policies leading to starvation of the population, including under article 8 (2)(e)(ix) of the Rome Statute of the International Criminal Court, which now includes the intentional use of starvation of civilians as a method of warfare as a war crime in non-international armed conflict (see annex II, paras. 37–47).<sup>73</sup>

## IX. Sexual and gender-based violence

72. Sexual and gender-based violence, including conflict-related sexual violence, continued to be widespread and pervasive in South Sudan, characterized by a recognizable pattern of terror and subjugation. During the period under review, violations documented by the Commission included rape and gang rape, sexual mutilation, forced marriage, abduction and sexualized torture.<sup>74</sup> Children, including young girls, were also victims of sexual exploitation (annex II, paras. 1–12).<sup>75</sup>

73. Incidents of sexual and gender-based violence arising from localized conflict included rape and gang rape, forced nudity, abduction, sexualized torture and forced marriage.<sup>76</sup> Evidence collected by the Commission confirmed that cattle keepers and young men were the main perpetrators of sexual violence in the context of localized conflict, some of whom belonged to organized militias operating under the command and control of both government and opposition forces.<sup>77</sup> Local authorities have neither investigated nor prosecuted any cases reported (see annex II, paras. 1–12).

## X. Continued denial of fundamental rights and freedoms

74. Arbitrary arrests and detentions, and other restrictions on the freedoms of expression, opinion and assembly, continued to characterize life in South Sudan (annex II, paras. 71–86). The Commission was informed in a confidential meeting on 21 August 2019 that civic and political space was severely restricted in the form of censorship and self-censorship, which constrained activists, journalists, human rights defenders, political dissidents and ordinary citizens from expressing their views publicly or organizing themselves.

75. Moreover, civilians in Western Bahr el Ghazal, Unity and Central Equatoria witnessed persistent fighting, with upsurges in April, June and August 2019 marked by an increase in the scale and severity of violations, including abductions and enforced disappearances (see annex II, paras. 71–86). Witnesses indicated that disappearances were characterized by prior inter-ethnic conflict and the presence of armed groups in these regions.

## XI. Conclusions

**76. On the basis of its findings, the Commission has reasonable grounds to believe that members of the Government of South Sudan engaged in acts amounting to economic crimes, including tax evasion, money laundering, bribery, using one's position to influence decisions in the allocation of State resources, and using public**

<sup>72</sup> See conference room paper A/HRC/43/CRP.1, available on the webpage of the Commission at [www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx).

<sup>73</sup> Ibid.

<sup>74</sup> ERN 103469 – 103474; ERN 102632 - 102652.

<sup>75</sup> ERN 102991 – 102995.

<sup>76</sup> ERN 102664 – 102670; ERN 102660 – 102663; ERN 102627 – 102631; ERN 102680 – 102688; ERN 102609 – 102617; ERN 102632 – 102652.

<sup>77</sup> ERN 102680 – 102688; ERN 102632 – 102652; ERN 102653 – 102659

funds for personal gain and advantage. The illicit diversion of revenues deprived the State of critical resources to fund economic, social and cultural rights.

77. Gross human rights abuses and violations and serious violations of international humanitarian law were also committed in the context of the recruitment and the use of children and localized conflicts. Members of SPLA-IO (RM) Division 6A, and government forces including the National Security Service and SSPDF Tiger Division, Divisions 3, 4, 5 and 10 as well as Taban Deng-allied SSPDF, continued to recruit, train and use children aged as young as 12 years in Wau, Warrap, Unity and Central Equatoria States.

78. Localized conflicts at the subnational level, often with the participation of organized armed militias affiliated with the SSPDF or SPLA-IO (RM), were characterized by brutal attacks. Violations against civilians included abductions, forced recruitment, including of children, murder, sexual violence, ill-treatment, abduction, looting and the destruction of property, crops and other means of livelihood.

79. The Commission also found incontrovertible and sufficient evidence to hold to account, under international and national laws, individuals both in the Government and the armed opposition who have pursued policies leading to starvation of the population, including in Wau and Unity States (see also annex II, paras. 37–47).<sup>78</sup>

80. Incidents of sexual and gender-based violence, including conflict-related sexual violence, continued to be widespread and pervasive, including in the context of localized conflicts, and were characterized by a pattern of terror and subjugation. Violations documented by the Commission included rape and gang rape, sexual mutilation, forced marriage, abduction and sexualized torture. Children, including young girls, were also victims of sexual exploitation (see also annex II, paras. 1–12).

81. Arbitrary arrests and detentions, and other restrictions on the freedoms of expression, opinion and assembly, also continued to characterize daily life in South Sudan, in acts that violated the right to information and expression, and the freedoms of association and of assembly under the African Charter on Human and Peoples' Rights. In addition, through continued acts of enforced disappearance, South Sudan failed in its duty to investigate in good faith all allegations of human rights violations, in particular where the authorities alone had relevant information (see also annex II, paras. 71–86).

## **XII. Recommendations**

82. The Commission recommends that the Government of South Sudan:

(a) Ensure that senior officials make written declarations regarding their assets prior to taking up a government post, and then annually, in compliance with section 35 of the Southern Sudan Anti-Corruption Commission Act (2009), and introduce legislation making it a criminal offence to provide a wrong declaration;

(b) Work with other States to recover and repatriate proceeds from corrupt activities, including properties purchased in neighbouring and other countries and funds held in foreign accounts, and seek assistance to investigate and prosecute the individuals responsible;

(c) Realign spending priorities and commit resources towards fulfilling citizens' needs, including ensuring freedom from hunger and other economic, social and cultural rights, and improved standards of living;

(d) Strengthen the independence and capacity of the judiciary and national justice institutions, including those outside Juba;

<sup>78</sup> See also conference room paper containing the additional findings of the Commission (A/HRC/43/CRP.1), available on the webpage of the Commission at [www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx).

- (e) Comply urgently with all obligations under international human rights law and international humanitarian law, including by refraining from all attacks directed at civilians;
- (f) Deposit with the Secretary-General, without delay, instruments of accession to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and the first Protocols thereto, which have been ratified by the Transitional National Legislature;
- (g) Sign, accede to or ratify without delay international and regional human rights instruments to strengthen the promotion and protection of fundamental rights and freedoms of the people; and most notably, that South Sudan become a party to the International Convention for the Protection of All Persons from Enforced Disappearance, thereby complementing domestic legislation;
- (h) Become a party to the Rome Statute of the International Criminal Court and the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, or accept the jurisdiction of the International Criminal Court, to ensure accountability for human rights violations and serious crimes ongoing in the country;
- (i) Take the steps necessary to address and break cycles of localized conflict, including by implementing the resolutions adopted at relevant peace conferences, such as the Kwacjoc conference, held in August 2018, the Mankien conference, held in June 2019, and the tri-state conference, held in July 2019;
- (j) Establish special courts and conduct impartial investigations to hold perpetrators to account, and provide compensation to victims and their families;
- (k) Promote effective disarmament, demobilization and reintegration (DDR) programmes;
- (l) Strengthen measures to promote disarmament, demobilization and reintegration, including by drafting legislation and regulations concerning the responsibility of security forces on keeping and storing arms;
- (m) Increase investment in programmes relating to disarmament, demobilization and reintegration in relation to children, including psychosocial support, education, vocational training and youth employment;
- (n) Ensure that gender-based violence against women is effectively addressed and not referred to alternative dispute resolution procedures, such as mediation and conciliation;
- (o) Immediately appoint a special representative on sexual and gender-based violence, as recommended by the Human Rights Council in its resolution S-26/1;
- (p) Fully implement the action plan on the prevention of sexual violence in conflict, in fulfilment of the commitments made in the Joint Communiqué of the Government of South Sudan and the Special Representative of the Secretary General on Sexual Violence in Conflict;
- (q) Ensure that the national justice system harmonizes the plural legal systems to strengthen and protect survivors of gender-based violence, ensuring access to justice, and reparations, including effective remedy, in accordance with the guidance provided by the Committee on the Elimination of Discrimination against Women in its general recommendation No. 33 (2015) on women's access to justice;
- (r) Ensure that conflict-related sexual violence is properly investigated, and that those responsible are prosecuted;
- (s) Ensure that all communities have rapid, unhindered and sustained access to humanitarian aid, prioritizing the acute needs of civilians in the Greater Upper Nile and Bahr el Ghazal regions, and take measures to hold accountable State and non-State actors who obstructed or unlawfully diverted humanitarian assistance;

(t) Cease all interference in media and civil society activities, and ensure freedom of expression and assembly;

(u) Expedite the establishment of chapter V mechanisms without further delay to achieve the holistic implementation of transitional justice;

(v) Ensure that all serious violations and abuses are properly investigated, that those responsible are prosecuted, and that victims are provided with effective remedies;

(w) Establish without further delay a commission for truth, reconciliation and healing, ensuring effective and transparent consultations with South Sudanese stakeholders and that the process of selection of commissioners is transparent and credible;

(x) Ensure that all South Sudanese, including women, young people, the elderly, children, displaced persons and refugees, are consulted and included and participate effectively in the design and implementation of the chapter V mechanisms;

(y) Facilitate civil society engagement in raising awareness of transitional justice mechanisms and promote advocacy for justice and accountability mechanisms to enhance citizen's knowledge and improve their participation in transitional justice processes;

(z) Adopt and promote a broad approach to reparations, including by ensuring that at least 1 per cent of oil revenues are allocated to reparations, alongside other non-monetary measures;

(aa) Provide victims and their families with adequate, prompt and effective reparation and remedies, including the truth about the violations that have been suffered and the fate or whereabouts of loved ones who disappeared while in the custody of the State;

(bb) Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights and make a declaration allowing for individual petition before the African Court on Human and Peoples' Rights;

(cc) Through national, regional and international mechanisms, take measures and support the investigation and prosecution of all those most responsible for alleged war crimes and crimes against humanity and other human rights violations in South Sudan.

83. The Commission recommends that Member States:

(a) Monitor and implement the arms embargo linked to the ongoing national conflict, including in Central Equatoria and Maiwut, and curb the supply of weapons to warring parties;

(b) Exercise their jurisdiction to hold perpetrators of violations and abuses of human rights and violations of international humanitarian law to account;

(c) Incorporate the starvation of civilians as a war crime in their respective national legislation where they have not already done so.

84. The Commission recommends that the African Union:

(a) Encourage South Sudanese parties to resolve outstanding differences in order to settle the conflict and ensure the timely formation of the Revitalized Transitional Government of National Unity;

(b) Engage with the Government of South Sudan and support it in taking the steps necessary to establish the hybrid court and other transitional justice mechanisms and processes, and establish a timeline for the process;

(c) Make contingency preparations for unilaterally establishing a hybrid court, in line with the decisions made by the Peace and Security Council, in the event that the Government of South Sudan fails to meet the deadline to establish the Court;

(d) **Institute processes for collecting and preserving evidence in preparation for the formation of the hybrid court.**

**85. The Commission recommends that the United Nations and international partners:**

(a) **Encourage the parties to resolve their outstanding differences in order to settle the conflict, and ensure the timely formation of the Revitalized Transitional Government of National Unity;**

(b) **Engage and support stakeholders at both the national and subnational levels to build the legal and policy frameworks necessary to support transitional justice institutions, particularly the hybrid court.**

**86. The Commission recommends that the Ceasefire Transitional Security Arrangements Monitoring and Verification Mechanism continue to include information in its public reporting about concerns with regard to the protection of civilians, including the recruitment and the use of children and sexual and gender-based violence.**

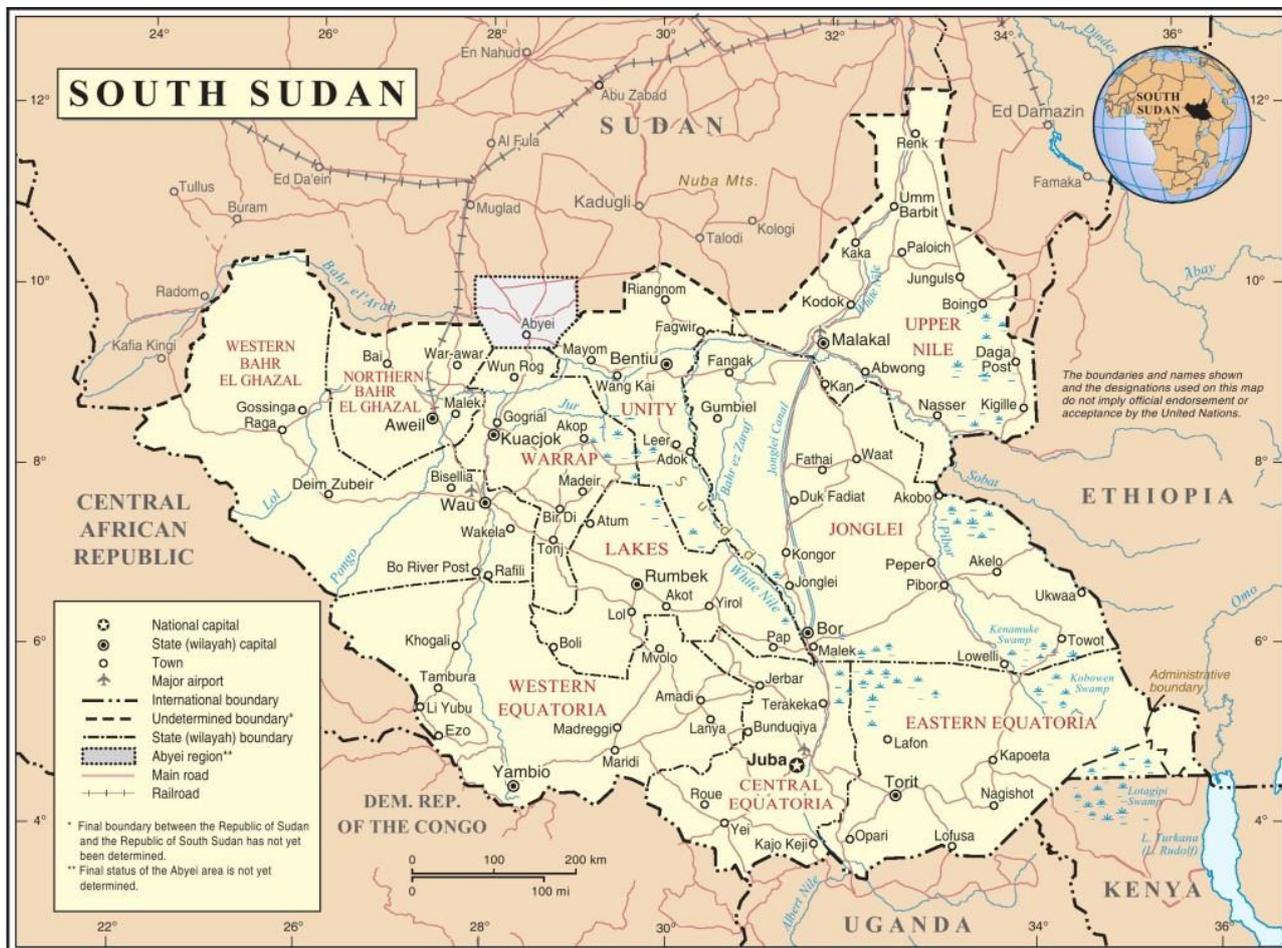
**87. The Commission recommends that UNMISS and non-governmental organizations:**

(a) **Bolster investigations into national staff members killed in connection with their employment, and provide their families with support, including psychosocial support and compensation;**

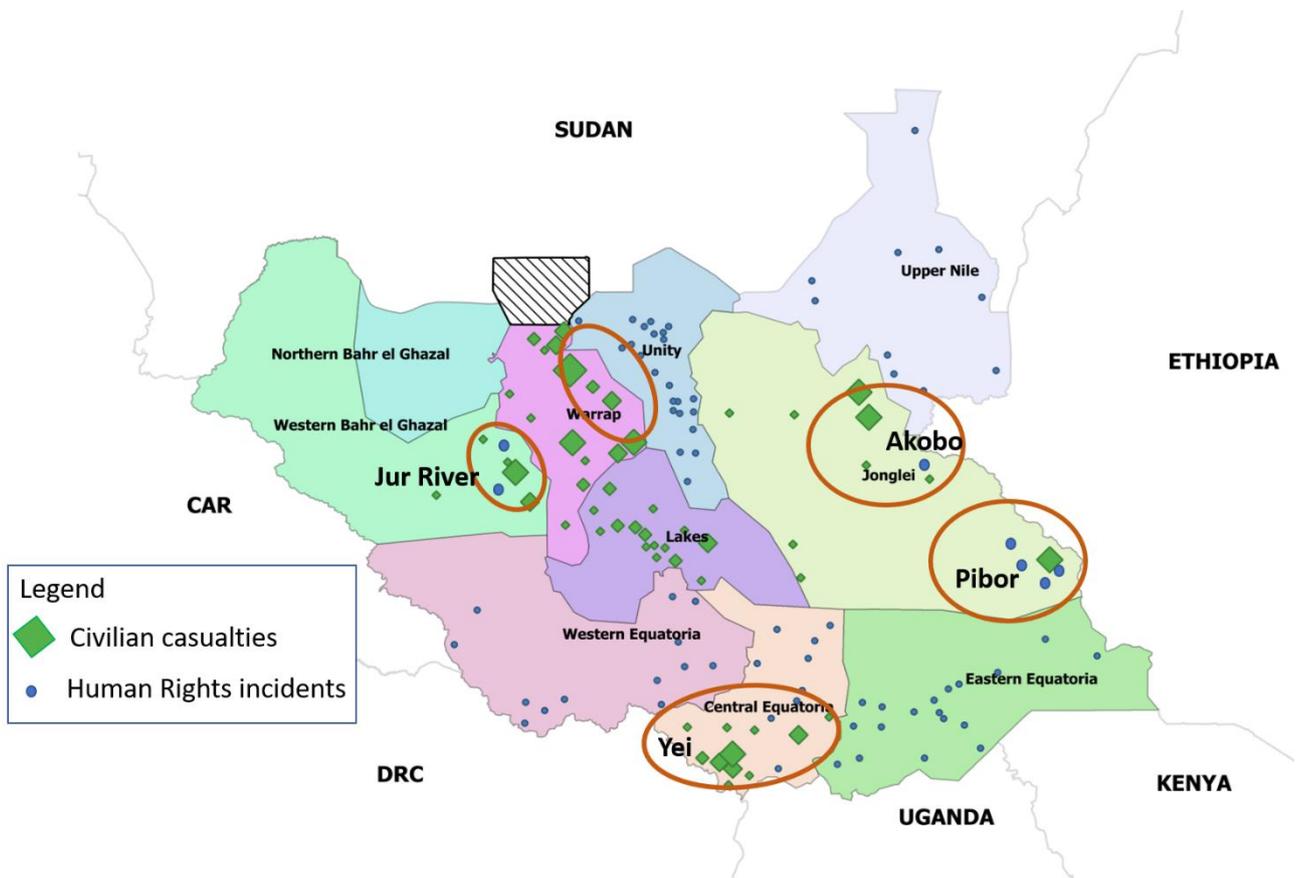
(b) **Continue to support the implementation of transitional justice mechanisms under chapter V of the Revitalized Agreement on the Resolution of the Conflict in South Sudan, in accordance with best practices and standards.**

# Annex I

## 1. Map of South Sudan

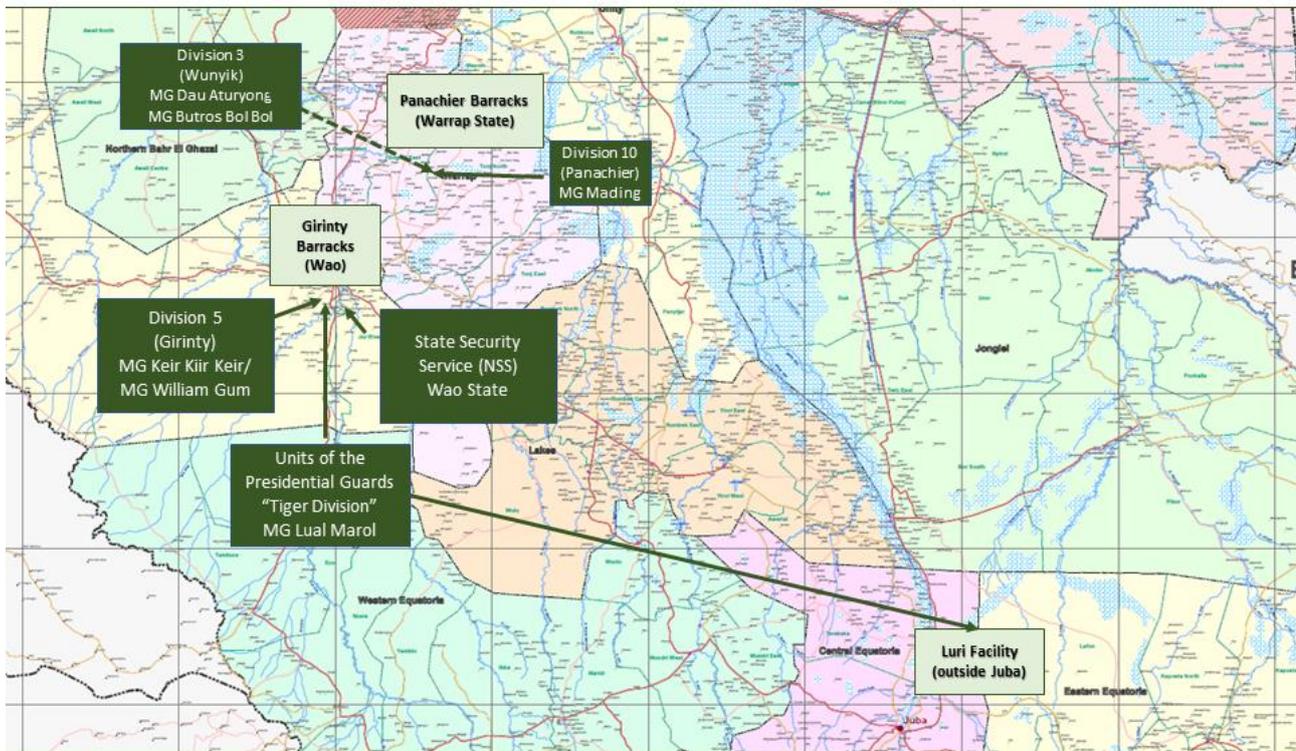


2. Localized conflict locations



### 3. Military bases/barracks (child recruitment and use)

#### Facilities for new recruits (2018-2019)



#### 4. Protection of civilian displacement sites



12 November 2019

#### UNMISS “Protection of Civilians” (PoC) Sites

As of 7 Nov. 2019, a total number of civilians seeking safety in six Protection of Civilians (PoC) sites located on UNMISS bases is **190,455** including 117,767 in Bentiu, 26,359 in Malakal, 29,702 in Juba UN House, 1,931 in Bor, and 14,696 in the area adjacent to UNMISS in Wau “.

Region	Location	Number of Civilians Seeking Protection
Central Equatoria	UN House PoC I & III	29,702
Unity	Bentiu	117,767
Upper Nile	Malakal	26,359
Jonglei	Bor	1,931
Area Adjacent to UNMISS in Wau	AA	14,696
<b>TOTAL</b>		<b>190,455</b>

**Source:** The figures reported are based on Biometric Registration conducted by IOM in Bor (May 2019), UN House (February 2019), Wau Adjacent Area (August 2019), and the headcounts conducted in Bentiu (July 2019) and DRC headcount for Malakal (June 2019).

## Annex II

### Additional findings

#### I. Recruitment and use of children – emblematic incidents<sup>79</sup>

1. Accounts received by the Commission from former child soldiers paint a picture of violent recruitment campaigns, harsh military training,<sup>80</sup> inhuman living conditions,<sup>81</sup> frequent abuse and ill-treatment and the denial of education,<sup>82</sup> adequate medical care<sup>83</sup> and communication with parents or relatives. In so doing, government forces violated both the Child Act of South Sudan and the SPLA Act which prohibit the recruitment of children in military forces and require all actors to consider the best interest of the child.

##### A. Warrap State

###### *Gogrial*

2. The Commission spoke with a boy from Gogrial who recalled how, one day in December 2018, a green and brown “technical” pick-up truck arrived at his home.<sup>84</sup> Immediately upon arrival, SSPDF Tiger Division soldiers yelled at, handcuffed, and threw the boy into the back of their truck where four other boys aged 16 to 17 years were also confined.<sup>85</sup> Unaware of why he was being accosted or that he was being forcibly recruited, the boy recalled being “afraid they would kill us”.<sup>86</sup>

3. SSPDF Tiger Division soldiers drove the boys to the Division 5 Girinty Military Barracks in neighbouring Wau (Western Bahr el Ghazal). At around 10.00 a.m. the following morning, boys and men were transferred to the National Security Service (NSS) training facility in Luri closer to Juba in *wara* trucks.<sup>87</sup> There, the boy was able to identify by name a Tiger Division soldier wearing a khaki, black, and green camouflage print uniform who began training the recruits—teaching him military drills including how to crawl, as well as other conditioning methods. He was further taught how to do push-ups and kneel as “punishment”.<sup>88</sup>

4. Overall, the boy estimated 500 trainees at the Luri facility,<sup>89</sup> comprising men and boys. Explaining daily life in Luri, he recalled how some adult conscripts would cook, while boys washed dishes, and how he was denied adequate food and fed merely beans twice a day.<sup>90</sup> Recruits slept in “blue houses” situated near the training grounds, and their freedom of movement was confined to the training facility.<sup>91</sup>

5. Children at the Luri training facility were further tortured by drunk soldiers, and “punished” when food was not prepared. On one occasion, the boy recalled being lashed with a whip fashioned of leather.<sup>92</sup> Other forms of torture included Tiger Division soldiers forcing children to lie on the ground while their necks were stepped on.<sup>93</sup> Tiger Division soldiers

<sup>79</sup> Certain details concealed subject to the principle of “do no harm”.

<sup>80</sup> Child Act 2008, at Art. 31.

<sup>81</sup> *Ibid.* at Art. 6.

<sup>82</sup> *Ibid.* at Art. 14.

<sup>83</sup> *Ibid.* at Art. 15.

<sup>84</sup> ERN 103205 - 103209, paras. 4-5.

<sup>85</sup> ERN 103205 - 103209, paras. 3-4.

<sup>86</sup> ERN 103205 - 103209, para. 3.

<sup>87</sup> ERN 103205 - 103209, para. 7.

<sup>88</sup> ERN 103205 - 103209, para. 7.

<sup>89</sup> ERN 103205 - 103209, para. 8.

<sup>90</sup> ERN 103205 - 103209, para. 9.

<sup>91</sup> ERN 103205 - 103209, para. 10.

<sup>92</sup> ERN 103205 - 103209, para. 12.

<sup>93</sup> ERN 103205 - 103209, para. 13.

further denied medical care to recruits in Luri, which led in at least one case to the preventable death the boy witnessed.<sup>94</sup> The boy was able to escape from the Luri facility earlier this year.<sup>95</sup>

6. The Commission further received credible information that County Commissioners in Gogrial, Tonj, and Twic executed Government orders to recruit children, including through the use of recruitment centres in Gogrial.<sup>96</sup> County Commissioners in at least three locales were said to have pressured local chiefs and cattle camp leaders to ask families within their communities to volunteer for conscription.<sup>97</sup> In February 2019, the Executive Chief of Aguek (central Gogrial County), for example, requested that local families relinquish at least one fighting age male to join the SSPDF.<sup>98</sup> When a 17-year-old boy was urged by his family to represent them in the recruitment drive, he began hiding.<sup>99</sup> Days later, he was surrounded in public by three soldiers armed with Kalashnikovs and donning matching khaki and green camouflage SSPDF uniforms bearing the national flag on their sleeves.<sup>100</sup> To force his submission, two soldiers beat him with black batons, while the third pushed him.<sup>101</sup>

7. The boy was taken by the soldiers to an SSPDF Division 3 training centre in Aguek and described a Captain who bore three stars on his uniform as being in charge of the centre.<sup>102</sup> Every day at 6.00 a.m. while at the centre, he and other recruits were awoken by SSPDF soldiers to go running. Though he recalled crying as he was marching, an assembly master watched over to ensure his subjugation. Recruits were insufficiently fed, receiving only beans and *porso* twice a day, and further forced into labour/made to collect firewood.<sup>103</sup>

8. Soldiers training the youth in Aguek had informed the boy that he would later be taken to a main military training centre in Panachier, and that there he would be made to run, collect firewood, cook, and undergo further military training.<sup>104</sup> The Commission was able to confirm that the main SSPDF Division 3 training centre in Gogrial County is based in Panachier,<sup>105</sup> and that SSPDF Division 10 forces also moved to Panachier in April 2019.<sup>106</sup> In Aguek, SSPDF Division 3 soldiers told recruits that, once they completed training in Panachier, they would be deployed due to insecurity in Gogrial (Warrap), Malakal, Abyei, and “other areas where there are land disputes”.<sup>107</sup> After five days, the boy attempted a risky albeit successful escape.<sup>108</sup>

## B. Western Bahr el Ghazal State

9. As in Warrap State, the Commission received credible information that, beginning in November 2018, SSPDF Division 5 members began recruiting boys in Wau (Western Bahr el Ghazal), including homeless boys from neighbouring Gogrial who had escaped to Wau to evade recruitment. In April 2019, boys in Wau were taken to the SSPDF Division 5 Girinty Barracks.<sup>109</sup> One witness recalled that, on 11 April 2019, SSPDF Division 5 Military Intelligence Officers rounded up homeless boys in Wau and placed them onto a truck, as they had been “ordered to take the children to Nyakuael” (Tonj).<sup>110</sup>

<sup>94</sup> ERN 103205 - 103209, para. 14.

<sup>95</sup> ERN 103205 - 103209, para. 18.

<sup>96</sup> ERN 102536 - 102540, para. 5. Recruitment centres were located in Kuac West, Kuac East, Kuac North, and Kuac South.

<sup>97</sup> ERN 102536 - 102540, para. 6.

<sup>98</sup> ERN 102530 - 102535, para. 5.

<sup>99</sup> ERN 102530 - 102535, paras. 5-6.

<sup>100</sup> ERN 102530 - 102535, para. 6.

<sup>101</sup> ERN 102530 - 102535, para. 7.

<sup>102</sup> ERN 102530 - 102535, para. 8.

<sup>103</sup> ERN 102530 - 102535, para. 10.

<sup>104</sup> ERN 102530 - 102535, para. 14.

<sup>105</sup> See, e.g., ERN 102530 - 102535, para. 14, ERN 102536 - 102540, para. 12; Confidential Meeting, 19 October 2019.

<sup>106</sup> Confidential Meeting, 19 October 2019.

<sup>107</sup> ERN 102530 - 102535, para. 14.

<sup>108</sup> ERN 102530 - 102535, para. 15.

<sup>109</sup> ERN 102803 - 102810, para. 18; ERN 102797 - 102802, para. 16.

<sup>110</sup> ERN 102797 - 102802, para. 16.

## C. Unity State

10. In furtherance of a pattern previously documented by the Commission, credible information was received that boys remain within the ranks of the Taban Deng-allied SSPDF in Unity State.<sup>111</sup> The Commission further received information that a 17-year-old boy, recruited by the SPLA-IO (RM) when he was 13, was seen in September 2019 together with SPLA-IO (RM) soldiers at the market in Adok, Leer County.<sup>112</sup> The Taban Deng-allied SSPDF is listed in the annex of the latest Secretary-General report on children and armed conflict as persistent perpetrators of grave violations against children, including recruitment and use.<sup>113</sup>

11. In April 2019, approximately 500 South Sudanese civilians, most of them women and children alongside approximately 50 men, travelled from Khartoum (Sudan) to Rubkona town,<sup>114</sup> following an offer by National Patriotic Alliance Forces (NPAF)<sup>115</sup> of free transportation believed to have been paid by the First Vice President Taban Deng.<sup>116</sup> Upon arriving in Rubkona town, they were transported to the joint barracks of the then SPLA-IO (TD) and the NPAF<sup>117</sup> in Tong, Rubkona County.<sup>118</sup> In Tong, young men were separated from their families for recruitment by NPAF.<sup>119</sup> Approximately 17 men who refused to be recruited were detained,<sup>120</sup> among them between three and four minors.<sup>121</sup> By July-August 2019, most detainees had either escaped or were released.<sup>122</sup>

12. At the end of November 2019, the National Patriotic Alliance Forces forcefully recruited a 14-year-old boy outside of the Bentiu POC site,<sup>123</sup> who was able to escape some five weeks later.<sup>124</sup>

Facilities for new recruits between 2018 and 2019 are mapped in annex I, map 4.

## II. Localized conflict(s) – emblematic incidents

13. While the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) addressed the conflict at a national level, less attention has been focused on addressing localized conflict(s). Legacies of conflict and inter-communal violence which have played out between and within ethnic groups<sup>125</sup> have long roots, but these conflicts have been exacerbated by new actors, new competitions over resources and the mismanagement and abuse of transhumance. A failure to properly understand the

<sup>111</sup> In September and October 2018. See, e.g., ERN 101626 - 101631, para. 13; ERN 101638 - 101642, para. 10; Confidential Meeting, 21 September 2018.

<sup>112</sup> ERN 103279 - 103284, paras. 3-4.

<sup>113</sup> Report of the Secretary-General on children and armed conflict, UN Security Council, A/73/907-S/2019/509, 20 June 2019, at Annex I, p. 40.

<sup>114</sup> ERN 103101 - 103104, para. 6, ERN 103097 - 103100, para 8, ERN 103064 - 103068, paras. 4 and 9.

<sup>115</sup> The NPAF are based in Tong (Unity) in the same barracks as SSPDF (former SPLA-IO (TD)). They are aligned to SSPDF though not yet integrated.

<sup>116</sup> ERN 103101 - 103104, para. 8, ERN 103097 - 103100, para. 8.

<sup>117</sup> Following the dismissal of General Robert Ruai Kuol Jal from the position as SPLA-IO Military Governor for Liech (Unity) State by SPLM/ SPLA-IO Chairman Rick Machar end of 2017, the General founded the NPAF (ERN 103101 - 103104, para. 5; and ERN 103097 - 103100, para. 7). His forces settled in Tong in November 2018 and aligned with the then SPLA-IO (TD) Forces (ERN 103101 - 103104 para. 5; ERN 103097 - 103100 para. 7; Investigator's Report).

<sup>118</sup> ERN 103101 - 103104, para. 9; ERN 103097 - 103100, paras. 8 and 10; ERN 103064 - 103068.

<sup>119</sup> ERN 103064 - 103068, paras. 7 and 9.

<sup>120</sup> ERN 103101 - 103104, para. 10; ERN 103064 - 103068, para. 9.

<sup>121</sup> ERN 103101 - 103104, para. 10; ERN 103064 - 103068, para. 9.

<sup>122</sup> ERN 103097 - 103100, para. 10; ERN 103064 - 103068, para 13.

<sup>123</sup> ERN 103310 - 103310, para. 22.

<sup>124</sup> ERN 103310 - 103310, para. 25.

<sup>125</sup> Acknowledging that some of the deadliest attacks perpetrated this year were among Dinka sub-clans.

drivers of local conflicts will result in flawed solutions and continue to grow into one of the greatest challenges to long-term peace, stability and human security in South Sudan.<sup>126</sup>

## A. Jur River (Western Bahr el Ghazal)

14. Members of the Luo community from Western Bahr el Ghazal and cattle keepers from the Dinka community in Warrap told the Commission they had lived in peace for decades, even residing within the same communities and intermarrying. Over time, however, the relationship between the two groups fractured, escalating into violent clashes. In 2016, the Marial Bai Agreement was introduced to govern cattle migration and initially seemed to quell hostilities. However, interlocutors told the Commission that tension between these ethnic groups began to resurface after the introduction of administrative boundaries in January 2017 which engineered state borders with the intention of accumulating resources to benefit the Dinka community, furthering the ethnic divide.<sup>127</sup>

15. As early as November 2018, cattle keepers from the Dinka community in Tonj (Warrap) began migrating through the neighboring Jur River area of Wau (Western Bahr el Ghazal) in violation of the Marial Bai Agreement which specifies that migration is to commence each January, the start of the dry season.<sup>128</sup> Other key provisions of the agreement were also violated in that the cattle camp leaders failed to seek the written consent of local chiefs in Wau (Western Bahr el Ghazal) prior to their migration from Tonj (Warrap);<sup>129</sup> cattle keepers were not supposed to travel with arms, but were to use sticks and spears to guide their cattle; and the cattle keepers did not compensate farmers for damaged crops.<sup>130</sup> Further compounding the dispute was that the previous Marial Bai Agreement failed to take account of the on-going conflict in that SPLA-IO (RM) forces were stationed along the migration route.<sup>131</sup> Interlocutors also indicated that a greater number of cattle keepers participated in this year's migration, increasing the level of damage to the Luo community's crops leading up to the harvest.<sup>132</sup>

16. Accounts differ as to how the violence began, with both communities blaming the other. However, after 6 March 2019, the attacks intensified when cattle keepers from the Dinka community in Tonj (Warrap) returned to Jur River in search of pastoral land but allegedly raped a girl while she was fetching water.<sup>133</sup> The pastoralists retaliated, reportedly killing a cattle keeper in Akou in Tonj (Warrap).<sup>134</sup> Cattle keepers described as wearing blue *jalabiya* (tunics) proceeded to launch a brutal attack in Kuajena on 17 March 2019, killing nine people and wounding six others (five children and one woman), including a mother whose baby was only a few days old when she was killed.<sup>135</sup> As one witness told the

<sup>126</sup> Wild, Hannah & Jok, Jok & Patel, Ronak. (2018). The militarization of cattle raiding in South Sudan: how a traditional practice became a tool for political violence. *Journal of International Humanitarian Action*; See also Saferworld (2017). *Informal armies: community defence groups in South Sudan's civil war*; Idris, Iffat. (2018). *Livestock and Conflict in South Sudan*. K4D Helpdesk Report484. Brighton, UK: Institute of Development Studies.

<sup>127</sup> A/HRC/40/CRP.1; ERN 102707 - 102717, para. 9; ERN 102632 - 102652, para. 7-10. See also Wau Displacement Sites: Influx from Jur River March-June 2019, IOM Displacement Tracking Matrix, available at [https://displacement.iom.int/system/tdf/reports/20190816%20IOM%20DTM%20Jur%20River%20displacement%20to%20Wau%20thematic%20report\\_1.pdf?file=1&type=node&id=6443](https://displacement.iom.int/system/tdf/reports/20190816%20IOM%20DTM%20Jur%20River%20displacement%20to%20Wau%20thematic%20report_1.pdf?file=1&type=node&id=6443).

<sup>128</sup> ERN 102675 - 102679, para.6; Confidential Meeting, 22 September 2019.

<sup>129</sup> ERN 103249 - 103254.

<sup>130</sup> ERN 103249 - 103254; ERN 102632 - 102652, para. 7-11; Confidential Meeting, 22 September 2019.

<sup>131</sup> ERN 102632 - 102652, paras. 7-11; Confidential Meeting, 22 September 2019.

<sup>132</sup> Confidential Meeting, 22 September 2019.

<sup>133</sup> ERN 102632 -102652, para. 14; Confidential meeting, 9 July 2019.

<sup>134</sup> Ibid.

<sup>135</sup> ERN 103249 - 103254; ERN 102632 - 102652, paras. 15-21; ERN 102707 - 102717, para. 12; ERN 102671 - 102674, para. 5; ERN 102680 - 102688, paras. 7-10; ERN 103364 - 103370.

Commission, “After that, I constantly lived in fear in [location concealed] so I came to Wau . . .”<sup>136</sup>

17. Thereafter, recurrent retaliatory attacks marked by killings, rape, abduction and the looting and destruction of property ensued across Kuajena, Rocrocdong, Udici and Alur in Wau (Western Bahr el Ghazal). As one witness told the Commission, “The cattle keepers started organizing themselves in groups . . . and every two to three days, we would hear about another incident.”<sup>137</sup> On 1 April 2019, for instance, a deadly attack launched by cattle keepers on a primary school sheltering internally displaced persons (IDPs) from the Luo community in Kuajena resulted in the death of at least 11 civilians.<sup>138</sup> Eyewitnesses indicated that State security forces who had been deployed to protect the IDPs failed to intervene during the attack.<sup>139</sup> NSS officers subsequently dispatched to guard civilians sheltering in the school allegedly tortured them and compelled them to do forced labour.<sup>140</sup> UNMISS and CTSAMVM patrols sent to monitor the situation were repeatedly denied access to the school.<sup>141</sup> Eventually, the NSS soldiers were withdrawn from the school in August 2019. At the time, the Commission was informed that the NSS would not be investigating the officers’ alleged misconduct.<sup>142</sup>

18. On 18 May 2019, cattle keepers from the Dinka community wearing blue *jalabiya* launched another attack on a Luo community in Rocrocdong (Western Bahr el Ghazal) which killed at least two individuals, including an elderly village chief.<sup>143</sup> During the incident, the cattle keepers reportedly separated the men from the women and shouted ethnic slurs.<sup>144</sup> They proceeded to shoot the village chief in the back of his head with a Kalashnikov rifle before burning the village *tukuls* and ordering the villagers to leave the land. As they fled the scene, the cattle keepers also set the village chief’s body on fire and looted food items, goats and cattle.<sup>145</sup> During another similar attack in Rocrocdong, one 17-year-old girl told the Commission, “The attackers did not do anything to me. However, I saw them taking girls. I do not know how many they took [or what] happened to these girls after they took them. I was busy running away with my children.”<sup>146</sup>

19. The same month, the International Organization for Migration reported that more than 12,346 persons were displaced from the Jur River area, with 99 per cent of new arrivals citing conflict as the reason for their entry into UN Protection of Civilians site and other IDP collective sites.<sup>147</sup> Thirteen per cent of these IDPs reported having housing or property destroyed.<sup>148</sup> Meanwhile, half of all new arrivals reported having been displaced twice since 2013, while approximately 35 per cent indicated it was their first experience of displacement.<sup>149</sup>

20. When cattle keepers from the Dinka community launched another attack in Rocrocdong on 18 June 2019, one teenage girl who escaped abduction described her attackers as, “. . . mainly young boys wearing blue *jalabiya* . . . they were speaking the

<sup>136</sup> ERN 102707 - 102717, para. 15.

<sup>137</sup> ERN 103249 - 103254.

<sup>138</sup> ERN 102546 - 102552, para. 9; ERN 102664 - 102670, para. 12-13; ERN 102632 - 102652, para. 23.

<sup>139</sup> ERN 102797 - 102802; ERN 102632 - 102652, paras. 24-25.

<sup>140</sup> ERN 102872 - 102876, para. 12; ERN 102632 - 102652, paras. 21-31; and ERN 103269 - 103273. The Commission received information that female IDPs at the site were sexually assaulted but further investigations are needed. ERN 102699 - 102706, para. 19; ERN 102632 - 102652, paras. 25-31.

<sup>141</sup> Confidential documents on file with the Commission

<sup>142</sup> Confidential meeting, 1 August 2019.

<sup>143</sup> ERN 102689 - 102698; ERN 102594 - 102600, paras. 9-13; ERN 103142 - 103145; ERN 102675 - 102679, para.11; ERN 102609 - 102617, para. 5.

<sup>144</sup> ERN 102689 - 102690, paras. 10-11.

<sup>145</sup> ERN 102689 - 102690, para. 4; ERN 102594 - 102600, paras. 9-13.

<sup>146</sup> ERN 103137 - 103141.

<sup>147</sup> Wau Displacement Sites: Influx from Jur River March-June 2019, IOM Displacement Tracking Matrix, 16 July 2019, available at [https://displacement.iom.int/system/tdf/reports/20190816%20IOM%20DTM%20Jur%20River%20displacement%20to%20Wau%20thematic%20report\\_1.pdf?file=1&type=node&id=6443](https://displacement.iom.int/system/tdf/reports/20190816%20IOM%20DTM%20Jur%20River%20displacement%20to%20Wau%20thematic%20report_1.pdf?file=1&type=node&id=6443).

<sup>148</sup> Ibid.

<sup>149</sup> Ibid.

Dinka language and saying they didn't want the Luo there . . ."<sup>150</sup> The witness further recounted how the cattle keepers arrived in the village brandishing AK-47s and PKMs which they used to kill at least 11 people near a school before looting all of the food in the village.<sup>151</sup> Other witnesses indicated that SSPDF Division 5 soldiers who were present failed to intervene during the attack, but came to collect the dead bodies afterwards.<sup>152</sup>

21. In several such incidents documented by the Commission, eyewitnesses had previously interacted with the cattle keepers and were able to identify by name the cattle camps and individuals who carried out the attacks on their villages.<sup>153</sup> Additionally, several interlocutors indicated the cattle being migrated belonged to high-ranking Government officials<sup>154</sup> who had engaged the cattle keepers to guard their cattle and provided them with ammunition and small-arms, as well as heavy weapons such as PKMs and RPGs.<sup>155</sup> Soldiers from SSPDF Division 5 reportedly played a key role in arming the cattle keepers from Tonj as they were from the same Dinka ethnic group.<sup>156</sup> The Commission also received information about County Commissioners and a high-ranking government official allegedly opening the stores from previous disarmament initiatives to provide cattle keepers weapons.<sup>157</sup>

22. Local communities informed Commission investigators that by August 2019, youth self-defence groups had emerged to protect themselves and their communities against such attacks.<sup>158</sup> Youth were able to purchase their weapons from SSPDF soldiers who needed the income because they had not been paid their salaries.<sup>159</sup> One youth leader told the Commission he had purchased his AK-47 from an SSPDF soldier for 60,000 SSP.<sup>160</sup>

23. As the SPLA-IO (RM) Division 6a forces were accused of being involved in counterattacks against the cattle keepers and other members of the Dinka community,<sup>161</sup> the Commission observed that Government security forces began to target Luo youth, often accusing them of being rebels which in turn led some of these youth to seek protection by joining the armed opposition group.<sup>162</sup> In other instances, Luo commanders affiliated with SPLA-IO (RM) sought to avenge attacks which involved their community by recruiting, at times forcefully, from among the youth, in violation of the cessation of hostilities agreement.<sup>163</sup>

24. Between 3 and 6 July 2019, a Tri-State Peace Conference was held between Gogrial (Warrap), Wau (Western Bahr el Ghazal) and Tonj (Warrap) where members signed a deal resolving to cease hostilities and conduct comprehensive disarmament.

25. With respect to the administration of justice, witnesses and victims appeared most concerned that the compensation mechanisms in the Marial Bai Agreement and the Tri-

<sup>150</sup> ERN 102627 - 102631; and ERN 102609 - 102617, paras. 12-15.

<sup>151</sup> ERN 102627 - 102631, paras. 5-6; ERN 102632 - 102652.

<sup>152</sup> ERN 103249 - 103254; ERN 102627 - 102631, para. 9; ERN 102609 - 102617, paras. 12-15; and ERN D120820 - 120826.

<sup>153</sup> ERN 102689 - 102690, paras. 9-20; ERN 102594 - 102600, paras. 10-13; ERN 102699 - 102706, para. 13; ERN 102627 - 102631, para. 5; ERN 102664 - 102670, paras. 9-14; ERN 102618 - 102626, para. 10; ERN 102707 - 102717, paras. 9-10.

<sup>154</sup> ERN 103358 - 103367, para. 7; ERN 102872 - 102876, para. 13; Confidential meeting, 6 July 2019.

<sup>155</sup> ERN 103249 - 103254; ERN 102872 - 102876.

<sup>156</sup> ERN 103249 - 103254; ERN 102797 - 102802, paras. 8-11; ERN 102872 - 102876, paras. 14-15; ERN 102632 - 102652, para. 22; and Confidential meeting, 6 July 2019.

<sup>157</sup> ERN 102850 - 102857, paras. 11-12; ERN 102797 - 102802, paras. 8-9; ERN 102803 - 102810, paras. 13-14.

<sup>158</sup> Investigator's Report; Confidential meeting, 9 July 2019.

<sup>159</sup> ERN 102850 - 102857, para. 11-12.

<sup>160</sup> ERN D120820 - 120826.

<sup>161</sup> See, e.g., ERN 102546 - 102552; ERN 102580 - 102596, para. 7-13; ERN 102587 - 102593; ERN 102563 - 102568.

<sup>162</sup> ERN 102872 - 102876, para. 17; ERN 102632 - 102652, paras. 25-31; Confidential meeting, 9 July 2019.

<sup>163</sup> ERN 102632 - 102652, para. 32; ERN 102618 - 102626, para. 15-17.

State Peace Conference Resolutions had not been honoured.<sup>164</sup> The Commission observed that Luo suspects in these incidents tended to be the ones pursued and arrested.<sup>165</sup> While there was a cross-border Special Court established in Wau, local communities still expressed a preference for informal compensation and reconciliation mechanisms, rather than criminal justice.<sup>166</sup>

## B. Mayom (Unity) and Twic (Warrap)

26. The Commission received credible information that between December 2018 and May 2019 the border area between Unity and Warrap states was marked by a high number of attacks and counter-attacks between Bul Nuer from Mayom (Unity) on one side, and Dinka from Tonj and Twic (Warrap) on the other.<sup>167</sup> The attacks resulted in hundreds of civilian casualties and thousands of cattle looted by both sides.<sup>168</sup>

27. One of the deadliest attacks was launched by Dinka from Luoch and Low (Warrap) on a cattle camp in Load (Mayom County) in mid-January 2019,<sup>169</sup> which killed and injured hundreds of civilians<sup>170</sup> including dozens of women, children and infants.<sup>171</sup> While some attackers wore civilian clothes, others were dressed in Tiger Battalion uniforms or SPLA uniforms including at least two persons with 3 stars, two persons with 2 stars and one person with one star on the shoulder boards.<sup>172</sup> Civilian cattle raiders were supported by military [SSPDF forces]<sup>173</sup> and reportedly received their orders from a high-ranking Government official.<sup>174</sup> One victim stated to the Commission “My father and my three sisters were killed at 4.00 a.m. I was in the cattle camp in Load when it happened . . . A lot of people were killed, around 270 people, in Load . . . Among the 270 were women and small children, even babies. They took the cattle. They [the State Government of Tonj] were launching this attack because of tribal conflict between the Nuer and Dinka . . . I was also injured in the attack by bullet, it is still inside [my shoulder]. I asked the Governor of Northern Liech State for money for the treatment, but he does not give me money because I am with the opposition.”<sup>175</sup>

28. Sources also believed that the heavy weapons were distributed by the Government of Tonj.<sup>176</sup> Attacks were carried out using light and heavy weapons including AK-47s (“Kalashnikovs”), PK machine guns (PKMs) and rocket-propelled grenades (RPGs).<sup>177</sup> Sources described how cattle keepers raided cattle while those in uniform fired weapons.<sup>178</sup>

29. Beginning in April 2019 and onwards, a series of attacks and counterattacks between Dinka from Twic County (Warrap) and Bul Nuer from Mayom County (Unity) culminated in a final heavy attack on 28 May 2019 in which Bul Nuer from Mayom County attacked locations in the Turalei area (Warrap) resulting in the killing of 28 (22 Dinka from

<sup>164</sup> Confidential Meeting, 22 September 2019.

<sup>165</sup> Confidential Meeting, 1 August 2019.

<sup>166</sup> Confidential Meeting, 22 September 2019.

<sup>167</sup> ERN 103303 - 103309, para. 4; ERN 102974 - 102977, paras. 7-8; ERN 102978 - 102981, para. 5; ERN 102982 - 102985, paras. 8 and 10; Investigator’s Report.

<sup>168</sup> ERN 103303 - 103309, para. 4.

<sup>169</sup> This attack was reportedly carried out in retaliation of an attack by Bul Nuer from Mayom (Unity) on Dinka communities in Yathngek and Majak Lian (Warrap), and reportedly caused more than a hundred civilian deaths.

<sup>170</sup> ERN 103290 - 103297, para. 5; ERN 103290 - 103297, para. 9; ERN 103285 - 103289, para. 9.

<sup>171</sup> ERN 103073 - 103076, para. 4.; ERN 103290 - 103297, para. 5; ERN 103285 - 103289, para. 8; ERN 102978 - 102981, para. 7; ERN 103264 - 103268, para.11.

<sup>172</sup> ERN 103290 - 103297, para. 20.

<sup>173</sup> ERN 103285 - 103289, para. 6; ERN 102982 - 102985, para. 6; ERN 103264 - 103268, para.9.

<sup>174</sup> ERN 103290 - 103297 para. 17; ERN 103073 - 103076, para. 6.

<sup>175</sup> ERN 103290 - 103297, paras. 4-5, and 8-9.

<sup>176</sup> ERN 103290 - 103297, para. 7; ERN 103073 - 103076, para. 6.

<sup>177</sup> ERN 103073 - 103076, para. 6; ERN 103290 - 103297, paras. 7, 20 and 22; ERN 103285 - 103289, para. 5; ERN 102982 - 102985 (a), para. 6.

<sup>178</sup> ERN 103290 - 103297, para. 12; ERN 103285 - 103289, para. 17.

Turalei and four Bul Nuer from Mayom),<sup>179</sup> injuring of over 20,<sup>180</sup> the looting of thousands of cattle<sup>181</sup> and burning down of shelters.<sup>182</sup> Due to the magnitude of the incident, the Governor of Twic described the attack as a “military level operation.”<sup>183</sup> Following the wave of deadly attacks, the Governor of Northern Liech State convened a conference attended by the governors of Twic and Gogrial and 60 other civil and military authorities in Mankien (Unity) from 7 to 9 May 2019 to address the cross-border violence.<sup>184</sup>

### C. Jonglei

30. While deeply entrenched conflict between the Lou Nuer, Dinka and Murle pastoralist communities has historically played a defining role in the lives of civilians in Jonglei, this has been exacerbated by the national conflict. By the time the civil war spread to the region in December 2013, both the Government as well as the opposition capitalized on the ethnic divide and historical grievances, with several areas of the State changing hands over time.<sup>185</sup> Since cattle has always been central to the livelihoods of the Lou Nuer, Dinka and Murle pastoralists who occupy the region, as well as to their social and cultural systems, the spread of arms and increased militarization, commercialization of cattle and rising dowry price have incentivized cattle raiding and child abduction rendering it even more deadly in recent times.<sup>186</sup>

31. In late November 2018, in the attempt to reconcile the divide between the Lou Nuer and Murle communities, a United Nations agency organized a peace delegation to travel to Lokomai in Liakangole to deliver food.<sup>187</sup> Witnesses told the Commission that after the food was offloaded from the boats and partially distributed in Lokomai, members of the Murle community launched an attack on the delegation, killing at least eight individuals.<sup>188</sup> Before fleeing the scene, the attackers reportedly stole food items such as sorghum, flour, oil and beans.<sup>189</sup> Relatives of the dead expressed concerns to the Commission regarding the killings as well as compensation for the loss of their loved ones.<sup>190</sup>

32. Less than two months later, in January 2019, members of the Murle community attacked cattle keepers from the Lou Nuer community in Duchan and Kolabel villages (Jonglei), killing at least 47 individuals, injuring 78 others and stealing an estimated 1,000 heads of cattle.<sup>191</sup> As one witness recounted, “At the time the Murle attacked us, I was walking in the front line . . . They rushed at us in one large group from the right side, as if they were coming from Akobo East. We were taken by complete surprise . . .”<sup>192</sup> Though two of his family members were killed during the incident, the witness reported that no investigation had been opened.

33. In the absence of the rule of law and accountability, one woman told the Commission, “Given the insecurity in our area, we have started to send our children in the White Army to patrol the bush before we do anything . . . If the Murle loot our cattle, they quickly recover them. If they abduct our children, the White Army goes after them.” She added that women in the community support the White Army by rewarding them with food

<sup>179</sup> ERN 103303 - 103309, para. 7; and Confidential meeting note.

<sup>180</sup> ERN 103303 - 10330, paras. 7 and 11.

<sup>181</sup> ERN 103303 - 103309, para. 4.

<sup>182</sup> ERN 103303 - 103309, para. 7.

<sup>183</sup> ERN 103303 - 103309, para. 5.

<sup>184</sup> ERN 103303 - 103309, para. 4.

<sup>185</sup> Drivers of conflict in Jonglei State, Judith McCallum and Alfred Okech, Humanitarian Practice Network, May 2013, available at <https://odihpn.org/magazine/drivers-of-conflict-in-jonglei-state>.

<sup>186</sup> Ibid.

<sup>187</sup> ERN 102889 - 102893, para. 7.

<sup>188</sup> ERN 103234 - 103239, para. 12.

<sup>189</sup> ERN 103234 - 103239, para. 12.

<sup>190</sup> ERN 102889 - 102893.

<sup>191</sup> ERN 103234 - 103239, para 13; ERN 103371 - 103376, para. 11; ERN 102913 - 102917, para 18; ERN 102918 - 102924, para. 18; ERN 103259 - 103263.

<sup>192</sup> ERN 103259 - 103263, para. 7.

and water when they go to fight.<sup>193</sup> Following clashes between Lou Nuer sub-clans, the White Army replenished its *gojam* (select fighters from among its ranks) to maintain peace in Akobo Town in 2018.<sup>194</sup> The *gojam* wear uniforms and carry arms to protect civilians. Youth reported to the Commission that they obtain arms by recovering them during battle or bartering with SSPDF soldiers based in Waat for cattle. Indeed, the Commission documented the widespread circulation of arms among the youth, including arms registered to the NSS Internal Security Bureau.

34. Witnesses expressed concerns that men were disproportionately targeted for killing during these incidents.<sup>195</sup> On the other hand, women, girls and boys were more likely to fall victim to abduction.

35. Towards the middle of the year, several measures were introduced to restore peace to the region. Speaking out against the resurgence in violence within their communities, women's associations condemned cattle raiding, kidnapping of children, road robberies and fighting between youth in Greater Jonglei on 7 May 2019.<sup>196</sup> In Spring 2019, the White Army planned a revenge attack in response to the November 2018 incident in Lokomai but after intervention from the Chairman of the SPLA-IO, Dr. Riek Machar, who reportedly encouraged them to allow the national peace process to address their concerns, they decided to abandon their mission and return home.<sup>197</sup> On 7 and 8 August 2019, the Inter-Communal Peace Dialogue among the Dinka, Lou Nuer and Murle of Jonglei introduced a Joint Peace Committee to report incidents of community-based violence.<sup>198</sup>

36. Nevertheless, despite the peace conference, the Commission received information that attacks continued into late November 2019 when armed Murle elements reportedly killed at least one individual and looted cattle.<sup>199</sup> Several witnesses interviewed by the Commission, including children, indicated a high-ranking Government official organized members of the Murle community and provided them with arms.<sup>200</sup> As one member of the Lou Nuer community told the Commission, "The issues between the Murle and the Lou Nuer . . . are not political in the sense that the Murle attack us and capture towns, but it is political in the sense that political actors are involved in influencing groups that raid cattle, abduct and kill our people. The Murle and Dinka Bor are with the Government and we are with the SPLA-IO."<sup>201</sup>

### III. Starvation

37. Millions of South Sudanese women, men and children continued to face acute food insecurity and do not know where their next meal will come from. During the reporting period, some 6.35 million individuals comprising 54 per cent of the population were classified as 'in Crisis' or worse 'acute food insecurity'.<sup>202</sup> The Greater Upper Nile region is currently the most food insecure, followed by the Bahr el Ghazal region.<sup>203</sup> In 2019, the Human Development Index, which measures basic dimensions of human development,

<sup>193</sup> ERN 103234 - 103239, para. 15.

<sup>194</sup> ERN 103353 - 103356; ERN 102913 - 102917, para 18.

<sup>195</sup> ERN 102913 - 102917; ERN 102918 - 102924.

<sup>196</sup> Confidential documents on file.

<sup>197</sup> ERN 103399 - 103406, para. 19.

<sup>198</sup> ERN D120814 - D120815.

<sup>199</sup> ERN 103371 - 103376, para. 11; ERN 103377 - 103382, para 10; 102913 - 102917, para. 19.

<sup>200</sup> ERN 103336 - 103340; ERN 103341 - 103344; ERN 103389 - 103394; ERN 103413 - 103419; ERN 103259 - 103263; ERN 103445 - 103448; and ERN 103383 - 103388.

<sup>201</sup> ERN 103377 - 103382, para. 8.

<sup>202</sup> South Sudan: IPC Acute Food Security Snapshot August 2019 – April 2020, FAO, available at <http://www.fao.org/in-action/kore/news-and-events/news-details/en/c/1208338>.

<sup>203</sup> More than half the country struggles to survive despite improving conditions in South Sudan, FAO, 11 September 2019, available at <http://www.fao.org/south-sudan/news/detail-events/en/c/1207694>.

ranked South Sudan as the third worst nation state in which to reside, at 186 out of 189 countries.<sup>204</sup>

38. It is estimated that 1.3 million children will need treatment for acute malnutrition in 2020, 300,000 of whom will be severely acute malnourished. Despite a decrease in military confrontations, the proportion of children acutely malnourished grew from 13 per cent in 2018 to 16 per cent in 2019, above the emergency threshold of 15 percent.<sup>205</sup>

39. The effects of food insecurity were compounded during the period under review by abnormally heavy rains and high levels of seasonal flooding. On 29 October 2019, President Kiir declared a state of emergency covering 30 counties in Greater Bahr el Ghazal, Greater Upper Nile and Greater Equatoria. The United Nations Office for the Coordination of Humanitarian Affairs (OCHA) estimated that close to one million people were affected across the country. Some 72,600 metric tons of cereals were further lost due to flooding,<sup>206</sup> amounting to approximately a 15 per cent loss in production. The situation remains worse for those internally displaced, including vulnerable children, elderly, widows, and disabled individuals.

40. While poverty and bifurcated weather seasons in the South Sudanese subsistence economy have substantially affected the availability of food countrywide, access to food and other vital objects indispensable to the survival of the population have been undermined by the actions of the government in control of strategic locations and where they have deliberately implemented strategies responsible for food insecurity. Armed groups holding territory for military advantage have behaved in a similar fashion.

41. Both government forces and armed groups have for example pursued policies responsible for the starvation of the population in Wau and Unity States (A/HRC/43/56/CRP.1). Such policies were envisaged and implemented as part of a wider strategy to deprive enemy communities of resources in order to force their capitulation, allow soldiers and militias to reward themselves, forcibly displace communities from ancestral lands that could then be expropriated or simply to compel individuals to join different factions engaged in the conflict. Denial of humanitarian access and displacement brought about by unlawful tactics have significantly exacerbated famine in different parts of the country, depriving hundreds of thousands of civilians of vital needs including access to food (A/HRC/43/56/CRP.1).

#### *Violations and alleged crimes - findings*

42. The Commission has reasonable grounds to believe that both government and opposition forces attacked, destroyed and rendered useless objects indispensable to the survival of the population and used starvation of civilians as means to achieve military objectives. Denying access to food was used as an instrument to target and punish non-aligning communities especially those deemed to support the enemy while rewarding supporters and maintaining community loyalties. Some victims described deliberate policies pursued in both government and opposition forces-controlled areas to destroy and loot primary means of livelihood such as fresh crops, livestock, and ready harvest on which civilians were dependent for their survival.

43. The Commission further has reasonable grounds to believe that the government of South Sudan did not fulfil its obligations under national and international law to progressively use all resources at its disposal to prioritize access to food and ensure freedom from hunger for its population in affected areas. It neither prevented, investigated nor punished perpetrators of these crimes. The Commission collected information which demonstrated, moreover, that disproportionate resources were deliberately diverted and spent

<sup>204</sup> South Sudan Human Development Indicators, UNDP, 2019, available at <http://hdr.undp.org/en/countries/profiles/SSD>.

<sup>205</sup> Humanitarian Needs Overview, OCHA, November 2019, at p. 3, available at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ss\\_20191120\\_south\\_sudan\\_humanitarian\\_needs\\_overview\\_2020.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ss_20191120_south_sudan_humanitarian_needs_overview_2020.pdf)

<sup>206</sup> Country Brief October 2019, WFP, available at [https://docs.wfp.org/api/documents/WFP-0000110949/download/?\\_ga=2.48343718.1269336333.1575637372-1581897920.1575637372](https://docs.wfp.org/api/documents/WFP-0000110949/download/?_ga=2.48343718.1269336333.1575637372-1581897920.1575637372).

in funding the armed conflict, and that corruption and embezzlement by senior government officials came at the expense of the starving population.

44. Specifically, these acts were contrary to Article 14 of the Additional Protocol II which prohibits the starvation of civilians as a method of warfare, Article 18 which guarantees access to humanitarian relief to civilians, and Article 8(2)(e)(ix) of the Rome Statute of the International Criminal Court which now includes as a war crime in non-international armed conflict intentionally using starvation of civilians as a method of warfare.<sup>207</sup> Although South Sudan is not party to the Rome Statute, the war crime could still be prosecuted through a Security Council referral or in states which already include a similar war crime of starvation in their national criminal law.

45. These acts were further contrary to Article 25 of the Universal Declaration of Human Rights which guarantees a right to food as part of an adequate standard of living. While there is no express provision in the African Charter on Human and Peoples' Rights which guarantees the right to food, the African Commission on Human and Peoples' Rights has stated that the "Right to food is implicitly protected under the African Charter on Human and Peoples' Rights through the right to life, the right to health, and the right to economic, social and cultural development".<sup>208</sup>

46. At the national level, the right to food may be construed by Articles 9(3) and 11 of the Constitution which guarantee both the domestic application of international human rights instruments to which South Sudan is a state party and the right to life and human dignity. The interdependence, indivisibility and interrelated nature of all human rights form another basis of the recognition of the right to food.

47. Based on the information collected, the Commission concludes that incontrovertible and sufficient evidence exists to hold to account individuals both in government and on the armed opposition under international and national laws that have pursued policies leading to starvation of the population.

#### IV. Sexual and gender-based violence

48. Sexual and gender-based violence, including conflict related sexual violence<sup>209</sup> continued to be widespread and pervasive in South Sudan, characterised by a recognizable pattern of terror and subjugation. During the period under review, violations documented by the Commission included rape and gang rape, sexual mutilation, forced marriage, abduction and sexualised torture.<sup>210</sup> Children including young girls were also victims of sexual exploitation.<sup>211</sup>

49. The current environment in South Sudan remains insecure and often deadly for South Sudanese women and girls as bodily integrity cannot be guaranteed. The DDR of various forces including members of armed groups exacerbated insecurity for women and girls, as the inadequate nature of cantonment and uncertainty over livelihoods for cantoned soldiers

<sup>207</sup> Art 8(2)(e)(ix): 'Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies'.

<sup>208</sup> 155/96: Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) / Nigeria, para. 65

<sup>209</sup> "Conflict-related sexual violence refers to incidents or patterns (for the purposes of listing in accordance with Security Council resolution 1960 (2010)) of sexual violence, that is rape, sexual slavery, forced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity against women, men or children. Such incidents or patterns occur in conflict or post-conflict settings or other situations of concern (e.g. political strife)." See 66/657-S/2012/33, para. 3. "Gender-based violence is considered to be any harmful act directed against individuals or groups of individuals on the basis of their gender. Gender-based violence may include sexual violence, domestic violence, trafficking, forced/early marriage and harmful traditional practices." See A/HRC/27/21, para. 3 (internal citation omitted).

<sup>210</sup> ERN 103469 - 103474; ERN 102632 - 102652.

<sup>211</sup> ERN 102991 - 102995

drove them to roam around civilian inhabited areas in search of food and water, rendering women and girls vulnerable to abuse.

50. Though conflict at the national level decreased following the signing of the R-ARCSS in September 2018, localized and intercommunal conflict(s) adversely impacted on women and girls, as well as men and boys. As conflict at the local level escalated significantly between December 2018 and November 2019 and generated heightened insecurity and violence, it further created an environment for criminal activity in which sexual and gender-based violations thrived.<sup>212</sup>

51. Incidents of sexual and gender-based violence arising from localized conflict included rape and gang rape, forced nudity, abduction, sexualised torture and forced marriage.<sup>213</sup> Evidence collected by the Commission confirmed that perpetrators of sexual violence in the context of localised conflict were mainly cattle keepers and young men, some of whom belonged to organized militias operating under the command and control of both government and opposition forces.<sup>214</sup> Local authorities have neither investigated nor prosecuted any cases reported.

#### *On-going violations*

52. Conflict related sexual violence has been so prevalent and widespread that survivors have normalised their experiences of rape. One witness told the Commission: “This war has drained me [...] I have been raped repeatedly. Sometimes we [women] stop talking about this, its normal. We go to get fire wood, we are raped, and we come back, what can we do? [...] The third occasion [when I was raped] was this year, 2019, in September [...]”<sup>215</sup>

53. In a previously documented pattern, abductions targeting women on ethnic grounds continued during the reporting period. A witness described how two women she was traveling with while in search of firewood were abducted because of the ethnic community they belonged to. Both women were married with children and have not been seen since.<sup>216</sup>

54. The Commission has documented the following non-exhaustive patterns of sexual and gender-based violations throughout the course of the conflict: (i) Sexual assault in conjunction with looting and intimidation of a target ethnic group; (ii) sexual assaults in conjunction with fighting in an area, usually including the rape of women in public before family members; (iii) sexual assault in detention centres of both women and men; (iv) assaults against women for the purpose of terrorizing and humiliating them usually as part of a targeted ethnic attack and a recognizable pattern of terror and subjugation; and (v) sexual enslavement of women.

#### *Harms suffered and consequences*

55. During the reporting period, survivors of sexual and gender-based violence experienced physical bodily trauma, forced and unwanted pregnancies, sexually transmitted infections, psychological trauma, post-traumatic stress disorders, stigma and ostracization owing to negative societal perceptions of being a “rape victim” and suspicion of having contracted HIV.<sup>217</sup> These consequences had adverse impact on the reproductive health of most survivors who described severe physical pain and bodily trauma experienced during rapes and immediately after. Many are living with long-term physical repercussions and severe psychological trauma resulting from the attacks. The Commission found that some survivors did not receive adequate medical attention or support following the violations they had endured.<sup>218</sup>

<sup>212</sup> ERN 102940 - 102943.

<sup>213</sup> ERN 102664 - 102670; ERN 102660 - 102663; ERN 102627 - 102631; ERN 102680 - 102688; ERN 102609 - 102617; ERN 102632 - 102652.

<sup>214</sup> ERN 102680 - 102688; ERN 102632 - 102652; ERN 102653 - 102659

<sup>215</sup> ERN 103475 - 103480.

<sup>216</sup> ERN 102587 - 102593.

<sup>217</sup> ERN 103469 - 103474.

<sup>218</sup> ERN 103495 - 103498.

56. The Commission also notes with concern the impact of sexual violence on South Sudanese men and boys which remained massively underreported as most male survivors were unwilling to speak about their experiences. Underreporting was attributed in part to limited awareness, societal stigma and shame.

57. Moreover, South Sudanese IDPs and refugees reported that multiple conflict-induced displacements over time have left them traumatised, depressed and despondent. The uncertainty experienced by those residing in protection of civilian sites also continued to have a negative impact on gender relations.<sup>219</sup> As with men and boys, notions of stigma and shame linked to sexual and gender-based violence remained a critical obstacle for many women and girls in their communities. For example, several spoke at length about the stigma linked to children born as a result of rape.<sup>220</sup>

#### *Unity State 2018*

58. In March 2019, the Commission reported that more than 125 women had allegedly been raped on the Nhialdu road<sup>221</sup> – in the Bentiu-Guit-Nhialdu triangle – over a 10-day period beginning in September and peaking in November 2018.<sup>222</sup> The Government of South Sudan disputed the allegations and dismissed with contempt media reports on the matter.<sup>223</sup> The Government's internal investigation concluded that reported figures of 125 rapes over a 10-day period could not be verified.<sup>224</sup> It did, however, confirm that 16 isolated cases of sexual violence occurred during this period. Local authorities confirmed between four and five cases reported every month of the period.<sup>225</sup> A senior County official confirmed to the Commission that the government's investigation had neither been thorough nor comprehensive.

59. In response to the alarming number of cases of sexual violence in the Bentiu area, the UNMISS Human Rights Division conducted its own investigation in northern Unity, for the period September to December 2018, and documented 55 incidents affecting 175 victims of violence, including 134 cases of rape or gang rape and 41 other forms of gendered violations.<sup>226</sup> The UNMISS report confirmed on-going patterns of sexual and gender-based violence in the region since the outbreak of the conflict in 2013-14,<sup>227</sup> a trend that continued to date.

60. The Commission welcomes the Government's deployment of an investigation committee as a positive step but finds that the government's on-going denial and intimidation of witnesses has created a climate of fear preventing survivors from reporting, effectively hampering prospects for criminal accountability. Army commanders in the Bentiu area have been informed of these violations and are obligated to act to prevent and refer for prosecution where these violations are known.

#### *Yambio (Western Equatoria) 2019*

61. The Commission also gathered information on allegations of sexual slavery, forced marriage, forced labour and the rape of women and girls unlawfully detained in an SPLA (IO) military base in Yambio.<sup>228</sup> On 28 July 2019, the SPLM/SPLA (IO) Chairman and Commander in Chief, Dr Riek Machar, issued unequivocal orders to "release without delay"

<sup>219</sup> ERN 103499 - 103503.

<sup>220</sup> See, e.g., ERN 103469 - 103474.

<sup>221</sup> A/HRC/40/CRP.1, paras. 456, 458.

<sup>222</sup> UNMISS & OHCHR *Conflict related sexual violence in Northern Unity, September – December 2018*, 15 February 2019, available at: <https://unmiss.unmissions.org/human-rights-reports>

<sup>223</sup> No evidence to back claims of Bentiu rapes: investigation team, Radio Tamazuj, 21 December 2018, available at <https://radiotamazuj.org/en/news/article/no-evidence-to-back-claims-of-bentiu-rapes-investigation-team>; see also Republican Order No. 25/2018.

<sup>224</sup> Confidential Report, CHRSS Files.

<sup>225</sup> Confidential Report, CHRSS Files.

<sup>226</sup> *Report of the Commission on Human Rights in South Sudan, 20 February 2019* (A/HRC/40/CRP/1)

<sup>227</sup> See UNMISS & OHCHR *Indiscriminate attacks against civilians in Southern Unity, April – May 2018*

<sup>228</sup> Confidential Meetings, CHRSS Files.

women and girls held on SPLA (IO) bases in Western Equatoria (Sector 6).<sup>229</sup> While the Commission commends the leadership of the SPLA (IO) for its rapid response, it remains gravely concerned that very few women have been released or allowed to leave.<sup>230</sup>

62. SPLM/SPLA (IO) leadership have publicly committed to ensure the release of the women as well as to prevent and address sexual violence within their ranks. However, they have also expressed difficulties in doing so given limited access to the women concerned, as well as reluctance by the commanders and other military personnel to allow the women to leave. The Commission continues to monitor this situation and notes efforts by relevant leadership to ensure it is addressed fully and to completion.<sup>231</sup>

*Responses by the State and other authorities*

63. The Commission notes that the main obstacles to accountability for sexual and gender-based violence are the deliberate failure and lack of political will by the government of South Sudan to hold senior commanders and the security forces accountable. Even where evidence was available, the Government of South Sudan has repeatedly failed to take steps to decisively deal with these incidents in clear violation of their obligations under international and domestic law.<sup>232</sup> To date, there have been no reported prosecutions of incidents of sexual and gender-based violence, and instead the Government has deliberately sought to silence those who have courageously reported the violations they endured. The Government of South Sudan can no longer rest on its laurels for the successful prosecution of the perpetrators in the Terrain case (A/HRC/40/69, para. 43) and needs to act decisively to address the on-going impunity.

64. The government's only response to such violations has been to announce establishing specialized chambers. Beyond providing a building, these chambers are yet to be operationalized.<sup>233</sup> The situation is rapidly deteriorating with a backlog of more than 200 cases, increasing daily.<sup>234</sup> Four judges have been appointed to handle the cases, comprising one female and three males.<sup>235</sup>

*Violations and alleged crimes - findings*

65. The Republic of South Sudan has acceded to several international and regional human rights instruments that reaffirm the rights of women and girls to equality and dignity. It has acceded to the United Nations Convention on the Elimination of All Forms of Discrimination against Women,<sup>236</sup> the United Nations Convention against Torture<sup>237</sup> and the Convention on the Rights of the Child.<sup>238</sup> It is also a party to the African Charter on Human and People's Rights and has signed but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo protocol).<sup>239</sup> These instruments guarantee equal rights and dignity for both women and men, equality before the law and prohibit any form of discrimination on the basis of sex or gender.

66. Based on the foregoing, the Commission has reasonable grounds to believe that members of government engaged in acts that violated the right of women and girls to

<sup>229</sup> ERN D120827 - D120828.

<sup>230</sup> About 40 to 50 women and girls have been able to leave the army base. However, it has also been reported that several of the women after having been joined to a soldier and now having borne children out of the relationships within the base overtime, face discrimination when they attempt to return to their communities. In these situations, some women have returned to the base where they are able to obtain food and some form of livelihood. Confidential meetings.

<sup>231</sup> ERN D120829 - D120829.

<sup>232</sup> Legal Action Worldwide (LAW): "First legal case lodged against South Sudanese Government for rape and sexual slavery" before the Committee on the Elimination of Discrimination against Women (CEDAW), December 2018; ERN D116272.

<sup>233</sup> Confidential Meeting.

<sup>234</sup> Confidential Meeting.

<sup>235</sup> Confidential Meeting.

<sup>236</sup> Acceded to in 2015.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid.

<sup>239</sup> Signed in 2013.

equality before the law and prohibition of any form of discrimination,<sup>240</sup> guaranteed by the Convention on Elimination of All Forms of Discrimination against Women. They also violated the right of victims to freedom from torture.<sup>241</sup> Certain conduct further violated rights against early and forced marriage,<sup>242</sup> the right to life,<sup>243</sup> dignity<sup>244</sup> and prohibition of all forms against discrimination<sup>245</sup> guaranteed by the Maputo Protocol of the African Charter on Human and Peoples Rights on the Rights of Women.

67. These acts were also contrary to the laws of South Sudan, most notably the right to equality before the law guaranteed by the Constitution of South Sudan protection from sexual abuse guaranteed by the Child Act 2008.<sup>246</sup> They were further contrary to the Penal Code which prohibits rape and abduction of women for purposes of early marriage, or sexual abuse.<sup>247</sup>

68. The Commission finds that many Commanders have been responsible for deliberately inciting sexual and gender-based violations, by giving *carte blanche* to young recruits to abduct women and hold them as sexual slaves, by setting an example by their own conduct or by condoning such crimes and failing to take action to hold those responsible for such crimes accountable.

69. The Commission also finds that non-state actors including opposition forces are not exempt from responsibility for sexual and gender-based violence. Despite efforts to implement an action plan on preventing and addressing sexual violence in conflict, the Commission urges the military and civilian leadership of the opposition to robustly address sexual and gender-based violations perpetrated by those in their ranks.

70. Beyond prevailing impunity, so long as denial and stigma prevail the accountability for sexual and gender-based violations further remains a grave challenge. In its report of March 2019, the Commission found a direct nexus between the lack of gender equality in the country and the prevalence of sexual and gender-based violence (A/HRC/40/69, para. 42). Impunity for sexual and gender-based violence in South Sudan is therefore exacerbated by underlying gender inequality and the ethnic dimensions of the conflict at both the national and local levels.

## V. Continued denial of fundamental freedoms

### A. Freedom of expression, opinion and assembly, arbitrary arrest and detention

71. A hallmark of the conflict since 2016 has been increasing securitization and ethnicization of the State security apparatus. These institutions have continued to engender a heightened climate of fear among communities and civil society (A/HRC/40/CRP.1, para. 237). During the period under review, individuals continued to describe being deprived of their fundamental freedoms including freedom of opinion, expression and assembly which impacted on human rights defenders, the publication of newspapers, the work of journalists and freedom of the press more generally. Civilians increasingly raised concerns regarding witness protection as a prerequisite to interacting with the Commission. As one South Sudanese woman expressed, “Citizens are so afraid [of being watched] that they do not even

<sup>240</sup> CEDAW, Art. 2.

<sup>241</sup> UNCAT, Art. 2.

<sup>242</sup> Maputo Protocol, Art. 6.

<sup>243</sup> *Ibid.*, at Art. 4.

<sup>244</sup> *Ibid.*, at Art. 3.

<sup>245</sup> *Ibid.*, at Art. 2.

<sup>246</sup> § 26: “Every female child has a right to be protected from sexual abuse and exploitation and gender-based violence, including rape, incest, early and forced marriage, female circumcision and female genital mutilation”.

<sup>247</sup> §§ 247 and 273.

buy newspapers”.<sup>248</sup> For 2019, the World Press Freedom Index compiled by Reporters Without Borders ranked South Sudan 139 out of 180 countries.<sup>249</sup>

72. The Commission spoke to numerous individuals including civil society organizations who had experienced how civic space for freedom of expression and speech had been severely curtailed by the security apparatus, particularly the NSS, who continued to clamp down on the media, shut down radio stations and newspapers, and arrested, harassed and intimidated journalists and human rights defenders. Humanitarian organizations also expressed reservations about heightened surveillance. Members of civil society organizations in Juba, for example, expressed concerns over State monitoring of their private social media and digital communication accounts.<sup>250</sup> Others, including in Juba and Wau, were unable to conduct workshops without the express consent of NSS, who interlocutors believed were infiltrating and attending their workshops.<sup>251</sup> One interlocutor explained how State Security may determine the size of a workshop and the subject of discussion.<sup>252</sup> The Commission also continued to document cases where NSS did not authorize workshops and meetings of civil society groups to be held, despite the civic nature of their purpose.<sup>253</sup>

73. The media has repeatedly faced intimidation, harassment, threats and censorship, primarily from the security forces. This climate of repression has been marked by the closure of radio stations and the suppression of publications that convey information deemed to be critical or unfavourable to Government.<sup>254</sup> Coverage of certain topics considered by officials to be too sensitive for public consumption included security and military matters, federalism, corruption, the opposition and even the peace process. This pervasive trend of censorship and manipulation of information comes at a moment when it is crucial for the people of South Sudan to engage in free and open debate about their future.

74. Though the South Sudan Media Authority was established in 2014 as a government agency to protect journalists, including those working to expose violations of human rights, it has instead become a tool for oppression and has been instrumental in revoking accreditations and work permits of such individuals. The Commission notes with concern the silencing of foreign journalists by the State apparatus, including the Media Authority, during the reporting period. These actions appeared to be calculated to prevent media scrutiny as the then deadline for the establishment of R-TGoNU on 12 November 2019 approached.

75. In the weeks leading up to the deadline, at least two foreign journalists were declared *persona non grata* by the State. One Associated Press journalist had her press credentials revoked on 31 October 2019 and was expelled for six months with the State finding that she had “concocted misinformation intended to create panic and fear of the unknown.”<sup>255</sup> Less than one week later, on 4 November, a French journalist on assignment with France24 was reportedly similarly deported.<sup>256</sup>

76. Members of civil society based in Juba further recalled how NSS agents had been arbitrarily arresting and detaining their staff, forcing on numerous instances individuals to exile themselves abroad.<sup>257</sup> One civil society representative recalled how “staff are picked up

<sup>248</sup> Ibid.

<sup>249</sup> Reporters Without Borders, <https://rsf.org/en/south-sudan>. This ranking is based on several criteria including pluralism, media independence, media environment and self-censorship, legislative framework, transparency and the quality of infrastructure supporting the production of news and information.

<sup>250</sup> Confidential meeting, 21 August 2019; ERN 102903 - 102908, para. 14.

<sup>251</sup> ERN 102996 - 103002, para. 5; ERN 102903 - 102908, para. 16.

<sup>252</sup> ERN 102903 - 102908, para. 16.

<sup>253</sup> ERN 102996 - 103002, para. 5; Confidential meeting.

<sup>254</sup> ERN 103529 - 103537; ERN 102903 - 102908; ERN D120812 - D120812; ERN D120785 - D120790.

<sup>255</sup> Twitter, 31 October 2019, available at <https://bit.ly/30mSuUE>; ERN 102903 - 102908, para. 10; and ERN D120813 - D120813.

<sup>256</sup> South Sudan expels another journalist, second in two weeks, Reporters Without Borders, 7 November 2019, available at <https://rsf.org/en/news/south-sudan-expels-another-journalist-second-two-weeks>.

<sup>257</sup> Confidential meeting, 7 November 2019; Confidential meeting, 14 November 2019; Confidential meeting, 15 November 2019; and Confidential meeting, 16 November 2019.

and taken for questioning and ultimately detained at the Blue House.”<sup>258</sup> Those who had returned to South Sudan were too afraid to continue to work publicly.<sup>259</sup>

77. On 26 March, the Media Authority suspended Al-Watan newspaper for alleged non-compliance with licensing requirements. On 17 July, its editor-in-chief was arrested at Juba airport by NSS agents who forced him off a flight and confiscated his passport.<sup>260</sup> Another civilian was tortured by NSS Officers and repeatedly detained unlawfully in solitary confinement at the Blue House for several months in total.<sup>261</sup> On 4 August 2019, the former manager of Yirol Community Radio was reportedly released following nearly three weeks in prison. He had been arrested at the airport on 10 July for allegedly making defamatory remarks against the governor of Eastern Lakes State on social media.<sup>262</sup>

78. On 2 January 2020, President Kiir pardoned via presidential decree dozens of prisoners, including high profile political detainees. Peter Biar Ajak, a political activist who was detained by the NSS at Juba International Airport on 28 July 2018, and prominent businessman Kerbino Wol Agok were among the group released.<sup>263</sup>

#### *Violations and alleged crimes - findings*

79. The responsibility of the Government to promote and protect democratic space and foster an inclusive political environment, including through freedom of expression, peaceful assembly and association is a hallmark of the State’s duty to uphold justice and rule of law. These violations do not occur because South Sudan lacks a sound legal system or the absence of national and international legal frameworks to prevent and punish them, but rather should be attributed to the on-going and entrenched impunity across state institutions and leadership, which allow those in positions of authority to act in flagrant disregard for the law in the belief that they will not be held accountable for their acts.

80. The Commission has collected evidence which indicates that members of the State Security forces were involved in the unlawful journalists and editors,<sup>264</sup> harassed and detained members of civil society considered critical of the government, infiltrated civic organizations,<sup>265</sup> suspended newspapers deemed critical of the state and revoked journalists’ accreditations whom they accused of breaching national security. Collectively, these acts were contrary to national and international human rights obligations to protect the fundamental rights and freedoms of those within its jurisdiction. The Commission has documented that these actions of the government through its security organs and Media Authority were unlawful. Any derogation, suspension or suppression of freedom of expression must be proportionate, non-discriminatory and limited to address the emergency or situation. Restrictions and suppression during the period under review were not warranted as there was no such emergency nor situation warranting the same.

81. The acts pursued violated the right to information and expression,<sup>266</sup> freedom of association<sup>267</sup> and freedom of assembly<sup>268</sup> under the African Charter on Human and Peoples’ Rights. The acts were also contrary to Article 24 of the Transitional Constitution of South Sudan (2011) which guarantees the right to freedom of expression, reception and dissemination of information and the Media Authority Act (2013) which enshrines principles of freedom of the press including reiterating the fundamental nature of Article 24 of the

<sup>258</sup> Confidential meeting, 7 November 2019. The NSS headquarters in Juba is commonly known as the “Blue House.”

<sup>259</sup> Confidential meeting.

<sup>260</sup> ERN 102903 - 102908, para. 10.

<sup>261</sup> ERN 103538 - 103547, paras. 31 -33.

<sup>262</sup> Eastern Lakes authorities release detained journalist, Radio Tamazuj, 4 August 2019, available at <https://radiotamazuj.org/en/news/article/eastern-lakes-authorities-release-detained-journalist>.

<sup>263</sup> ERN D120816 - D120819. In October 2018, the Pan African Lawyers Union (PALU) had instituted a case against the government of South Sudan at the East African Court of Justice challenging the arbitrary arrest, unlawful detention and torture of Kerbino Wol. The case is still on-going. See EACJ, case no. 18/2018.

<sup>264</sup> ERN 102903 - 102908, para. 10

<sup>265</sup> Ibid.

<sup>266</sup> Art. 9.

<sup>267</sup> Art. 10

<sup>268</sup> Art. 11

Transitional Constitution. Based on the Commission's findings, there is sufficient evidence to hold to account both individuals and entities involved for the violations of above-mentioned fundamental rights and freedoms.

### **B. Enforced disappearance, abduction and torture**

82. Civilians in Western Bahr el Ghazal, Unity and Central Equatoria observed persistent fighting, with upsurges in April, June and August 2019 marked by an increase in scale and severity of violations, in particular abduction and enforced disappearances. Witnesses indicated that disappearances were characterized by prior inter-ethnic conflict and the presence of armed groups in these regions.

83. The Commission continued to gather evidence in the case of human rights lawyer Dong Samuel Luak and opposition politician Aggrey Idri who disappeared from the streets of Nairobi, Kenya in January 2017. By multiple accounts, the two men were reportedly transferred unlawfully to South Sudan with the involvement of the South Sudanese security services. On 9 April 2019, the United Nations Panel of Experts reported the men were killed in the NSS detention and training facility in Luri, part of a presidential and security service complex approximately 20 kilometres west of Juba.

#### *Violations and alleged crimes - findings*

84. The Commission has encountered families of victims who have disappeared while in the custody of the government or after having been abducted by armed opposition.<sup>269</sup> Unfortunately, in all cases identified, and despite the repeated inquiries by family members and relatives, neither the fate nor whereabouts of these individuals has been determined, as the government as well as opposition groups have refused to acknowledge the arrest and detention of such individuals.

85. South Sudanese authorities have repeatedly denied disappeared persons the right to recognition as a person before the law, depriving them and their families of the capacity to exercise rights and to access remedies for rights violations.

86. Through acts of enforced disappearance, South Sudanese authorities further violated other fundamental rights the rights to a fair trial and judicial guarantees. South Sudan has failed in its duty to investigate in good faith all allegations of human rights violations, in particular where the authorities alone had the relevant information, as is often the case if persons subjected to enforced disappearance.

## **VI. Accountability and transitional justice**

### **A. Accountability**

87. Entrenched impunity and a lack of accountability for gross human rights violations and abuses, serious violations of international humanitarian law and international crimes continues to characterize the human rights situation in South Sudan. The persistent failure to address violations and abuses of the past, on-going denial and a profound lack of political will to hold individuals and groups accountable, has been the key driver of violence. The Commission's findings confirm that impunity remains deeply entrenched and that victims continued to be denied their right to an effective remedy and reparations.

88. The Commission finds that there have been no effective criminal investigations into the numerous violations documented in its previous reports and by other organizations. Undoubtedly, the lack of political will at the highest level of government to hold perpetrators accountable, and persistent interference by the government in judicial matters are the chief obstacles to accountability. Moreover, existing investigative bodies often lack independence and transparency. Flawed procedures mean that prosecutors often decline to initiate investigations and prosecutions in the absence of formal complaints by victims, who fear stigma, reprisals and victimization. Known individuals, having committed grave

<sup>269</sup> Since only States can become party to the International Convention for the Protection of All Persons from Enforced Disappearance, the Commission uses the term "abduction" to denote similar acts carried out by members of armed groups.

violations, have instead been reappointed to higher political office without any form of accountability; one such individual had been identified in a UN report as bearing the greatest responsibility for grave violations, possibly amounting to war crimes, in southern Unity between April and May 2018.

## **B. Transitional justice**

89. Transitional justice in the context of South Sudan is critical and indispensable to achieving sustainable peace, national reconciliation and healing, and rebuilding the rule of law. Decades of violent conflict characterised by unspeakable violations combined with weak rule of law institutions have resulted in diminished security, lawlessness and a population sharply divided along ethnic lines. Immense political and social investment is therefore required to rebuild such a society and to achieve a durable peace where the rule of law is re-established, gross human rights violations and abuses are addressed and measures of reconciliation and healing are prioritised.

90. Chapter V of the ARCSS, as reconfirmed by the R-ARCSS, lays down a holistic programme for achieving these goals. Their implementation will assist South Sudan to come to terms with the legacy of its past. However, the establishment of the three Chapter V transitional justice mechanisms has stalled in the face of a lack of political will on the part of the government, and the absence of decisive action by the African Union and regional actors. Delays in the formation of the R-TGoNU have been used as justification for holding up the establishment of the Hybrid Court, denying justice to South Sudanese victims.

## **C. The Hybrid Court for South Sudan**

91. The establishment of the Hybrid Court has been marked by delay and obstruction by the Government. The AU's 2017 negotiations with the Government to establish the court ended in a stalemate, leaving the memorandum of understanding between the AU and the Government unsigned. Domestic legislation to operationalize the court was never adopted. Since the signing of the R-ARCSS, the government has contended that the Court must be formed by the R-TGoNU; but if the R-TGoNU continues to be delayed, the Commission takes the view that the AU Commission (AUC) and the incumbent TGoNU must establish the Court. Since both the ARCSS and R-ARCSS were designed to deliver transitional justice, the provisions on power-sharing should not be used to delay the activation of the justice or reconciliation mechanisms. If the incumbent TGoNU fails to cooperate, the AUC should consider establishing the Court as the Commission takes the view it has the legal authority to do so. The AUC could begin preparations, including by establishing an investigative mechanism to complement the collection and preservation of evidence, pending the full operationalization of the court.

## **D. Commission for Truth, Reconciliation and Healing (CTRH)**

92. While the government has pledged publicly to support the establishment of the CTRH, it has not committed the required resources. A technical committee created in 2017 to support sensitization activities and raise awareness about the CTRH conducted limited consultations across the country with minimal impact, leaving questions about the timing, relevance and credibility of the process. In order to achieve the goals of the process, all South Sudanese should be able to participate freely in the agreed processes for establishing the truth, understanding the causes of conflict and promoting reconciliation and healing. This requires a climate of freedom rather than the current environment of suppression of dissent and freedom of expression and assembly. While the country is still at war, and significant numbers of citizens remain displaced and exiled, an open and genuine reconciliation, healing and reconciliation processes would be difficult to achieve. It is imperative that the parties resolve outstanding differences preventing the total end of the conflict and the formation of the R-TGoNU.

## **E. Compensation and Reparation Authority (CRA)**

93. As with the other two Chapter V mechanisms, the Government has failed to establish the CRA and a Reparation Fund even though the ARCSS stipulated six months for the enactment of the necessary legislation. These are central pillars of transitional justice, but no effort has been made to conduct any consultations whatsoever on the CRA. While the Commission is aware that the Government has had concerns about the monetary cost of reparations it calls upon the Government to set aside at least 1 per cent of oil revenues for reparations, and in addition, can also invest in other non-monetary reparations.

## **F. National Dialogue**

94. While the National Dialogue process continues to gather and analyse information from within and outside the country in preparation for a national conference scheduled for March 2020, concerns about its lack of inclusivity and whether it is a vehicle to replace the Hybrid Court have remained. The Commission continues to hold the view that while the findings of the National Dialogue should be preserved and acted upon, care should be taken to that it does not duplicate, or contradict, the work of the Chapter V mechanisms.

## Annex III

### Applicable law

1. The Commission conducted its work within the frameworks of international human rights law, international humanitarian law, international criminal law and the domestic law of South Sudan. The Commission's Report of 2018 set out in detail the law applicable to South Sudan (A/HRC/37/CRP.2, paras. 98-163).

2. South Sudan is party to range of international and regional human rights instruments which reaffirm its obligations to protect fundamental rights and freedoms. It has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; and the Convention on the Rights of the Child and two of the Optional Protocols – on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. South Sudan has also acceded to the United Nations Convention against Corruption and is party to the 1951 Refugee Convention and its 1967 Protocol. While the South Sudan Transitional National Legislative Assembly ratified in July 2019 the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights and their First Optional Protocols respectively, the Government has not yet transmitted the instruments of accession to the United Nations, and, therefore, South Sudan is not yet a party to these four treaties. The Commission encourages the Government of South Sudan to send the necessary instruments of accession without delay.

3. South Sudan is also a party to the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa, the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, as well as to the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention). The Government of South Sudan has signed but not ratified the African Charter on the Rights and Welfare of the Child and the African Union Convention on Preventing and Combating Corruption.

4. A non-international armed conflict began in South Sudan on 15 December 2013. Consequently, parties to the conflict, and new conflicts that have arisen since then, are bound by Article 3 common to the four Geneva Conventions of 12 August 1949 and their Additional Protocols II and III (South Sudan is a party to all four Geneva Conventions and all three Additional Protocols) and by relevant customary international humanitarian law. Despite the signing of a permanent ceasefire (2017) and subsequent peace agreement (2018), the Commission assesses that hostilities have persisted to the extent that both international humanitarian law and international human rights law continued to apply throughout the reporting period.

#### A. Recruitment and the use of children in armed conflict

5. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict sets 18 years as the minimum age for direct participation in hostilities, and for recruitment into armed groups. The recruitment and use of children in conflict is also contrary to section 22(2) of the SPLA Act (2009) and Article 31 of the Child Act (2008).<sup>270</sup>

6. The present report applies the definition of "children" in accordance with the Convention on the Rights of the Child (hereafter, "the CRC") to which the Republic of South

<sup>270</sup> During her visit to Addis Ababa on 10 May 2014, the Special Representative for Children and Armed Conflict had signed a commitment agreement with Riek Machar to end grave violations against and provide assistance to children, and to appoint a high-level focal point, Report of the Secretary-General on children and armed conflict in South Sudan, S/2014/884, 11 December 2014, at p. 15.

Sudan is a party. Pursuant to Article 1 of the CRC, a “child” is defined as every person younger than 18 years, unless, according to the law applicable to the child, a child becomes an adult earlier. In accordance with international standards, the 2008 Child Act of South Sudan also defines children as individuals under the age of 18. The Act further upholds the rights of children to non-discrimination, to life, survival and development, to education, well-being and health and to liberty and security of person. It sets the minimum age for conscription or voluntary recruitment into armed forces or groups at 18 years and prohibits the use of children in military or paramilitary activities.<sup>271</sup>

7. South Sudan made two declarations to the Optional Protocol. On Article 3, it stated that “the minimum age at which it permits recruitment of volunteers in Armed Forces is eighteen years and in accordance with section 22 of the Sudan Peoples’ Liberation Army Act, 2009”. It further stated “that the safeguards provided in Article 3(2) of the Optional Protocol on Involvement of Children in the Armed Conflicts and in the Sudan Peoples’ Liberation Army Act, 2009 shall be observed and bound by to ensure that all recruitment is made in public places and not done under force or duress, advertised in the press and national media for young people, the recruits undergo medical examination and the record consist of recruitment as appropriate, among others, a birth certificate, certificate of education or apprenticeship”.

## B. Localized conflict(s)

8. As part of their obligation to protect human rights, States must prevent, investigate, punish and ensure redress for human rights violations committed by both those within their ranks and non-state actors. South Sudan is a party to the Geneva Conventions of 1949 and their Additional Protocols, which demand that parties to a conflict respect the rules on the conduct of hostilities (especially the rules on precaution, distinction and proportionality) as well as rules for the protection of the victims of armed conflict. The treaties have been incorporated in the law of South Sudan.<sup>272</sup>

9. South Sudan is also party to international human rights instruments such as the African Charter on Human and Peoples’ Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and, again, the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict. These treaties require respect for human rights including right to life, freedom from torture, freedom from inhuman and degrading treatment, right to fair trial and presumption of innocence and non-recruitment of children.

10. Under international law, including human rights law, the State may be held generally responsible for the wrongful conduct of non-State individuals or groups when the latter are acting in “complete dependence” on the State.<sup>273</sup> A State might also be held responsible in cases in which non-State individuals or groups act on its instructions or under its direction or its “effective control”<sup>274</sup> and also when its own agents acknowledge and adopt the conduct of non-State groups.<sup>275</sup> States must investigate the use of lethal force by their agents,

<sup>271</sup> Child Act (2008), §§ 9, 12, 14, 15, 19, 31 and 36. See also SPLA Act (2009), § 22(2).

<sup>272</sup> Geneva Convention Act, 2012.

<sup>273</sup> International Court of Justice (ICJ), *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 paragraphs 392, 399.

<sup>274</sup> International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 8. See also ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, 1986 paragraphs 109-110; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, 2007 paragraphs 400, 401.

<sup>275</sup> International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 11. In its General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), the African Commission on Human and Peoples’ Rights expressed the view that a State could be held responsible for killings by non-State actors if it

particularly those involved in law enforcement.<sup>276</sup> For State investigations to be effective, they must be as prompt as possible, exhaustive, impartial, independent and open to public scrutiny.<sup>277</sup> The African Commission on Human and Peoples' Rights has explained that a "state can be held responsible for killings by non-state actors if it approves, supports or acquiesces in those acts or if it fails to exercise due diligence to prevent such killings or to ensure proper investigation and accountability".<sup>278</sup>

11. The government of South Sudan bears the primary duty to protect and safeguard the well-being of its citizens through obligations it has voluntarily assumed under both domestic and international law. Non-state actors ("armed groups") may not be parties to such international human rights treaties, though are nevertheless obligated to respect the fundamental human rights of persons when such actors exercise de facto control over territory or persons, and such groups have additional obligations under international humanitarian law in times of armed conflict.<sup>279</sup>

### C. Starvation

12. Protection of the population from starvation is a well-established norm under both treaty and customary international law binding on all belligerents, including non-state actors. Customary and treaty law prohibit impeding or the diversion of humanitarian assistance. South Sudan is a state party to the four Geneva Conventions of 1949 and the three Additional Protocols of 1977 and 2005.<sup>280</sup> Of particular relevance to the non-international armed conflict in South Sudan are Common Article 3 to the Geneva Conventions and Articles 14 and 18 of Additional Protocol II to the Geneva Conventions, which prohibit the starvation of civilians or rendering useless objects indispensable for their survival and diversion of humanitarian assistance. Once the threshold for the application of Common Article 3 to the 1949 Geneva Conventions has been reached, the provisions which operate to protect the victims of war continue to apply even when there may appear to be periods of calm.<sup>281</sup>

13. All parties to the conflict in South Sudan are bound by the relevant rules of customary international law applicable in non-international armed conflict.<sup>282</sup> These include requirements that parties to such conflicts must at all times abide by the principles of distinction, proportionality and precaution in attack.<sup>283</sup> Belligerents have an obligation to ensure that civilians are humanely treated and to hold criminally accountable those individuals and entities who may be responsible for violations of this obligation.

14. The Republic of South Sudan is bound by Article 25 of the Universal Declaration of Human Rights which guarantees the right to food as part of an adequate standard of living. As a state party is also bound by the provisions of the African Charter on Human and Peoples

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approved, supported or acquiesced in those acts. See also the Report on the Commission of Inquiry on Burundi, September 2017 (A/HRC/36/54), paragraphs 23-27.

<sup>276</sup> See the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65, paragraphs 9, 10, 17.

<sup>277</sup> See, for example, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005.

<sup>278</sup> Paragraph 9 of General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4), adopted during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights held from 4 to 18 November 2015 in Banjul, The Gambia.

<sup>279</sup> See for a full discussion the Commission's 2018 Report A/HRC/37/CRP.2, paras. 99-137.

<sup>280</sup> South Sudan ratified the Four Geneva Conventions and their Additional Protocols on 25 January 2013; they entered into force for South Sudan on 25 July 2013.

<sup>281</sup> The ICRC 2016 *Commentary on the First Geneva Convention* (Cambridge, Cambridge University Press, 2016) on the criteria of intensity and organization required for Article 3 to be applicable, see p. 141, para. 387; pp. 174-175, paras. 414-444, 484. See also Gabriella Venturini, "The Temporal Scope of the Conventions", in A. Clapham, P. Gaeta, and M. Sassòli, (eds), *The 1949 Geneva Conventions: A Commentary*, (Oxford, Oxford University Press, 2015) 51-66, at 61.

<sup>282</sup> ICRC, *Study on Customary International Humanitarian Law*, Rules 1-24.

<sup>283</sup> *Ibid.*

Rights. While there is no express provision in the African Charter on Human and Peoples' Rights which guarantees the right to food, the African Commission on Human and Peoples' Rights has stated that the "Right to food is implicitly protected under the African Charter on Human and Peoples' Rights through the right to life, the right to health, and the right to economic, social and cultural development". In one of its decisions on Sudan, the Commission concluded that: "even if Sudan is going through a civil war, civilians in areas of strife are especially vulnerable and the state must take all possible measures to ensure that they are treated in accordance with international humanitarian law".<sup>284</sup> Further, in its earlier decision on Chad, the Commission had also noted that "the African Charter, unlike other human rights instruments, does not allow for state parties to derogate from their treaty obligations during emergency situations. Thus, even a civil war in Chad cannot be used as an excuse by the state violating or permitting violations of rights in the African Charter".<sup>285</sup>

15. At the national level, the right to food may be construed by Articles 9(3) and 11 of the Constitution which guarantee both the domestic application of international human rights instruments to which South Sudan is a state party and the right to life and human dignity, respectively. The interdependence, indivisibility and interrelated nature of all human rights form another basis of the recognition of the right to food. It can therefore be inferred that both the state of South Sudan and armed opposition groups are bound to respect and fulfil their human rights and humanitarian law obligations under national, regional and international instruments and especially those that guarantee access to food, prohibit starvation of civilians and denial of access to humanitarian assistance in armed conflict.

#### **D. Sexual and gender-based violence**

16. Incidents of sexual and gender-based violence and conflict-related sexual violence with respect to South Sudanese women and girls have rarely been investigated and prosecuted with women and girls being left without extremely limited redress, not being able to bring perpetrators to justice and unable to obtain reparation for harm suffered. Access to justice for victims of rape and other forms of sexual violence remains a challenge as rape cases rarely find their way before the statutory courts and are usually brought before customary courts which have an inherent gender bias and seldom hold male perpetrators sufficiently accountable for crimes committed.<sup>286</sup> In general, there is a trust deficit among women towards government institutions including the police, the statutory and the customary law courts, which are considered prejudiced against females.<sup>287</sup> Sentences meted out in these institutions including but not limited to compensation in the currency of cattle or monetary compensation are in most cases unsatisfactory and disproportionate to the crimes committed. While perpetrators may be fined for these serious crimes, in some instances victims are compelled by both families to marry the perpetrator, increasing trauma and suffering of the victims.<sup>288</sup>

17. Despite this lack of serious commitment by the government of South Sudan and armed opposition groups to prevent, investigate and punish sexual and gender-based crimes, the Republic of South Sudan and armed opposition groups are both under national and international obligations to prevent and punish such crimes. Article 3 to the Geneva Conventions, while it does not explicitly mention specific forms of sexual violence, prohibits "violence to life and person" including cruel treatment and torture and "outrages upon personal dignity".<sup>289</sup>

<sup>284</sup> Amnesty International & Others v Sudan (2000) AHRLR 297 (ACHPR 1999). Para 50.

<sup>285</sup> Commission Nationale des Droits de l'Homme et des Libertés v Chad (2000) AHRLR 66 (ACHPR 1995) para 21.

<sup>286</sup> Justice Africa, "Justice in Practice: South Sudan", Spring 2015.

<sup>287</sup> What Works to Prevent Violence against Women and Girls consortium, "No safe Place: A lifetime of violence for conflict-affected women and girls in South Sudan", 2017; Justice Africa, "Justice in Practice: South Sudan", Spring 2015.

<sup>288</sup> What Works to Prevent Violence against Women and Girls consortium, "No safe Place: A lifetime of violence for conflict-affected women and girls in South Sudan", 2017.

<sup>289</sup> See also Rule 93 of Rape and other forms of sexual violence

18. South Sudan has also acceded to several international and regional human rights instruments that reaffirm the rights of women and girls to equality and dignity both in times of war and peace. It has acceded to the United Nations Convention on the Elimination of All Forms of Discrimination against Women,<sup>290</sup> the United Nations Convention against Torture<sup>291</sup> and the Convention on the Rights of the Child.<sup>292</sup> It is also a party to the African Charter on Human and Peoples' Rights and has signed but not ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo protocol).<sup>293</sup> These instruments guarantee equal rights and dignity for both women and men, equality before the law, dignity, prohibition against early and forced marriage and any form of harmful practice and discrimination on the basis of sex or gender. At the domestic level, the laws of South Sudan, including most notably the Transitional Constitution (2011) guarantee the right to equality before the law for all persons. Further, the Child Act (2008) guarantees protection from sexual abuse and exploitation.<sup>294</sup> The Penal Code of South Sudan prohibits rape and abduction of women for the purpose of early marriage or sexual abuse, respectively.<sup>295</sup>

19. In its General Recommendation 35, the CEDAW Committee concluded that “women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association.”<sup>296</sup> The Committee further noted that “States parties are responsible for preventing such acts or omissions by their own organs and agents, including through . . . investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities.”<sup>297</sup> Based on the preceding, the government of South Sudan and armed opposition groups both have an inherent obligation to prevent, investigate and punish sexual and gender related crimes that may be committed by individuals and entities affiliated with either party to the conflict.

## **E. Freedom of expression, opinion and assembly, arbitrary arrest and detention**

20. The responsibility of the government to promote and protect democratic space and foster an inclusive political environment, including through freedom of expression, peaceful assembly and association is a hallmark of the State’s duty to uphold justice and the rule of law. These violations do not occur because South Sudan lacks a sound legal system or the absence of national and international legal frameworks to prevent and punish them, but rather should be attributed to the on-going and entrenched impunity across state institutions and leadership, which allow those in positions of authority to act in flagrant disregard for the law in the belief that they will not be held accountable for their acts.

21. South Sudan is a party to wide range of regional and international instruments which reaffirm the right to freedom of expression, opinion and assembly. It is a party to the Convention on Elimination of all Forms of Discrimination against Women and its Optional Protocol which guarantee, among others, the fundamental rights and freedoms for both men

<sup>290</sup> Acceded to in 2015.

<sup>291</sup> Acceded to in 2015.

<sup>292</sup> Acceded to in 2015.

<sup>293</sup> Signed in 2013.

<sup>294</sup> Section 26, Child Act 2008: “Every female child has a right to be protected from sexual abuse and exploitation and gender-based violence, including rape, incest, early and forced marriage, female circumcision and female genital mutilation”.

<sup>295</sup> Sections 247 and 273, respectively.

<sup>296</sup> Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19.

<sup>297</sup> *Ibid*, para 23.

and women including freedom of expression, assembly and opinion. While South Sudan has not yet finalized accession to the International Covenant on Civil and Political Rights (ICCPR), which protects freedom of expression in Article 19, the Convention has been ratified by the TNLA and it is awaiting depositing with the Secretary General. Further, South Sudan has ratified the African Charter on Human and Peoples' Rights which recognizes under Article 9 the right to receive information and to express and disseminate opinions within the law. In one of its decisions, the Commission has concluded that "arbitrarily arresting and detaining journalists, seizing magazine publications because they are critical of the government, closing media houses, and establishing prohibitive registration requirements amount to violations under the African Charter."<sup>298</sup>

22. Within domestic law, the Transitional Constitution (2011) enshrines in Article 24 the right to freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to public order, safety or morals as prescribed by law. The Media Authority Act (2013) also enshrines principles of freedom of the press including reiterating Article 24 of the Transitional Constitution and stating that the law will promote freedom of expression, a diverse range of media services which serve South Sudan's national languages, ethnic beliefs and cultures of the communities, and enhance the right of the public to know through promoting pluralism and a wide variety of publications and programming. It further provides that free media representing all groups and divisions of society shall be protected as essential to democracy, giving independent scrutiny of Government, and will be protected from censorship and against journalists having to reveal their source.<sup>299</sup>

23. Based on the above, the government of South Sudan has an inherent obligation to protect and fulfil its obligations enshrined in both national laws and international human rights instruments which guarantee the rights to freedom of expression, opinion and assembly that it has voluntarily assumed. The government has a responsibility to ensure that citizens and journalists can access and disseminate information without fear or intimidation from individuals and state-controlled entities such as the National Security Services or Media Authority. It is incumbent on the government of South Sudan to ensure that individuals and entities that violate these rights and freedoms enshrined in the law are held accountable within the established institutional and legal framework.

## **F. Enforced disappearance, abduction and torture**

24. Enforced disappearance violates one's right to recognition as a person before the law and to liberty and security and freedom from arbitrary detention, including the right to be brought promptly before a judge or other official for review of the lawfulness of detention. Enforced disappearance may also be associated with torture and other forms of cruel, inhuman or degrading treatment and extrajudicial execution, in violation of the right to life, prohibition on torture and other forms of cruel, inhuman or degrading treatment, and may further lead to violations of the right to life.

25. Customary international humanitarian law further prohibits arbitrary deprivation of liberty,<sup>300</sup> and requires parties to a conflict to keep a register of those deprived of their liberty,<sup>301</sup> to respect detainees' family life, to permit detainees to receive visitors, and to allow correspondence between detainees and their families.

26. Parties to a conflict must also take all feasible measures to account for persons reported missing as a result of the conflict and make efforts to provide family members with any information it has on their fate. Fundamental to the finding of a crime of enforced

<sup>298</sup> African Commission on Human and Peoples' Rights, *Media Rights Agenda et al. v. Nigeria*, Communications 105/93-128/94-130/94-152/96, 31 October 1998.

<sup>299</sup> See also "Response to NRA complaint against Eye Radio" Letter from the Managing Director of the Media Authority, December 17, 2019. On file with the Commission. The letter reiterates the fact that journalists are not required to disclose the sources of information obtained upon promise of confidentiality.

<sup>300</sup> ICRC Rule 99.

<sup>301</sup> *Ibid.*, at Rule 123.

disappearance is a refusal to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.<sup>302</sup> The Committee on Enforced Disappearance has concluded that enforced disappearance can constitute acts of torture within the meaning of Article 1 of the UN Convention against Torture.<sup>303</sup>

27. Article 9(2) of the Convention on Enforced Disappearance provides for command responsibility for those with direct or indirect oversight over their subordinates who fail to prevent and punish the crime of enforced disappearance. Article 6 creates an obligation for states parties to establish competence to exercise jurisdiction over enforced disappearance when an alleged perpetrator is on its territory. Suspected perpetrators of enforced disappearance in South Sudan can face accountability for this crime in states exercising jurisdiction over this crime when committed abroad.

28. With regard to torture, as recently noted by the UK Supreme Court, “A person acting in an official capacity” includes “a person who acts or purports to act, otherwise than in a private and individual capacity, for or on behalf of an organisation or body which exercises, in the territory controlled by that organisation or body and in which the relevant conduct occurs, functions normally exercised by governments over their civilian populations. Furthermore, it covers any such person whether acting in peace time or in a situation of armed conflict.”<sup>304</sup> Individuals from multiple armed groups in South Sudan may be considered to have acted or are acting in an ‘official capacity’ and thus their acts are potentially prosecutable as torture in the many jurisdictions around the world that exercise jurisdiction over extraterritorial torture.

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<sup>302</sup> Elements of Crimes, International Criminal Court (ICC), 2011, at Article 7(1)(i).

<sup>303</sup> See Committee on Enforced Disappearances (CED), Communication No. 456/2011, *Hernández v. Bolivia*, Views adopted on 15 May 2015, para 6.6.

<sup>304</sup> *R v TRA (Appellant)* [2019] UKSC 51, at para. 76.

## Annex IV

### Armed State actors (command structures)

#### The Armed Forces in South Sudan

The Armed Forces of South Sudan was established pursuant to the SPLA Act of 2009 and organized, equipped and manned through issuance of Presidential Decrees issues by the President of Sudan. On 2 October 2018, President Kiir issued Republican Order No. 18/2018 changing the name of the South Sudan People's Liberation Army (SPLA) to the South Sudan People's Defense Forces (SSPDF).

The Act provided that the SPLA shall be organized with active and reserve forces. The active forces shall consist of the following:

- (a) the ground forces;
- (b) the air force; and
- (c) the riverine forces.

The active force shall be organized into divisions, brigades, battalions, companies, platoons and squads, organized into combat units, combat support and service support units and shall be under the direct command and control of such officers as may be assigned by the appropriate authority.

The command and control of the SPLA begins with the President who is also the Commander-in-Chief and who shall have the powers to commission, promote, retire or dismiss officers of the SPLA. Under the Act, the President has the following powers:

1. determine the political and military objectives of the SPLA;
2. issue political and executive directives to the Minister;
3. Appoint the Chief of General Staff in consultation with the Vice President of the Government of Southern Sudan, on the recommendation of the Minister;
4. issue military orders to the Chief of General Staff;
5. Appoint Deputies to the Chief of General Staff, directors of branches, armed service division commanders in consultation with the Minister and Chief of General Staff;
6. commission officers, and, grant promotion to general officers and delegate the promotion of other officers to the Chief of Staff;
7. convene a General Court Martial when appropriate;
8. commute sentences and pardon officers and other ranks sentenced by courts martial; and
9. declare a general mobilization and take appropriate measures in consultation with the Southern Sudan Legislative Assembly or request the declaration of the state of emergency in the whole or part of Southern Sudan in accordance with the provisions of Article 199 (2) of the ICSS.

The Command Council is a consultative body mandated by law to provide advice to the President. It consists of the Commander-in-Chief, the Minister of SPLA Affairs, the Deputy Commander in Chief, the Chief of General Staff, the Under Secretary of the Ministry of SPLA Affairs, Deputies of the Chief of General Staff, directors of branches, armed services and division commanders. The Council shall have a secretariat located at the SPLA Headquarters. The Command Council shall have a secretariat located in the SPLA.

The Chief of General Staff shall be responsible for the following:

1. the preparation of the SPLA military strategy and programs on the directives of the Command Council to organize and modernize the SPLA to ensure its ability to carry out its mission;

2. the organization of the SPLA forces into combat units, combat support and service support units and staff;
3. the determination of personnel, military equipment and material requirements; in consultation with his or her Staff Command.
4. the recruitment, training and education of military personnel and management of their assignments and careers;
5. the development of operational plans, deployment of forces and command of the SPLA on behalf of the Commander-in-Chief;
6. ensuring the sustenance of operational units through the distribution, management and maintenance of military equipment, hardware, material and facilities;
7. enhancing the morale and welfare of the SPLA personnel;
8. ensuring the combat readiness of the SPLA forces;
9. making recommendation to the Commander-in-Chief, of officers for commissioning and promotion in accordance with established regulations and procedures governing promotion;
10. convening a General Court Martial when appropriate;
11. the development of the necessary military rules, regulations and standing operating procedures for the purpose of effective and efficient management of the forces;
12. the recommendation for appointment of the staff branch Directors to the Commander -in-Chief, in consultation with the Minister;
13. the assignment of senior officers to various SPLA brigades, battalions and specialized units as shall be directed by the Commander-in-Chief;
14. the development and supervision of research and development capabilities;
15. determination of the number and the quality of civilian employees required to serve in the SPLA and submission of the same to the Minister for approval and appointment; and
16. any other function as shall be delegated to him or her by the President and Commander-in-Chief, the Minister, this Act and regulations.

The Deputies of the Chief of General Staff shall:

1. assist the Chief of General Staff in preparing and executing strategic plans, coordinating and supervising the activities in their respective areas of responsibilities; and
2. prepare briefings and submit regular reports on their activities to the Chief of General Staff.

As noted, the SPLA was renamed SSPDF for “South Sudan People’s Defence Forces” on 2 September 2018. The Chief of Staff of the SSPDF is **Lt Gen Gabriel Jok Riak**, who was appointed in May 2018. He directly commands and controls the ground forces through the Commander of the Ground Forces **LT Gen Santino Deng Wol**.

South Sudan is divided between three “Corps-level” commands called “Sectors,” each commanded by a Lieutenant General, answerable to the Commander-in-Chief via the Chief of the General Staff. Each Sector had several subordinate Divisions, Brigades and Battalions.

There are nine divisional light infantry formations of the ground forces deployed nationwide with specific areas of operation and established headquarters, as follows:

- Division 1 in Renk, Upper Nile commanded by Mgen James Wijong
- Division 2 in Owachi, Malakal in Eastern Nile State commanded by MGen Akol Majok
- Division 3 in Wunyik, Northern Barh El Ghazal commanded by MGen Butros Bol Bol (MGen Dau Aturyong, earlier)

- Division 4 in Rubkona, Unity State commanded by MGen Samson Lual
- Division 5 in Wau, in Wau State commanded by MGen Keir Kiir Keir (MGen William Gum later part of 2019)
- Division 6 in Maridi, Western Equatoria commanded by MGen Johnson Juma Okot
- Division 7 in Torit commanded by MGen Victor Odong
- Division 8 in Bor, Jonglei State MG Malual Majok
- Division 10 recently deployed in Panachier, Warrap State, commanded by MGen Garang Mading

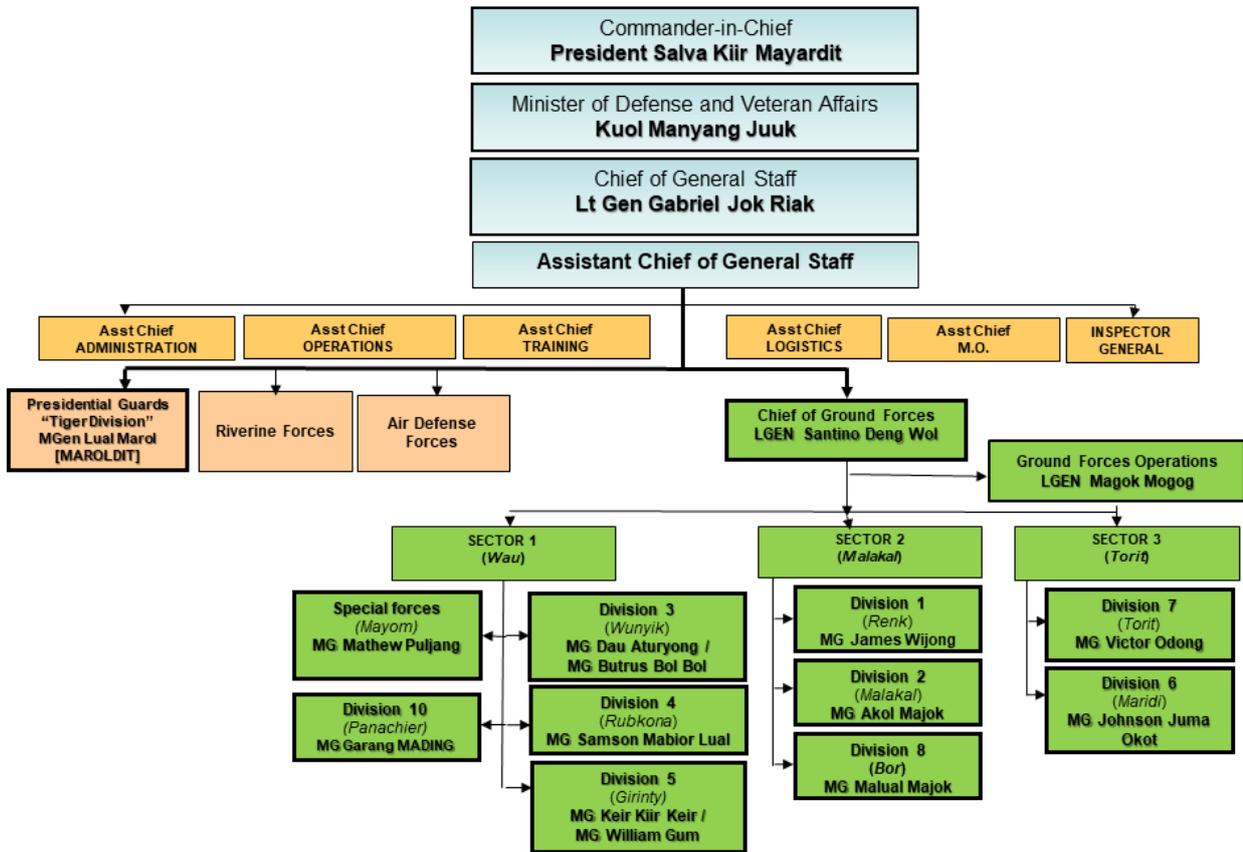
There is further a Special Forces unit with four brigades under MG Mathew Puljang based in Mayom, Unity State. The Presidential Guards, known as the “Tiger” Division and commanded by MGen Lual Marol [MAROLDIT] is headquartered in BILPAM in Juba (also known as the Jamus) with some of its forces believed to be deployed in strategic areas in the country.

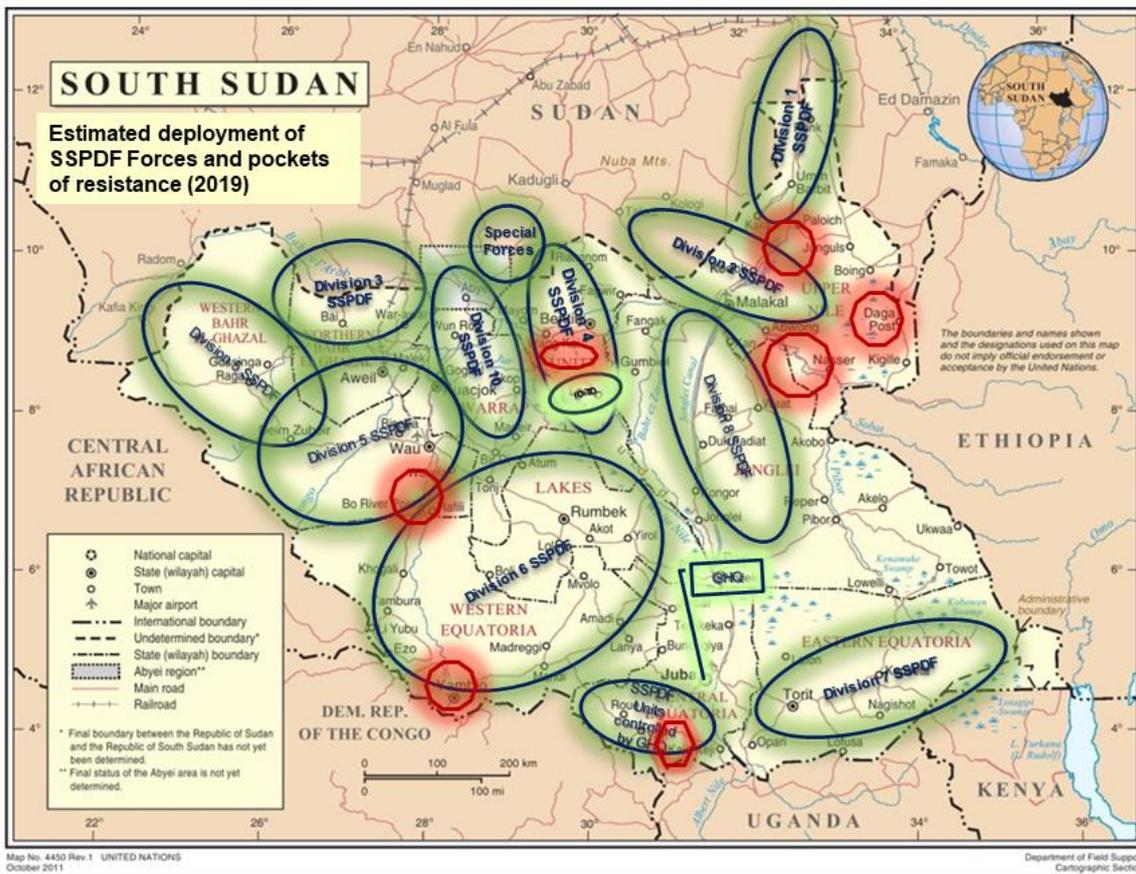
In May 2017, President Kiir issued Presidential Decrees restructuring the SPLA into three branches, namely: the ground force, air force and air defense Forces and Naval Forces. Each of the institutions was to be overseen by a commandenother Presidential Decree calls for the restructuring of the General Staff consisting of the following: The Commander in Chief, the Minister of Defense and Veteran Affairs, the Chief of Defense force, the Deputy Chief of Defense force and Inspector General. The same Decree abolished the previous structure, where deputy chief of general staff is now assistant chief of general staff and renaming the deputies to assistants.

Command and Control of SSPDF and Estimated Deployment in 2019 are as follows:

**SSPDF General Staff and Defense Forces**

December 2019





# Annex V

## Armed non-State actors (estimated deployment until 31 December 2019)

