



人权理事会

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议程项目4

需要理事会注意的人权状况

南苏丹人权状况委员会的报告* **

概要

南苏丹人权状况委员会严重关切地注意到,《解决南苏丹冲突重振协议》各签署方持续缺乏本着诚意执行《协议》关键条款的政治意愿,而这些条款能够推动组建重振后的民族团结过渡政府。政治精英们依然对他们表面上正在与之抗争的数百万平民所遭受的深重苦难视而不见。政府间发展组织和非洲联盟虽然是《重振协议》的协调人和保证人,但始终无法对各方施加决定性影响。尽管区域努力延长了过渡前时期,但是各国在南苏丹问题上往往追求的目标不同。2019年5月和11月这两个最后期限已经错过,第三个期限即将来临,而下列问题仍未解决:培训和部署必要的联合部队、确定州的数目和边界、重组州委员会以及颁布《宪法修正案》。

此外,政府军继续在瓦拉布州、西加扎尔勒河州和团结州广泛强行招募男子和男童入伍,而反对派部队则在团结州和中赤道州强行招募男子和男童。南苏丹人民国防军、当地民兵和民族拯救阵线(未签署《重振协议》)还在包括耶伊和洛博诺克(中赤道州)以及迈乌特(上尼罗州)等热点地区不断发生敌对行动。武装冲突事件证实,和平与安全依然面临威胁,迫切需要全面解决与问责、根深蒂固的有罪不罚以及当地民兵和抵抗团体武装有关的问题。

国家层面的和平岌岌可危,地方层面往往基于族裔的紧张局势也有所加剧,导致2018年平民伤亡人数增加近200%。2019年2月底至5月,联合国南苏丹特派团记录了当地爆发的152起暴力事件,其中约531人死亡、317人受伤。令人严重关切的是,野蛮袭击往往是为了劫掠牛只,肇事者为国家机构或苏丹人民

* 因提交方无法控制的情况,经协议,本报告迟于标准发布日期发布。

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解放军反对派(亲里克·马沙尔)(亲马沙尔的苏人解反对派)成员，这以惊人的速度引发了西加扎尔河州、团结州和琼莱州等地的流离失所问题。

性暴力和性别暴力，包括与冲突有关的性暴力，依然普遍存在，它将一种明显的恐怖和征服模式用作战争手段。在这种环境下，南苏丹妇女和女童仍然面临不安全且有性命之虞，因为她们的身體完整得不到保障。由于缺乏针对性侵犯和性别侵害行为的问责，否认和污名化问题愈发复杂，至今仍是一项严峻挑战。

与此同时，全国超过 55% 的平民(主要是妇女和儿童)面临着严重的粮食不安全状况，造成这种状况的原因包括：各方蓄意阻挠人道援助，出现了各种气候性因素，以及大规模冲突引发了流离失所问题。

国家税务局对外转移了数百万美元，耗尽了本可用于保护、实现和促进数百万弱势平民的重要经济、社会和文化权利的资源。这种转移国家资金的行为可能构成经济犯罪。

严重的粮食不安全状况，加之无法获得基本服务(包括水和教育)，导致相当一部分人被完全剥夺了公民权利，他们极度关注日常生存问题，而无法切实参与公共生活。

系统化地剥夺基本权利和自由，包括政府军公开对记者、活动人士、人权维护者和持不同政见者施加威胁，进一步严重影响了民众对公共领域的参与，侵犯了表达自由、见解自由和集会自由。国家安全局继续在这类审查中发挥着关键作用，包括开展监视、实施镇压及任意逮捕。

境内流离失所的平民人口仍超过 140 万，他们在无法满足基本需求的营地中备受煎熬，眼看着赖以生存的人道援助不断减少。除此以外，冲突还致使大约 220 万人成为难民和寻求庇护者。在六年多的时间里，该国在减轻流离失所者的苦难方面几乎无所作为。然而，委员会承认，重大敌对行动的停止确实促使数以万计的境内流离失所者和难民自愿返回了家园。

南苏丹政府腐败、贪污、延迟组建重振后的民族团结过渡政府、不向全国弱势群体提供服务，与此同时，萨尔瓦·基尔总统的政府加强了军事力量并巩固了政治和军事控制。此外，它还通过利用局部冲突以及压制基本权利和自由，维系了脆弱不堪的国家控制，进一步分化了被视为持不同政见者的族群，突出显示出该国迫切需要提升共同的民族认同感。

如今，南苏丹平民因蓄意的粮食断供而忍饥挨饿，遭受着系统化的监视和压制，被任意逮捕和拘留，还被剥夺了有效诉诸司法的机会。针对这些侵犯人权行为和相关罪行提供救济是实现可持续和平与安全的先决条件，除非冲突各方在国际社会的支持下优先满足平民的需求、履行其国际义务、不再拖延地执行《重振协议》，尤其是关于过渡期正义机制和南苏丹问题混合法庭的条款，否则此类救济仍将遥不可及。

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一. 导言

1. 人权理事会在第 31/20 号决议中，决定设立南苏丹人权状况委员会，任期一年。委员会向理事会第三十四届会议提交了第一次报告(A/HRC/34/63)。
2. 人权理事会在第 34/25 号决议中，决定将南苏丹人权状况委员会的任务期限延长一年，并请委员会继续监测并报告南苏丹的人权状况，为防止人权状况进一步恶化提出建议，并就包括和解在内的过渡期正义机制提交报告并提供指导。
3. 人权理事会还请委员会确定和报告据称严重侵犯和践踏人权及相关犯罪，包括性暴力和性别暴力及族裔暴力的事实和背景情况，收集和保存证据，查明责任，以制止有罪不罚现象，追究责任。理事会还请委员会将相关信息提交所有过渡期正义机制，包括将根据《解决南苏丹冲突重振协议》第五章与非洲联盟合作设立的南苏丹问题混合法庭等机制。¹
4. 人权理事会在第 37/31 号决议中，决定将委员会的任务期限再延长一年，并在其第 40/19 号决议中又再次延长一年。人权理事会主席任命的委员会现任成员是亚斯明·苏卡(主席)、安德鲁·克拉彭和巴尼·阿法科。
5. 南苏丹人权状况委员会得到设在朱巴的秘书处的支持。它访问了南苏丹境内的几个地点，包括 Akobo(琼莱州)、Akouyo(西加扎尔河州)、Bentiu(团结州)、Bor(琼莱州)、Gedi(西加扎尔河州)、Luri(中赤道州)、Kuajena(西加扎尔河州)、Kuajok(瓦拉普)、Mankien(团结州)、Pibor(琼莱州)、Rocrodon(西加扎尔河州)、Wau(西加扎尔河州)和 Yei(中赤道州)。委员会还访问了亚的斯亚贝巴、坎帕拉和恩德培(乌干达)、内罗毕、开罗和欧洲(地点不详)。委员会会见了大量受害者、证人、政府官员、民间社会成员和其他利益攸关方。此外，委员会还于 2019 年 12 月 16 日至 18 日在亚的斯亚贝巴组织了一次过渡期正义讲习班，并将于 2020 年 2 月在坎帕拉再举办一次关于性暴力和性别暴力的讲习班。
6. 在本次任务期间，委员会记录了 216 份详细的个人证词，收集了包括机密记录在内的超过 3,340 份文件，涵盖自 2013 年 12 月以来在南苏丹发生的事件。所有证据都保存在委员会的机密数据库和档案中。
7. 委员会感谢南苏丹政府为特派团提供便利，并感谢在访问埃塞俄比亚、乌干达和肯尼亚期间得到这些国家政府的合作。委员会还感谢非洲联盟、联合国南苏丹特派团(南苏丹特派团)、联合国各机构、民间社会组织和专家的协助和贡献。

二. 方法

8. 委员会按照人权理事会第 40/19 号决议向理事会提交本报告。在报告中，委员会主要侧重于查明 2018 年 9 月签署《解决南苏丹冲突重振协议》至 2019 年 12 月期间发生事件的事实和背景情况。

¹ 根据其任务规定，委员会负责收集和保存证据，将其储存在数据库中，并按独特的证据登记号(ERN)进行分类。报告通篇提到这些登记号，以便各国在请求查阅证据时使用。

9. 鉴于其任务的重点是问责，委员会还侧重于确定侵犯人权行为的责任，并查明应对这些侵犯人权行为和罪行承担责任的个人。为了澄清国际罪行的责任，特别是国际法规定的指挥或上级责任，委员会试图查明指挥结构、行为模式以及控制和纪律指标。

10. 对具体事件和行为模式的事实认定是对侵犯人权行为以及酌情对战争罪和危害人类罪等国际罪行进行法律定性的依据。

11. 委员会采用了“有合理理由相信”的证据标准，其工作的依据是要求按照这一标准收集和保存证据，以支持未来的问责机制，包括刑事问责的规定。

12. 在委员会认定指称犯罪人与具体侵犯人权行为或侵犯人权行为模式存在关联，有关资料足以构成刑事调查或起诉的证据时，在严格保密的基础上保存了这些资料。在某些情况下，没有足够的信息来确定应对侵犯人权行为负责的个人；在这种情况下，这些人所属的武装部队或武装团体被认定负有责任。

13. 委员会采用了实况调查的最佳做法，旨在确保证人安全、安保、保密和福祉。因此，只有在信息来源方给予知情同意，并且披露不会导致暴露信息来源或对其造成损害的情况下，才列入信息。委员会感谢受害者和证人分享自己的经历，并始终遵循“不伤害”原则。

三. 政治和安全动态

A. 《解决南苏丹冲突重振协议》的执行情况

14. 根据 2018 年 9 月的《解决南苏丹冲突重振协议》，萨尔瓦·基尔总统和候任副总统里克·马沙尔同意在 2019 年 5 月前组建重振后的民族团结过渡政府；然而，由于未能执行关键条款，包括关于安全安排和州际边界的关键条款(见下文第 17-19 段)，在政府间发展组织(伊加特)的推动下，5 月 3 日延长了 6 个月的期限。应基尔总统邀请，两位领导人于 2019 年 9 月 9 日和 9 月 11 日在朱巴会晤，讨论悬而未决的问题。然而，他们无法达成妥协。

15. 约韦里·穆塞韦尼总统(乌干达)于 11 月 7 日召开了三方首脑会议，主权委员会主席阿卜杜勒·法塔赫·布尔汉将军(苏丹)和卡隆佐·穆西约卡特使(肯尼亚)以及基尔总统和候任副总统马沙尔出席了会议，以避免一场威胁停火、拖延组建重振后的民族团结过渡政府的危机。首脑会议使过渡前时期延长了 100 天，从 2019 年 11 月 12 日开始生效，至 2020 年 2 月 22 日，从而提供了更多时间，以便除其他外，处理与安全安排有关的未竟关键任务，包括组建过渡政府。²

² 总体而言，过渡前时期的 63 项活动将于 2019 年 11 月 12 日之前完成。截至 11 月初，仅完成 31 项活动，另外 22 项仍在进行中，有 10 项尚未开始。见 2019 年 7 月 1 日至 9 月 30 日期间执行《解决南苏丹共和国冲突重振协议》情况的报告(可查阅 <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>)，第二页。

16. 打破僵局的一个关键就是就州的数目和边界达成协议，这将最终决定全国的权力分配。解决这一问题对于解决首都朱巴的安全安排、建立联合军队、重组州委员会和颁布《宪法修正法案》以及国家宪法修正委员会审查其他安全法律至关重要。³

1. 进驻营地

17. 进驻营地、登记、筛选、选拔、训练和重新部署战斗人员，以组建必要的联合部队——一支有 83,000 名士兵的联合军队(见附件一，地图 1)，是《解决南苏丹冲突重振协议》的基石。在本报告所述期间，只取得了有限进展。⁴截至 11 月初，指定给反对派部队的 25 个营地中有 24 个开始运作，登记工作正在进行，南苏丹人民国防军(南苏丹国防军)的所有 10 个军营也在进行登记。⁵此外，83,000 名必要的联合部队中约 69,000 人已在指定的营地和军营登记，尽管他们仍在等待筛选、选拔、训练和重新部署。筛选、选拔和培训过程成功的一个关键因素是适当的经费来源。然而，鉴于政府未能兑现其提供 1 亿美元支持该进程和其他安全机制的承诺，大多数驻军地点无法获得足够的水、食物或医疗服务，生活条件恶劣。还有人对这些营地靠近平民，特别是妇女和女童提出关切(见附件二，第 49 段)。

2. 行政边界

18. 2015 年 10 月，基尔总统单方面宣布在南苏丹设立 28 个州以取代原来的 10 个州，⁶并于 2017 年 1 月宣布增设 4 个州，使州的总数达到 32 个。⁷基尔总统划定了 32 个州，加剧了有关获取自然资源的紧张局势，因为这实际上确保了总统的丁卡族控制宝贵的资源，特别是石油。总统的行为被许多人，包括费尔提特人和卢人(西加扎尔河州)、希卢克人(上尼罗州)和赤道人，认为是为了促进丁卡人的利益而进行的不公正的选区划分。

19. 独立边界委员会在非洲联盟南苏丹问题高级别特设委员会的支持下于 2019 年 2 月 28 日开始工作，该委员会由阿尔及利亚、乍得、尼日利亚、卢旺达和南非组成，其成员由伊加特执行秘书任命。⁸独立边界委员会审议了各州数目和边

³ 同上。

⁴ 必要的联合部队细目：军队(35%)29,050 人；国家安全局(10%)8,300 人；国家警察(8%)6,640 人；州警察(26%)21,580 人；野生动植物管理处(7%)5,810 人；监狱管理局(10%)8,300 人；消防队(4%)3,320 人，共计 83,000 人。这些数字不包括估计由 3,000 人组成的贵宾保护股。

⁵ 见 2019 年 7 月 1 日至 9 月 30 日期间执行《解决南苏丹共和国冲突重振协议》情况的报告，第二页；另见南苏丹共和国执行《解决南苏丹共和国冲突重振协议》情况的报告，第二页；另见 2019 年 1 月 1 日至 3 月 31 日期间执行《解决南苏丹共和国冲突重振协议》情况的报告(可查阅 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)，第四页。

⁶ 第 36/2015 号建制令，2015 年 10 月 2 日。

⁷ 第 02/2017 号共和国令，2017 年 1 月 14 日。

⁸ 根据《重振协议》第 1.15.1 条。

界以及州委员会的组成和重组，⁹ 但未能达成共识，也无法获得至少七名成员的支持。¹⁰

20. 尽管国家宪法修订委员会已于 2017 年 4 月向司法和宪法事务部部长提交了新宪法草案，但草案仍有待审查。此外，截至 2018 年 1 月底，该委员会还完成了五项安全法(包括《苏丹人民解放军法》(2009 年)、《国家安全法》(2014 年)、《警务法》(2009 年)、《监狱管理法》(2011 年)和《野生动物管理法》(2011 年))的修正案，但在编写本报告时尚未通过任何修正案。¹¹ 在本报告所述期间，委员会还开始审查《公共财政管理和问责法》(2011 年)、《国家审计庭法》(2011 年)和《南苏丹反腐败委员会法》(2009 年)，¹² 这些法律涉及一些与人权、法治和民主治理有关的问题，而修正案旨在确保公平和包容各方的招聘和问责。

21. 委员会关切地注意到，《重振协议》中列举的规定正由签字方以完全形式主义的方式作为“在方框里打勾”工作来处理。这种缺乏政治意愿的情况导致在本报告所述期间进展甚微，有鉴于此，只有本着诚意进行有意义的接触，才能实现《重振协议》所载目标。

B. 制裁

22. 主要是美利坚合众国不断使用制裁作为强制遵守人权标准和确保执行《重振协议》的手段。2017 年 9 月和 12 月，美国宣布对四名南苏丹官员进行制裁，因为他们的所作所为威胁到了南苏丹的和平、安全与稳定。¹³ 在本报告所述期间，美国又对包括第一副总统塔班·邓·盖在内的八名南苏丹人进行了制裁，他们涉嫌参与侵犯和践踏人权行为或“阻碍和解进程或和平谈判”。¹⁴

C. 持续不断的冲突和叛军抵抗团体

23. 委员会仍然感到关切的是，在南苏丹境内的大片领土上没有国家机器，这不仅由于缺乏有效的服务而加剧了平民的痛苦，而且使抵抗团体和反对派得以控制局势。由于国家的缺席，在本报告所述期间，这种动态导致了一系列武装敌对行动。

24. 南苏丹国防军、当地民兵和民族拯救阵线(南苏丹反对派运动联盟的成员)之间的敌对行动仍在热点地区继续，包括耶伊和洛博诺克(中赤道州)和迈乌特。自 2018 年 11 月以来，民族拯救阵线和南苏丹统一战线继续在赤道州与政府军作

⁹ 同上，第 1.15.7 条。

¹⁰ 同上，第 1.15.9 条。

¹¹ 国家宪法修订委员会在所涉期间还起草了《国家消防队法》(2019 年)。

¹² 见 2019 年 7 月 1 日至 9 月 30 日期间执行《解决南苏丹共和国冲突重振协议》情况的报告，第 6 页。

¹³ 见载有委员会主要调查结果的会议室文件(A/HRC40/CRP.1)，可查阅委员会网页 www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx。

¹⁴ 见美国财政部的新闻稿，“Treasury Sanctions Individuals for Roles in Atrocities and Other Abuses”，2019 年 12 月 10 日，“Treasury Sanctions Two Senior South Sudanese Officials for Obstructing Reconciliation Efforts”，2019 年 12 月 16 日，以及“Treasury Sanctions South Sudanese First Vice President for Role in Serious Human Rights Abuse”，2020 年 1 月 8 日。

战，它们都没有签署《解决南苏丹冲突重振协议》。虽然中赤道州部分地区由民族拯救阵线和苏丹人民解放军反对派(亲里克·马沙尔)(亲马沙尔的苏人解反对派)分子控制，但其他地区仍在政府军控制之下。上尼罗大区和中赤道地区的武装行为四分五裂，也助长了持续不断的暴力和侵犯人权行为，包括与冲突有关的性暴力。

四. 人权背景

25. 南苏丹在获得独立前曾经历了多年的武装冲突，导致该国四分五裂，国内掠夺成性、不负责任的所谓“政治精英”们为夺取权力和资源而发动了暴力斗争，却牺牲了本国公民的安全和福祉。整个南苏丹因此遭遇了极为严峻的人权状况：蓄意造成平民饥荒、其难民和境内流离失所危机规模居非洲之最、性暴力和性别暴力频发。为此，国家机构日益成为安全部门，它们制造恐惧和恐怖，公民被剥夺了基本人权，酷刑、恐吓、任意非法拘留和强迫失踪成为常态。

26. 在本报告所述期间，政府军犯下了大部分违反人权法和国际人道法攻击平民的行为，包括：劫掠、与冲突有关的性暴力及其他形式的性暴力和性别暴力、任意逮捕和拘留、剥夺表达自由、见解自由和集会自由、武装部队招募和使用儿童以及任意限制人道援助。各武装团体也实施了严重违反人权法和国际人道法的行为，包括招募和使用儿童。

27. 南苏丹自独立以来，一直深陷于族裔冲突的泥潭，几乎没有对国家建设或国家的任何基础设施发展进行过投资。系统性腐败问题积重难返，是影响实现和平与稳定的最大障碍。机构能力薄弱，难以提供正常运作的负责任政府所需的最基本服务，因而损害了国家的复原力。有罪不罚现象根深蒂固，清楚地体现在如下方面：缺乏针对严重罪行的问责；未能建立过渡期正义机制；与公共服务、基础设施和人民生活方面的投资相比，国家更重视为军事和安全机构提供资金；以经济犯罪(包括腐败和贪污)为特征的食利主义严重弱化了国家功能。

28. 尽管南苏丹的国内法和该国自愿加入的国际条约均包含关于保护人权和促进问责的重要保障条款，但是该国并没有充分遵守和执行这些条款。由于缺乏有效的法治机构导致了安全和保障状况不稳定，因此，在本报告期间，针对暴行和其他罪行的问责仍然不足。南苏丹的成文法法院系统继续面临公民信任缺失的问题。基础设施不完善、资源缺乏、能力不足等状况进一步削弱了国家为平民提供有效诉诸司法机会的能力。委员会在 8 月 20 日举行的秘密会议上得知，司法职位空缺和欠发工资已导致某些法院(包括位于朱巴的法院)运作瘫痪。

29. 博尔(琼莱州)和本提乌(团结州)两地普遍使用习惯法法院，此举也阻碍了有效诉诸司法，因为习惯法法院缺乏程序保障且对妇女和女童抱有根深蒂固的文化偏见，并且没有获得审理严重刑事案件的授权。不过，自 2018 年 10 月起，联合国支助的流动法院系统至少在 10 个地方扩大了诉诸司法的渠道。¹⁵

¹⁵ 见联合国开发计划署(开发署), “Mobile Courts in South Sudan”, 2019 年 3 月 25 日, 可查阅 <https://reliefweb.int/report/south-sudan/mobile-courts-south-sudan>; 以及 “Mobile court concludes proceedings in Malakal”, United Nations Peacekeeping, 2019 年 9 月 23 日, 可查阅 <https://peacekeeping.un.org/en/mobile-court-concludes-proceedings-malakal>。

30. 为填补司法机构内部的重大空白而采取了其他一些举措，包括在朱巴组建了一个专门法庭，负责审理性暴力和性别暴力案件，该法庭自 2019 年 10 月 31 日开始运作(附件二，第 64 段)。在编写本报告之时，仅确定了供该法庭开展工作的房舍。设立专门的性暴力和性别暴力问题法庭之举值得欢迎，不过，委员会注意到，按照设想，该法庭将在国家一级而非州一级运作。此外，尽管流动法院对性暴力和性别暴力案件做出判决，但是它们似乎与该专门法庭无关，这就导致全国成千上万的受害者，包括与冲突有关的性暴力(不属于该专门法庭的有限授权范畴)受害者丧失了诉诸司法的机会。虽然已经做出相关承诺，可是犯有性暴力和性别暴力或者与冲突有关的性暴力者被起诉的却寥寥无几。

31. 2019 年 12 月，国家安全局还宣布设立了一个由五名法官组成的专门法庭，负责审判对犯有犯罪行为、违反《国家安全法》的行为和违反任何其他法律法规的行为的国家安全局成员。国家安全局法律事务主任称，该法庭还“有权对被控实施了侵犯人权等罪行的国家安全人员[士官]进行审判和惩罚，无论该人是以个人身份还是以国家安全[局]成员身份行事。”¹⁶

32. 尽管取得某些进展，但是委员会依然极为关切的是，在根据《解决南苏丹冲突重振协议》第五章建立过渡期正义机制(包括关于性暴力和性别暴力的机制)方面缺乏进展。在本报告所述期间，建立混合法庭的工作几乎毫无进展。2019 年 12 月，非洲联盟法律顾问办公室在与西奥多·梅龙法官和邦哈尼·马约拉教授协商后指出，该混合法庭的章程草案已经确定，起草委员会将着手编写该法庭的规则草案。然而，建立真相、和解和消除创伤委员会或者补偿和赔偿局、并辅以习惯机制和其他社区机制的进程仍然停滞不前(附件二，第 87 至 94 段)。

五. 经济、社会和文化权利

33. 民众极度贫困且缺乏基本服务，而国家机器的成员实施的种种经济犯罪无异于雪上加霜。¹⁷ 腐败令一些官员富可敌国，而数百万平民却食不果腹，由此造成了严重的社会经济不平等。随着时间的推移，腐败变得如此有利可图，它已经影响到所有经济部门和国家机构。¹⁸ 由于收入被非法转移，该国政府丧失了为实现经济、社会和文化权利(例如健康权、教育权、食物和农业权以及水权)提供资金的重要资源。¹⁹

34. 南苏丹经济以现金为主，政府高级官员的任命往往有赖于裙带关系，两者都为挪用和转移公共资金提供了便利。会计工作总体缺乏透明度和平民监督，导致

¹⁶ Dimo Silva Aurelio, “South Sudan Creates Tribunal to Try Security Operatives”, 美国之音, 2019 年 12 月 5 日。

¹⁷ 见关于……会议室文件(A/HRC/40/CRP.1), 可查阅委员会网页 www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx。

¹⁸ 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.

¹⁹ 例如见 Sam Mednick, “Sprouting Weapons of War” Organized Crime and Corruption Reporting Project, 2019 年 7 月 17 日, 可查阅 www.occrp.org/en/investigations/sprouting-weapons-of-war。

上述问题更加严重。南苏丹工作安排的优先顺序漏洞百出，可以看出该国的资金被用在了军队和统治精英身上，而不是用来改善基础设施或公共服务。

35. 自 2005 年《全面和平协议》达成以来，石油收入一直是南苏丹经济的主要支柱，占该国出口的绝大部分，目前占政府收入的 73%。²⁰ 南苏丹这种对石油收入的依赖所产生的累积效应提升了该国的地缘政治地位，也催生了一种“食利”国家模式，在这种模式下，原油产生的巨额收入被用来为中国、印度和马来西亚等外部客户谋取利益。然而，应计利润仍旧会被“政治精英”们挪用，而不是依照相关法律规定用于对国家和公民进行再投资。²¹

36. 《重振协议》的缔约方力图解决这一问责空白，其第四章的条款专门规定了旨在推动对公共资源、尤其是石油收入使用和管理的问责制和透明度的各项改革和措施。第四章所载措施的主要依据是南苏丹的国内法律，特别是 2012 年《石油法》和《石油收入管理法》。为确保公共财政透明而制定的其他相关立法有：《石油收入管理法》(2013 年)第 9 章、²² 《调查委员会法》(2006 年)第 5 章²³ 以及《南苏丹银行法》(2011 年)第 11 章。²⁴

1. 非石油收入

37. 第四章还规定，原本由财政部负责征收的非石油收入改由国家税务局主要负责征收和管理。²⁵ 委员会在秘密会议上得知，2019 年上半年，国家税务局稳步增加了税收征缴收入，²⁶ 限制了过度的税收豁免，精简了国家税务局高级职位的招聘，²⁷ 扩大了税基，并通过每月公布税款征收情况统计数据提高了透明度。

38. 2019 年 8 月 23 日，征收工作停滞，因为财政和经济规划部长萨尔瓦托·加朗·马比奥迪特根据多项指控罢免了国家税务局局长并解散了国家税务局董事会，然而双方对上述指控均予以否认。²⁸ 2019 年 10 月 28 日，财政和经济规划部长指控国家税务局局长在肯尼亚蒙巴萨非法开设了一个单一国库账户并进行账户操作，²⁹ 目的是对外转移国家税务局业务账户内的资金。国家税务局董事会否认了这项不法行为指控，确认其知悉此事并授权开设这一账户和进行随后的交易。³⁰

²⁰ 联合国儿童基金会(儿基会)，“国家预算简报”，2019 年 5 月，可查阅 www.unicef.org/southsudan/reports/national-budget-brief。

²¹ 例如见《石油收入管理法》(2013 年)，第 29 条。

²² 关于透明和问责的第 9 章。

²³ 第 5 章第 21 款：公众了解调查程序和资讯的权利。

²⁴ 第 11 章：账户、财务报表、审计和报告。

²⁵ 《重振协议》，第 4.10.1.4 至第 5 条。

²⁶ 向委员会备案的年度统计数据。

²⁷ 委员会在一次秘密会议上获悉，国家税务局董事会已聘请坦桑尼亚税务局进行国家税务局高级职位的招聘工作。但所有招聘在过去一年被冻结，以便国家安全局进行审查。

²⁸ RSS/MOF&P/MO/3/08/19 号部长令和向委员会备案的文件。

²⁹ 由于南苏丹是一个内陆国家，其许多进口商品抵达蒙巴萨港口并在那里征税。

³⁰ 见董事会发表的新闻稿，可查阅 <http://updm-rss.org/press-statement-by-the-defunct-national-revenue-authority-nra-board>。

39. 委员会有充分理由相信，非法罢免国家税务局局长并解散国家税务局董事会以来，非石油收入款项一直在稳定地转入由南苏丹银行代表国家税务局管理的国家税务局业务账户。³¹《国家税务法》规定，征收的税款总额中，只有 2%可由国家税务局保留供其业务之用，³²——这是法律规定划归国家税务局的唯一款项，其余部分均应汇至该国政府的综合账户。委员会掌握的可靠证据显示，2019 年 9 月，南苏丹的非石油收入总额中，就有 56%被汇入国家税务局账户，只有 42%被汇至政府账户。³³

40. 委员会掌握的关于 2019 年 10 月和 11 月情况的证据证实，将近 80%的非石油收入被转移到国家税务局业务账户，只有 20%被汇入在内罗毕开设的政府账户。³⁴委员会在 2019 年 9 月 2 日举行的秘密会议上就下列情况得到了确认：转移至国家税务局业务账户的资金并未按照法律规定交到政府手中。2019 年 10 月，国家税务局代理局长又声称 2019 年 1 月至 8 月中旬采取的公开发布月度统计数据并逐条列明国家税务局税款征收情况的做法(由前任局长提出)并非法定举措，因此予以终止，收入征缴和支出方面的国家机密性随之提高。

41. 截至 2019 年 7 月中旬，国家税务局报告的非石油来源收入已超过 3,600 万美元(70 亿南苏丹镑)。³⁵委员会在 2019 年 9 月 2 日举行的秘密会议上获得可靠消息：数百万美元的公共收入在 9 月和 10 月突然消失，没有存入国家税务局的经常账户。在过去 10 年里，南苏丹的审计长一直无法有效履行其职能，也无法根据审计规范和准则提交报告，因为该国政府拒绝发布和接收此类报告；这种状况削弱了该国实现可持续发展目标的能力。

2. 违法行为和被控罪行：调查结果

42. 南苏丹于 2015 年 1 月加入《联合国反腐败公约》，并于 2013 年 1 月签署(但尚未批准)《非洲联盟预防和打击腐败公约》。这两项条约都禁止成员国实行或推行鼓励腐败或挪用公共资源的政策。南苏丹还成立了反腐败委员会，其作用是保护公共资源，调查腐败和滥用公共资源的案件。³⁶

43. 根据上述信息，委员会有合理的理由认为，该国政府成员从事了相当于经济犯罪的行为，包括逃税、洗钱、贿赂、利用自己的地位影响国家资源分配的决定和利用公款谋取私利，同时直接知晓其行为不仅会使他们不当致富，而且会剥夺政府向平民提供重要服务和改善社会福利所必需的资源。

44. 委员会将在一份会议室文件(A/HRC/43/CRP.2)中公布其关于经济犯罪的详细调查结果，包括缺乏透明度和民事监督、挪用国家收入和非法资金流动，重点是经济犯罪如何阻碍人们享有主要的经济、社会和文化权利，包括获得足够的食

³¹ 向委员会备案的机密文件。

³² 机密会议，2019 年 10 月 23 日。

³³ 向委员会备案的机密文件。

³⁴ 同上。

³⁵ “South Sudan collects 36 mln USD tax from non-oil sources”，新华社，2019 年 7 月 12 日。

³⁶ 《反腐败法》(2009 年)；《过渡宪法》，第 147 段。

物、教育和医疗卫生的权利，以及这些犯罪行为如何对儿童造成不成比例的影响，导致婴儿死亡率居高不下。

六. 在武装冲突中招募和使用儿童³⁷

45. 在本报告所述期间，《解决南苏丹冲突重振协议》进展缓慢，各方有选择地执行，对儿童生活产生了不成比例的影响。严重急性营养不良、缺乏关键服务和部族间不断自相残杀以及性暴力和性别暴力问题继续使南苏丹的男女儿童遭受多重伤害。截至 2019 年 7 月下旬，南苏丹国防军和反对派武装团体中据信仍有大约 19,000 名儿童。³⁸ 令人关切的是，据估计至少自 2017 年 12 月以来，冲突各方招募的儿童人数一直保持未变。³⁹

46. 在本报告所述期间，苏人解反对派(亲里克·马沙尔)第 6A 师(驻扎在 Achot (瓦乌州))和政府军成员，包括国家安全和南苏丹国防军猛虎师、⁴⁰ 南苏丹国防军第 3 师(驻扎在北加扎勒河州(Winejok)和瓦拉布州(Panachier))、第 4 师(驻扎在 Rubkona(团结州))、第 5 师(驻扎在 Girinty 军营(瓦乌州)、西加扎勒河州)和第 10 师⁴¹ 以及南苏丹国防军塔班·邓派联合部队⁴² 不断在瓦乌州、瓦拉布州、团结州和中赤道州(民族拯救阵线的权力基地)招募、培训和使用年仅 12 岁的儿童。尽管《解决南苏丹冲突重振协议》、《苏丹人民解放军法》和《国家服务安全法》载列了一些规定，但委员会收到可靠资料称，政府军进行的招募活动试图招募 10,000 名男子和男童，⁴³ 有人估计人数达 17,000 人。⁴⁴

47. 尽管《解决南苏丹冲突重振协议》第 2.1.10.3 条重申了 2017 年《停止敌对行动协议》第 3 条第(2)款(f)项、第 9 条第(1)款和第 10 条(a)项关于不使用儿童和不招募儿童加入武装部队或民兵的承诺，但自签署协议以来进展不大。由于最早于 2018 年 9 月开始规划，而且招募工作至少持续到次年 7 月，国家安全和南苏丹国防军特别是在瓦拉布州通过强迫招募和使用儿童等手法加强兵力(据报道 2019 年 8 月在 Tonj South(瓦拉布州)的 Yithkuel 开始为部队培训)。据报道，儿童新兵在瓦拉布的南苏丹国防军第 3 师和瓦乌州、⁴⁵Yithkuel (通治州南)的南苏丹国防军第 5 师 Girinty 军营以及 Luri(朱巴附近)的国家安全局训练设施之间调动(见

³⁷ 根据“不伤害”原则未披露某些信息。

³⁸ 见儿基会，“南苏丹反对派团体释放 32 名儿童”，2019 年 7 月 24 日。2018 年，联合国核对了 102 起招募或使用儿童事件，受影响的儿童有 453 名(365 名男童，88 名女童)，其中 14% 的儿童被招募入伍时不满 15 岁(A/73/907-S/2019/509，第 152 段)。

³⁹ “Children are the face of conflict-fuelled humanitarian tragedy in South Sudan – UNICEF”，联合国新闻服务处，2017 年 12 月 15 日。

⁴⁰ 委员会在 2019 年 10 月 19 日的一次秘密会议上听取了可信的指控，称猛虎师部队是总统亲自派遣监督招募工作的。

⁴¹ 委员会在 2019 年 9 月 16 日和 17 日的秘密会议上获悉，2019 年 4 月，估计有 800 名第 10 师的士兵被部署到瓦拉普(帕纳契尔州)设立总部，开展解除武装工作。

⁴² 指的是苏人解反对派(亲塔班·邓)部队。

⁴³ ERN 102837-102841；ERN 102850-102857。

⁴⁴ ERN 103459-103468。

⁴⁵ ERN 102536-102540。

附件二，第 3-5 段)。在某些情况下，调动和训练涉及南苏丹国防军猛虎师部队。据报道，一些新兵在接受训练和佩发武器后被带到朱巴附近，由国家安全局和南苏丹国防军，特别是猛虎师部署。⁴⁶

48. 在委员会记录的大多数情况下，招募儿童是蓄意的，因为这些儿童是被南苏丹国防军绑架的，包括在戈格里亚勒(瓦拉布州)被绑架的(附件二，第 1-12 段)。除了政府军之外，瓦拉布州的县专员和地方长官还通过招募活动有系统地为国家安全局和南苏丹国防军招募和使用儿童。在其他情况下，专员们向无法提供适龄作战男性的家庭勒索牛只，使他们一贫如洗。⁴⁷ 委员会发现在 Tonj (瓦拉布州)存在类似行为模式，即南苏丹国防军的命令下达给指挥官和地方长官，之后这些官员要求各家至少推举一名家庭成员。如果没有适龄男子，便找男童代替。⁴⁸

49. 在团结州，因冲突而丢失或与父母失散的男童由于缺乏资金养活自己而“自愿”加入了南苏丹国防军或苏人解反对派(亲里克·马沙尔)。⁴⁹ 然而，一旦入伍，这些男童就难以获释。⁵⁰ 儿童们如不服从命令则被鞭打 30 至 50 下。⁵¹

50. 虽然历经磨难，但委员会采访的所有已逃脱的应征儿童都非常顽强，他们大多数人强调的是希望继续接受教育。⁵² 一名男童表示，他希望成为医生，以减轻“我国人民的痛苦”，在他看来，他们为了治病不得不长途跋涉。⁵³ 另一位男童希望有一天能成为律师，以“赋予人民权利”。⁵⁴

51. 此外，青年人数剧增、失业率居高不下，再加上缺乏受教育的机会，加剧了犯罪行为和形势动荡。在本报告所述期间，15 至 24 岁的男童和男子的失业率仍接近 20%。⁵⁵ 约有 220 万儿童失学，而全国有 30% 的学校因冲突而遭到破坏、毁坏、被占或关闭。⁵⁶ 尽管自 2011 年独立以来，正常运作的学校数量大幅度增加，但是，阿维尔(加扎尔河)等地的年轻人认为，缺乏就业和教育机会是从事犯罪活动的关键因素。⁵⁷ 正如一位年轻人告诉委员会：“有把枪是有益的，因为它可以让一个年轻人变得有价值，否则他可能会无所事事。”⁵⁸

⁴⁶ ERN 103459-103468；另见附件二，第 71-86 段。

⁴⁷ 秘密采访证实，政府军有计划地在瓦拉布州招募儿童；ERN 103200-103204。

⁴⁸ ERN 102837-102841。

⁴⁹ ERN 103320-03323；ERN 103315-103319。

⁵⁰ ERN 103315-103319。

⁵¹ ERN 103315-103319。

⁵² ERN 103205-103209；ERN 102530-102535；ERN 103200-103204。

⁵³ ERN 103200-103204。

⁵⁴ ERN 102530-102535。

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

⁵⁶ 见 www.unicef.org/southsudan/media/1831/file/UNICEF-South-Sudan-Education-Briefing-Note-Mar-2019.pdf。

⁵⁷ Emmanuel Kele, “Aweil youth say unemployment makes them engage in criminality”, 南苏丹特派团，2019 年 5 月 7 日。

⁵⁸ ERN 103445-103448。

1. 解除武装、复员和重返社会

52. 据说南苏丹至少有 19,000 儿童与政府部队和武装团体有关联，这一事实充分表明，执行解除武装、复员和重返社会的进程存在严重不足。2019 年 1 月 31 日和 2 月 21 日，包括 2 名年仅 8 岁的儿童在内的 40 名儿童在 Tonj North (瓦拉布州) 被南苏丹国防军释放。⁵⁹ 委员会收到信息称，南苏丹国防军第 3 师于 2019 年 6 月在 Aguok、Kuac West 和 Kuac East 释放了 14 名儿童。⁶⁰ 7 月，停火和过渡期安全安排监测和核查机制监督了在 MirMir (团结州) 释放 32 名年龄在 13 至 17 岁之间的儿童，他们自 2016 年以来一直在苏人解反对派 B 师当兵。⁶¹

53. 据报道，在 2019 年 9 月 16 日那一周，北加扎尔河州的武装团体向国家解除武装、复员和重返社会委员会释放了 20 多名儿童，⁶² 基尔总统根据第 123/2019 号总统令重组了该委员会。由 12 名成员组成的国家解除武装、复员和重返社会委员会根据《重振协议》负责管理前士兵重返社会的工作。虽然某些地区的儿童解除武装、复员和重返社会工作取得了积极进展，但委员会关切地注意到，儿童兵招募活动正在瓦乌州、瓦拉普州、团结州和中赤道州进行，后者由民族拯救阵线招募。所有儿童，无论他们被招募到哪里或哪个派别，都必须立即予以释放并给予适当保障。

54. 委员会对正在进行的招募和正在发生的敌对行动之间的联系，特别是民族拯救阵线在中赤道州的征兵表示关注。在本报告所述期间，《重振协议》签署方加快了招募和强行招募儿童兵的行动，这可能与需要达到必要的联合部队进驻营地所需人数有关(见上文第 17 段)。

2. 违法行为和被控罪行：调查结果

55. 苏人解反对派(亲里克·马沙尔)和政府军成员，包括国家安全和南苏丹国防军塔班·邓派联合部队，都招募了未满 15 岁的儿童入伍。委员会在 2020 年 1 月 8 日举行的一次秘密会议上获悉，其中一些儿童被用作帮厨、警卫和信差，其他儿童则参加敌对行动。一些人回忆说，他们接受训练、配备了武器、被迫抢劫，他们还受到死亡威胁和恐吓，以阻止他们离开训练营和战场。

56. 上述招募儿童的行为违反了国内法和条约法，包括南苏丹 2018 年 9 月加入的《儿童权利公约关于儿童卷入武装冲突问题的任择议定书》，南苏丹问题混合法庭章程草案将招募未满 15 岁儿童列为犯罪行为(第 5 条(b)项)。

57. 同样，一九四九年八月十二日日内瓦四公约关于保护非国际性武装冲突受害者的附加议定书(第二附加议定书)第四条第三款禁止未满十五岁的儿童参加敌对行动。南苏丹的国内法进一步要求国家保护和确保在做出任何与儿童有关的决定

⁵⁹ ERN D120808-D120810。

⁶⁰ ERN 103364-103370。

⁶¹ 见 2019 年 7 月 1 日至 9 月 30 日期间执行《解决南苏丹共和国冲突重振协议》情况的报告，第 21 段。

⁶² Emmanuel Kele/Deng Mou, “Government forces hand over captured child soldiers”, 南苏丹特派团，2019 年 9 月 24 日。

时始终考虑到儿童的最大利益。尽管国家有义务预防、调查和惩罚违法行为并提供补救，但南苏丹政府未能履行职责。

七. 局部冲突

58. 尽管签署《解决南苏丹冲突重振协议》以来重大敌对行动普遍减少，但作为进一步表明国家机构的脆弱性的一个例子，在完全没有法制的地方对畜牧资源的暴力竞争不断加剧，例如在朱尔河地区(西加扎尔河州)、特维克(瓦拉布州)、马约姆(团结州)和琼莱州(见附件二，第 13-36 段)。

59. 在广大农村社会中，财富主要以牛币为单位衡量，由于以雨季和旱季(包括洪水和干旱期)交替为特征恶劣的气候条件，2018 年 12 月至 2019 年 11 月，取水 and 牧场问题引发了牧民和农民之间的冲突。这类资源的竞争不仅受到气候因素的影响，而且还由于为了争夺优势和效忠种族、部落和亚氏族的斗争而变得紧张。

60. 全国范围内发生局部冲突主要是因为缺乏国家和法治，轻武器和重武器扩散，以及国家未能建立和培养共同的民族认同感。对于某些族群而言，他们在种族和族群间持续的暴力经历是如此激烈且限于局部，以至于南苏丹的独立对他们的日常安全可能没有什么意义。许多族群表示，独立仅仅结束了某种战争。

61. 委员会深为关切地注意到，在本报告所述期间，冲突各方利用当地的争斗，操纵族群之间的历史分歧，利用种族认同，达到排挤驱赶一方或另一方认为的持异议族群的目的。例如，委员会收到可靠情报称，携带轻重武器，包括 AK-47 突击步枪(卡拉什尼科夫式步枪)、火箭榴弹和 PK 机关枪的政府军武装民兵经常在临近社区，往往是在牛群转场期间，进行野蛮袭击。据报告，国家故意不提供安全或不追究肇事者对这些行为的责任，迫使平民建立起自己的自卫机制，加入武装组织或与武装分子结盟以获得保护。因此，国家一级的武装冲突大多在 2018 年 12 月初转变成为局部冲突，委员会记录了几起典型的暴力事件(见附件二，第 13-36 段)。仅在 2019 年 2 月底至 5 月，南苏丹特派团就记录了 152 起局部暴力事件，造成约 531 人死亡，317 人受伤，与 2018 年同期相比，伤亡人数增加了 192%(S/2019/491, 第 27 段)。

62. 西加扎勒河州的朱尔河地区发生的袭击事件以杀人、强奸和性暴力、绑架、抢劫和破坏财产为主(见附件二，第 13-36 段)。委员会在 2019 年 10 月 12 日的一次秘密会议上获悉，在戈格里亚勒(瓦拉布州)的阿普克族和阿古奥克族之间发生的类似冲突造成 300 多名平民遇害，妇女儿童惨遭绑架，房屋被焚，民用财产和医疗设施被毁。

63. 2018 年 12 月至 2019 年 5 月，在团结州和瓦拉普州交界地区，发生了多次袭击和反击，一方是来自马约姆(团结州)的努尔族，另一方是来自通治和特维克(瓦拉普州)的丁卡族。⁶³ 这些袭击造成了数百名平民伤亡、数千头牛被双方抢劫

⁶³ ERN 103303-103309; ERN 102974-102977; ERN 102978-102981; ERN 102982-102985。信息还来自一份实地特派团的机密报告。

一空。⁶⁴ 在琼莱州，洛乌努埃尔、丁卡和穆尔勒族牧民也发生了类似冲突(见附件二，第 13–36 段)。

64. 由于养牛者团体继续听从军事和民事当局调动，委员会审查了这些团体在多大程度上归属正式的组织结构，发现许多养牛场已经建立了正式的等级制度，包括在西加扎尔河州的 Kuajena、Rocodong、Udici 和 Alur in Wau 开展袭击。正如一位目击者告诉委员会的那样：“养牛人开始组织起来，每隔两三天，我们就会听到又出事了。”⁶⁵ 委员会发现，养牛人编入正式等级制度，并由冲突各方提供轻重武器，这些平民群体作为有组织的民兵在冲突各方的指挥和控制下活动。

65. 虽然《解决南苏丹冲突重振协议》主要侧重于解决国家一级的冲突，但地方行为者也作出同样努力去平息地方一级的暴力(见附件二，第 13–36 段)。委员会关切地注意到，虽然针对在地方一级减少暴力的并行措施仍然是可喜的发展，但这些措施并未在国家一级联系起来，而且国家级政府也未能有意义地参与其中。

违法行为和被控罪行：调查结果

66. 虽然局部冲突通常被描述为因牛群引起的传统种族冲突或涉及公民私人的犯罪，但民兵却接受了人员和武器，包括冲突各方向其提供的军用武器。政府军和武装反对派团体成员对平民实施的暴力行为违反日内瓦四公约第三条和第二附加议定书的条款规定以及习惯国际法，构成战争罪，包括谋杀、抢劫、破坏财产和性暴力。⁶⁶

67. 在局部冲突中犯下了严重侵犯和践踏人权行为以及严重违反国际人道法的行为，往往有与南苏丹国防军和苏人解反对派(亲里克·马沙尔)联合武装民兵的参与。直接针对平民的违法行为包括绑架、强迫招募(包括招募儿童)、谋杀、性暴力、虐待、绑架、抢劫以及破坏财产、庄稼和其他谋生手段，其目的显然是为了获取财富或牲畜(见附件一，地图 2)。其中有许多袭击暴露出对平民生命令人震惊的漠视。

68. 暴力事件进一步侵犯了《非洲人权和民族权宪章》第四条和第十四条所保障的生命权和财产所有权。暴力事件还违反了《过渡宪法》，特别是侵犯了生命权、不受不人道和有辱人格待遇的权利和财产所有权，并违反了禁止破坏和掠夺财产的 2008 年《刑法》和《苏丹人民解放军法》第 57 条和第 206 条。委员会有合理的理由认为，根据国际法，这些行为可能构成战争罪⁶⁷ 和其他严重罪行，⁶⁸ 南苏丹问题混合法庭规约草案将其定为刑事犯罪。

⁶⁴ ERN 103303-103309。

⁶⁵ ERN 103249-103254。

⁶⁶ 红十字国际委员会，规则 156。

⁶⁷ 根据规约草案第 4 条(a)、(b)、(e)和(h)项。

⁶⁸ 根据规约草案第 5 条(a)至(c)项。

八. 饥荒问题

69. 在本报告所述期间，约有 635 万人(大约占人口数量的 54%)被归类于“处于危机中”，甚至“处于严重的粮食不安全中”(又见附件二，第 37-47 段)。⁶⁹ 大尼罗河上游地区是目前粮食最不安全地区，其次是加扎尔河地区。⁷⁰ 2019 年，衡量人类发展基本层面的人类发展指数将南苏丹列为第三最差的民族国家，在 189 个人居国家中排名第 186 位。⁷¹

70. 委员会极为关切地注意到，除了气候因素外，政府军和武装团体还在瓦乌州和团结州推行了导致人口饥饿的政策。这些政策是作为更广泛战略的一部分来设想和实施的，目的是剥夺地方敌对族群的资源，从而迫使他们投降，让士兵和民兵们犒赏自己，强迫族群离开祖祖辈辈生活的土地，然后没收这些土地，或者只是强迫人们加入参与冲突的不同派别。非法策略造成的拒绝人道援助和流离失所大大加剧了该国不同地区的饥荒，剥夺了成千上万平民的基本需要，包括获得粮食的需要。⁷²

71. 根据所收集的资料，委员会得出结论称，存在无可争议的充分证据，可以据此根据国际法和国内法追究政府中和武装反对派中奉行导致人口饥饿政策的个人的责任，包括根据《国际刑事法院罗马规约》第八条第 2 款第(25)项的规定，该条款现在将故意以断绝平民粮食作为战争方法列为非国际武装冲突中的战争罪(见附件二，第 37-47 段)。⁷³

九. 性暴力和性别暴力

72. 在南苏丹继续广泛和普遍存在性暴力和性别暴力，包括与冲突有关的性暴力，其采用的明显模式是恐怖和征服。在本报告所述期间，委员会记录的违法行为包括强奸和轮奸、性残害、强迫婚姻、绑架和性虐待。⁷⁴ 儿童，包括少女，也沦为性剥削的受害者(见附件二，第 1-12 段)。⁷⁵

73. 由局部冲突引起的性暴力和性别暴力事件包括强奸和轮奸、强迫裸露、绑架、性虐待和强迫婚姻。⁷⁶ 委员会收集的证据证实，在局部冲突中，养牛人和青年男子是性暴力的主要实施者，其中一些人属于在政府和反对派武装的指挥和控

⁶⁹ www.fao.org/in-action/kore/news-and-events/news-details/en/c/1208338。

⁷⁰ 见 www.fao.org/south-sudan/news/detail-events/en/c/1207694。

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

⁷² 见会议室文件(A/HRC43/CRP.1)，可在委员会网页上查阅，网址为 www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx。

⁷³ 同上。

⁷⁴ ERN 103469-103474；ERN 102632-102652。

⁷⁵ ERN 102991-102995。

⁷⁶ ERN 102664-102670；ERN 102660-102663；ERN 102627-102631；ERN 102680-102688；ERN 102609-102617；ERN 102632-102652。

制下行动的有组织的民兵。⁷⁷ 地方政府既没有调查也没有起诉任何所报告的案件(见附件二, 第 1-12 段)。

十. 继续剥夺基本权利和自由

74. 任意逮捕和拘留, 以及对表达自由、意见自由和集会自由的其他限制, 在南苏丹依然比比皆是(附件二, 第 71-86 段)。委员会在 2019 年 8 月 21 日的一次秘密会议上获悉, 公民和政治空间受到严格限制, 其形式是审查和自我审查, 这限制了活动人士、记者、人权维护者、持不同政见者和普通公民公开表达意见或自行组织起来。

75. 此外, 西加扎尔河州、团结州和中赤道州的平民目睹了持续不断的战斗, 2019 年 4 月、6 月和 8 月, 包括绑架和强迫失踪在内的暴力行为的规模和严重程度有所增加(见附件二, 第 71-86)。证人表示, 先前的族裔间冲突和这些地区存在的武装团体是失踪问题的起因。

十一. 结论

76. 根据调查结果, 委员会有合理的理由认为, 南苏丹政府成员从事了相当于经济犯罪的行为, 包括逃税、洗钱、贿赂、利用自己的地位影响国家资源分配的决定和利用公款谋取私利。非法转移收入使国家失去了为实现经济、社会和文化权利提供资金的重要资源。

77. 在招募和使用儿童时以及局部冲突中, 也犯下严重践踏和侵犯人权及违反国际人道法的行为。在瓦乌州、瓦拉布州、团结州和中赤道州, 苏人解反对派(亲马沙尔)第 6A 师和包括国家安全局和南苏丹国防军猛虎师、第 3、第 4、第 5 和第 10 师在内的政府军以及南苏丹国防军塔班·邓派联合部队继续招募、训练和使用年仅 12 岁的儿童。

78. 地方一级的局部冲突往往有组织的南苏丹国防军或苏人解反对派(亲马沙尔)武装民兵联合部队参与, 多为野蛮袭击。对平民的侵犯行为包括绑架、强行招募(包括招募儿童)、谋杀、性暴力、虐待、绑架、抢劫以及破坏财产、庄稼和其他谋生手段。

79. 委员会还发现无可辩驳的充分证据, 可以据此根据国际法和国内法追究政府和武装反对派个人的责任, 这些人在瓦乌州和团结州等地推行导致民众饥荒的政策(另见附件二, 第 37-47)。⁷⁸

80. 性暴力和性别暴力事件, 包括与冲突有关的性暴力, 继续广泛普遍存在, 包括在局部冲突中存在, 其采用的模式是恐怖和征服。委员会记录的违法行为包括强奸和轮奸、性残害、强迫婚姻、绑架和性酷刑。儿童, 包括少女, 也沦为性剥削的受害者(另见附件二, 第 1-12)。

⁷⁷ ERN 102680-102688; ERN 102632-102652; ERN 102653-102659。

⁷⁸ 另见载有委员会补充调查结果的会议室文件(A/HRC/43/CRP.1), 可在委员会网页上查阅, 网址为 www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx。

81. 任意逮捕和拘留以及对表达自由、意见自由和集会自由的其他限制在南苏丹日常生活中也比比皆是，这些行为侵犯了《非洲人权和民族权宪章》所载知情权和表达权以及结社自由和集会自由。此外，南苏丹通过持续强迫失踪行为，未能履行义务，真诚地调查所有侵犯人权的指控，特别是在仅有当局掌握相关信息的情况下(另见附件二，第 71-86 段)。

十二. 建议

82. 委员会建议南苏丹政府：

(a) 确保高级官员按照《南苏丹反腐败委员会法》(2009 年)第 35 条的规定，在担任政府职务之前书面申报其资产，然后每年作出书面申报，并制定立法，将提供错误申报定为刑事犯罪；

(b) 与其他国家合作，追回和返还腐败所得，包括在邻国和其他国家购买的财产和外国账户中存有的资金，并寻求协助调查和起诉责任人；

(c) 重新调整支出优先事项，并将资源用于满足公民的需求，包括确保其免于饥饿和实现其他经济、社会和文化权利，以及提高生活水平；

(d) 加强司法部门和国家司法机构(包括朱巴以外的机构)的独立性和能力；

(e) 迫切履行国际人权法和国际人道法规定的所有义务，包括避免一切针对平民的袭击；

(f) 毫不拖延地向秘书长交存过渡时期国家立法机构批准的《公民权利和政治权利国际公约》和《经济社会文化权利国际公约》及其第一附加议定书；

(g) 毫不拖延地签署、加入或批准各项国际和区域人权文书，以加强促进和保护人民的基本权利和自由；尤其是使南苏丹成为《保护所有人免遭强迫失踪国际公约》的缔约国，从而对国内法形成补充；

(h) 加入《国际刑事法院罗马规约》和《非洲司法和人权法院规约议定书修正议定书》，或接受国际刑事法院的管辖权，以确保对该国持续存在的侵犯人权和严重罪行追究责任；

(i) 采取必要步骤解决和打破局部冲突的循环，包括执行 2018 年 8 月举行的瓦乔克会议、2019 年 6 月举行的曼金会议和 2019 年 7 月举行的三国会议等有关和平会议通过的决议；

(j) 设立特别法庭，进行公正调查，追究肇事者的责任，并向受害者及其家属提供赔偿；

(k) 推广有效的解除武装、复员和重返社会方案；

(l) 加强促进解除武装、复员和重返社会的措施，包括起草关于安全部队保管和储存武器责任的立法和条例；

(m) 增加对与儿童有关的解除武装、复员和重返社会方案的投资，包括心理支持、教育、职业培训和青年就业；

(n) 确保基于性别的暴力侵害妇女问题得到有效处理，而不是诉诸调解与和解等替代性争议解决程序；

(o) 按照人权理事会第 S-26/1 号决议的建议，立即任命一名性暴力和性别暴力问题特别代表；

(p) 全面执行关于防止冲突中性暴力问题的行动计划，履行南苏丹政府和负责冲突中性暴力问题的秘书长特别代表在《联合公报》中作出的承诺；

(q) 确保国家司法系统根据消除对妇女歧视委员会在关于妇女获得司法救助的第 33 号一般性建议(2015 年)中提供的指导，协调多元法律制度，以加强和保护性别暴力幸存者，确保他们能够诉诸司法并获得赔偿，包括有效补救；

(r) 确保与冲突有关的性暴力得到适当调查，肇事者受到起诉；

(s) 确保所有族群都能迅速、不受阻碍和持续不断地获得人道援助，优先满足大上尼罗河和加扎尔河地区平民的迫切需要，并采取措施追究阻挠或非法转移人道援助的国家和非国家行为者的责任；

(t) 停止一切对媒体和公民社会活动的干预，确保表达和集会自由；

(u) 毫不拖延地加快建立第五章机制，全面实施过渡期正义；

(v) 确保对所有严重侵犯和践踏人权行为进行适当调查，起诉责任人，并向受害者提供有效补救；

(w) 毫不拖延地设立真相、和解和消除创伤委员会，确保与南苏丹利益攸关方进行有效和透明的协商，并确保委员遴选过程透明可信；

(x) 确保与包括妇女、青年、老年人、儿童、流离失所者和难民在内的所有南苏丹人协商，确保他们有效参与第五章机制的设计和实施；

(y) 促进民间社会参与提高对过渡期正义机制的认识，促进对司法和问责机制的宣传，提高公民的知识，改善他们对过渡期正义进程的参与；

(z) 采取和推广广泛的赔偿办法，包括确保至少 1% 的石油收入与其他非货币措施一起用于赔偿；

(aa) 向受害者及其家属提供充分、迅速和有效的赔偿和补救，包括查明在国家羁押期间失踪的亲人遭受的侵犯人权行为以及他们的命运或下落；

(bb) 批准《关于建立非洲人权和民族权法院的〈非洲人权和民族权宪章〉议定书》，并发表声明，允许个人向非洲人权和民族权法院提出申诉；

(cc) 通过国家、区域和国际机制，采取措施并支持调查和起诉南苏丹境内涉嫌战争罪、危害人类罪和其他侵犯人权行为的所有责任人。

83. 委员会建议各会员国：

(a) 包括在中赤道州和迈乌特州监测和执行与当前民族冲突有关的武器禁运，遏制向交战各方供应武器；

(b) 行使管辖权，追究侵犯和践踏人权及违反国际人道法行为方的责任；

(c) 将断绝平民粮食作为战争罪纳入国家立法(如果尚未这样做)。

84. 委员会建议非洲联盟：

(a) 鼓励南苏丹各方解决悬而未决的分歧，以解决冲突，确保及时组建重振后的民族团结过渡政府；

(b) 与南苏丹政府接触，并支持其采取必要步骤，建立混合法庭和其他过渡期正义机制和程序，并确定这一进程的时间表；

(c) 根据和平与安全理事会的决定，为单方面设立混合法庭做好应急准备，以防南苏丹政府未能在最后期限前设立该法庭；

(d) 制定收集和保存证据的程序，为设立混合法庭做准备。

85. 委员会建议联合国和各国际伙伴：

(a) 鼓励各方解决悬而未决的分歧，以解决冲突，确保及时组建重振后的民族团结过渡政府；

(b) 让国家和地方一级的利益攸关方参与并支持它们建立必要的法律和政策框架，以支持过渡期正义机构，特别是混合法庭。

86. 委员会建议停火过渡安全安排监测和核查机制继续在公开报告中列入有关保护平民问题的信息，包括招募和使用儿童以及性暴力和性别暴力问题的信息。

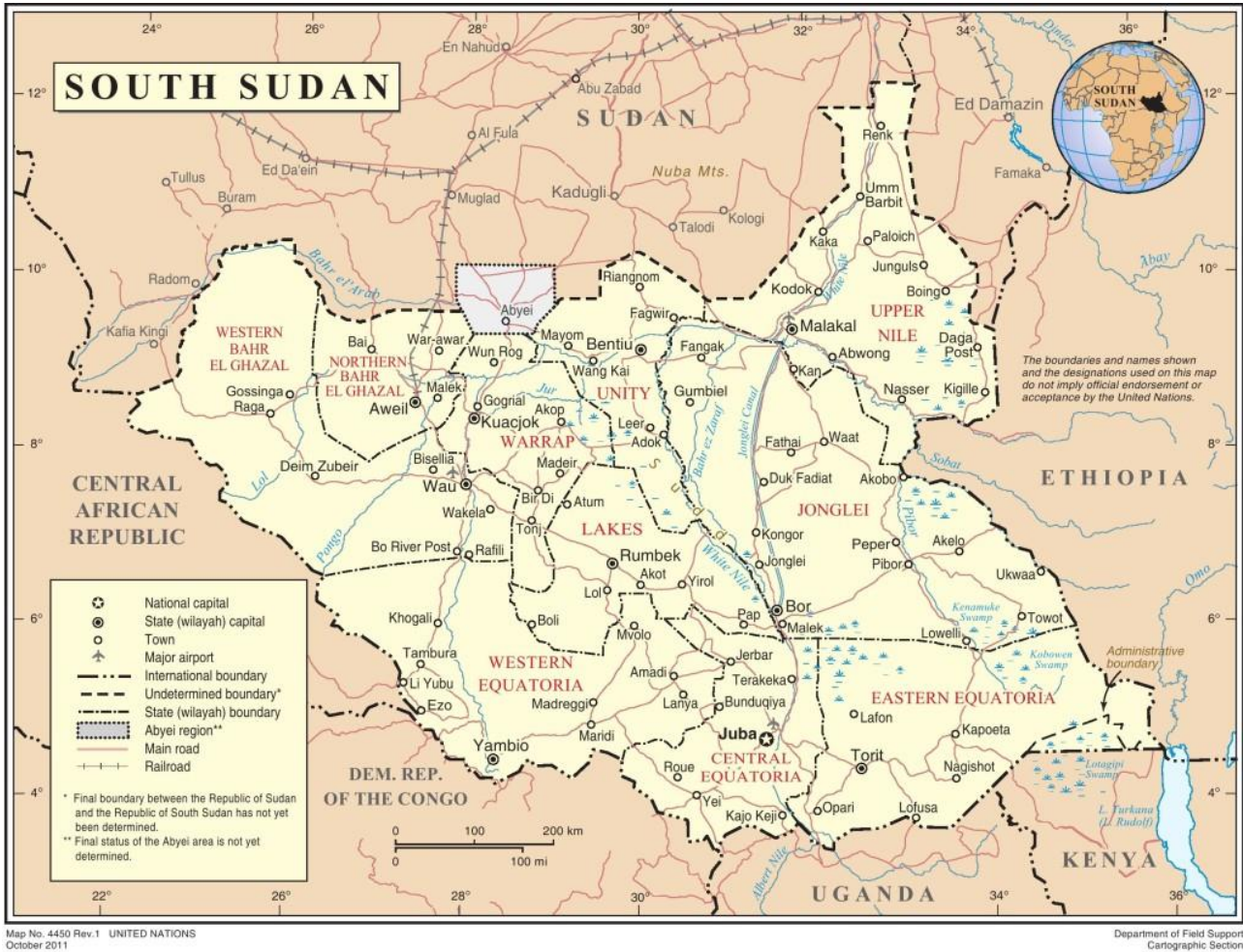
87. 委员会建议南苏丹特派团和各非政府组织：

(a) 加强对本国工作人员因公殉职的调查，并向其家属提供支持，包括心理支持和赔偿；

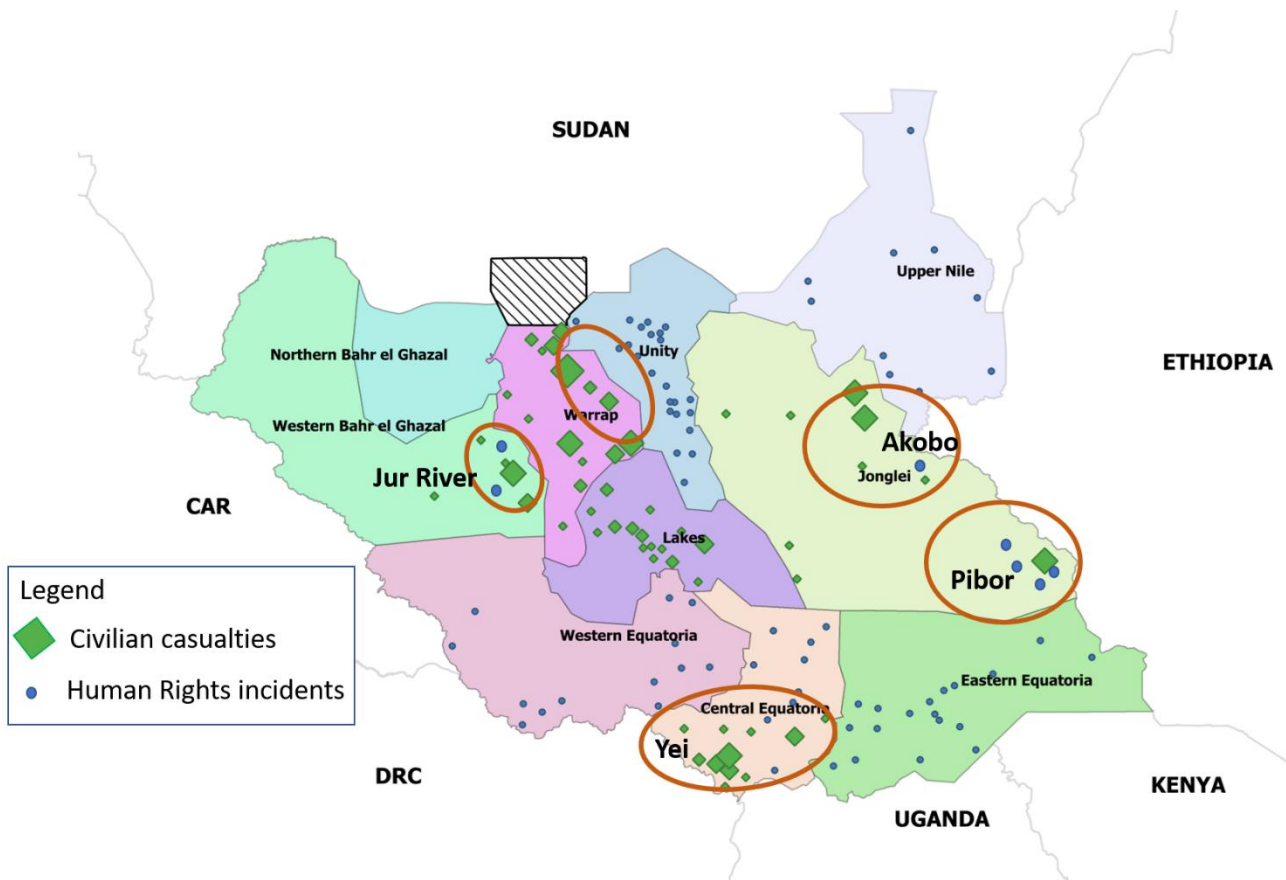
(b) 继续按照最佳做法和标准，支持实施《解决南苏丹冲突重振协议》第五章规定的过渡期正义机制。

Annex I

1. Map of South Sudan

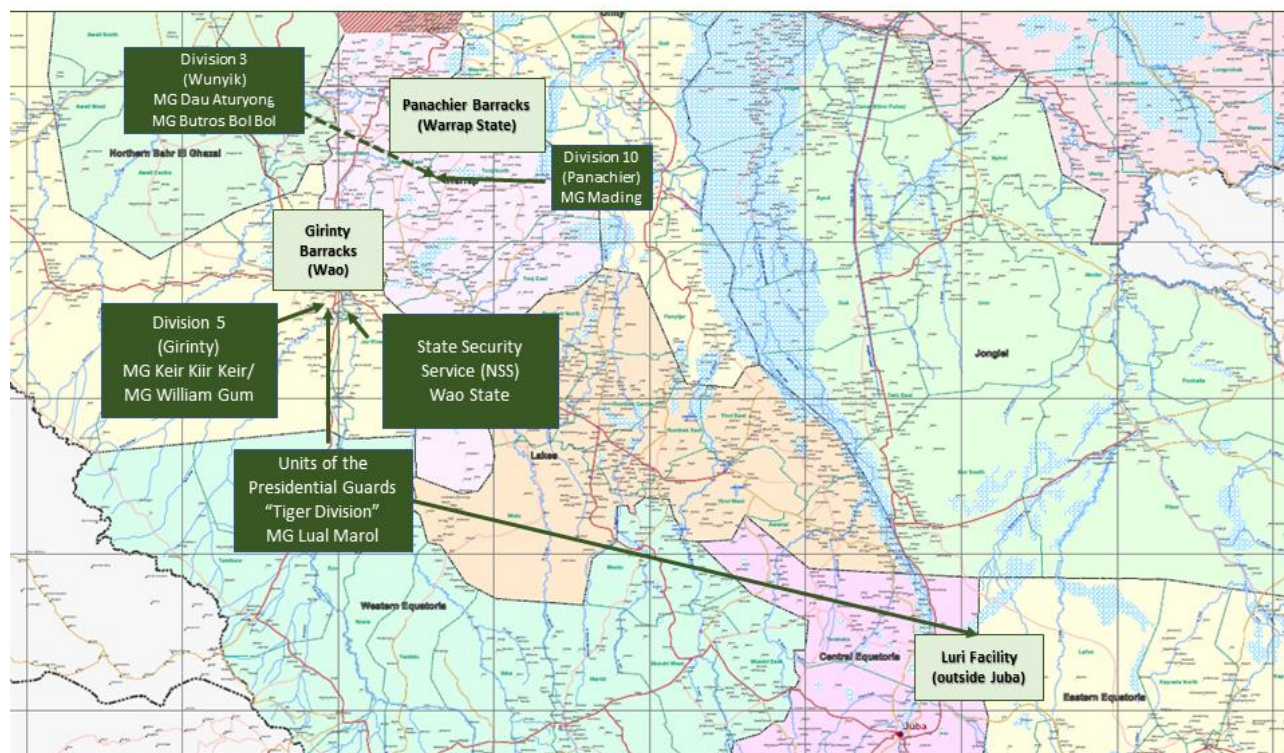


2. Localized conflict locations



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 of 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
TOTAL		190,455

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 in Bentiu (July 2019) and DRC headcount for Malakal (June 2019).

Annex II

Additional findings

I. Recruitment and use of children – emblematic incidents⁷⁹

1. Accounts received by the Commission from former child soldiers paint a picture of violent recruitment campaigns, harsh military training,⁸⁰ inhuman living conditions,⁸¹ frequent abuse and ill-treatment and the denial of education,⁸² adequate medical care⁸³ 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.⁸⁴ 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.⁸⁵ Unaware of why he was being accosted or that he was being forcibly recruited, the boy recalled being “afraid they would kill us”.⁸⁶

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.⁸⁷ 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”.⁸⁸

4. Overall, the boy estimated 500 trainees at the Luri facility,⁸⁹ 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.⁹⁰ Recruits slept in “blue houses” situated near the training grounds, and their freedom of movement was confined to the training facility.⁹¹

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.⁹² Other forms of torture included Tiger Division soldiers forcing children to lie on the ground while their necks were stepped on.⁹³ Tiger Division

⁷⁹ Certain details concealed subject to the principle of “do no harm”.

⁸⁰ Child Act 2008, at Art. 31.

⁸¹ Ibid. at Art. 6.

⁸² Ibid. at Art. 14.

⁸³ Ibid. at Art. 15.

⁸⁴ ERN 103205 - 103209, paras. 4-5.

⁸⁵ ERN 103205 - 103209, paras. 3-4.

⁸⁶ ERN 103205 - 103209, para. 3.

⁸⁷ ERN 103205 - 103209, para. 7.

⁸⁸ ERN 103205 - 103209, para. 7.

⁸⁹ ERN 103205 - 103209, para. 8.

⁹⁰ ERN 103205 - 103209, para. 9.

⁹¹ ERN 103205 - 103209, para. 10.

⁹² ERN 103205 - 103209, para. 12.

⁹³ ERN 103205 - 103209, para. 13.

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

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.⁹⁶ 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.⁹⁷ 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.⁹⁸ When a 17-year-old boy was urged by his family to represent them in the recruitment drive, he began hiding.⁹⁹ 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.¹⁰⁰ To force his submission, two soldiers beat him with black batons, while the third pushed him.¹⁰¹

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.¹⁰² 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.¹⁰³

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.¹⁰⁴ The Commission was able to confirm that the main SSPDF Division 3 training centre in Gogrial County is based in Panachier,¹⁰⁵ and that SSPDF Division 10 forces also moved to Panachier in April 2019.¹⁰⁶ 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”.¹⁰⁷ After five days, the boy attempted a risky albeit successful escape.¹⁰⁸

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.¹⁰⁹ One witness recalled that, on 11 April 2019, SSPDF Division 5

⁹⁴ ERN 103205 - 103209, para. 14.

⁹⁵ ERN 103205 - 103209, para. 18.

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

⁹⁷ ERN 102536 - 102540, para. 6.

⁹⁸ ERN 102530 - 102535, para. 5.

⁹⁹ ERN 102530 - 102535, paras. 5-6.

¹⁰⁰ ERN 102530 - 102535, para. 6.

¹⁰¹ ERN 102530 - 102535, para. 7.

¹⁰² ERN 102530 - 102535, para. 8.

¹⁰³ ERN 102530 - 102535, para. 10.

¹⁰⁴ ERN 102530 - 102535, para. 14.

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

¹⁰⁶ Confidential Meeting, 19 October 2019.

¹⁰⁷ ERN 102530 - 102535, para. 14.

¹⁰⁸ ERN 102530 - 102535, para. 15.

¹⁰⁹ ERN 102803 - 102810, para. 18; ERN 102797 - 102802, para. 16.

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).¹¹⁰

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.¹¹¹ 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.¹¹² 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.¹¹³

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,¹¹⁴ following an offer by National Patriotic Alliance Forces (NPAF)¹¹⁵ of free transportation believed to have been paid by the First Vice President Taban Deng.¹¹⁶ Upon arriving in Rubkona town, they were transported to the joint barracks of the then SPLA-IO (TD) and the NPAF¹¹⁷ in Tong, Rubkona County.¹¹⁸ In Tong, young men were separated from their families for recruitment by NPAF.¹¹⁹ Approximately 17 men who refused to be recruited were detained,¹²⁰ among them between three and four minors.¹²¹ By July-August 2019, most detainees had either escaped or were released.¹²²

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,¹²³ who was able to escape some five weeks later.¹²⁴

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

¹¹⁰ ERN 102797 - 102802, para. 16.

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

¹¹² ERN 103279 - 103284, paras. 3-4.

¹¹³ 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.

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

¹¹⁵ 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.

¹¹⁶ ERN 103101 - 103104, para. 8, ERN 103097 - 103100, para. 8.

¹¹⁷ 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).

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

¹¹⁹ ERN 103064 - 103068, paras. 7 and 9.

¹²⁰ ERN 103101 - 103104, para. 10; ERN 103064 - 103068, para. 9.

¹²¹ ERN 103101 - 103104, para. 10; ERN 103064 - 103068, para. 9.

¹²² ERN 103097 - 103100, para. 10; ERN 103064 - 103068, para. 13.

¹²³ ERN 103310 - 103310, para. 22.

¹²⁴ ERN 103310 - 103310, para. 25.

violence which have played out between and within ethnic groups¹²⁵ 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 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.¹²⁶

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.¹²⁷

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.¹²⁸ 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);¹²⁹ 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.¹³⁰ 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.¹³¹ 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.¹³²

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.¹³³ The pastoralists retaliated, reportedly killing a cattle keeper in Akou in Tonj (Warrap).¹³⁴ 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

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

¹²⁶ 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.

¹²⁷ 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.

¹²⁸ ERN 102675 - 102679, para.6; Confidential Meeting, 22 September 2019.

¹²⁹ ERN 103249 - 103254.

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

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

¹³² Confidential Meeting, 22 September 2019.

¹³³ ERN 102632 -102652, para. 14; Confidential meeting, 9 July 2019.

¹³⁴ Ibid.

mother whose baby was only a few days old when she was killed.¹³⁵ As one witness told the Commission, “After that, I constantly lived in fear in [location concealed] so I came to Wau . . .”¹³⁶

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.”¹³⁷ 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.¹³⁸ Eyewitnesses indicated that State security forces who had been deployed to protect the IDPs failed to intervene during the attack.¹³⁹ NSS officers subsequently dispatched to guard civilians sheltering in the school allegedly tortured them and compelled them to do forced labour.¹⁴⁰ UNMISS and CTSAMVM patrols sent to monitor the situation were repeatedly denied access to the school.¹⁴¹ 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.¹⁴²

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.¹⁴³ During the incident, the cattle keepers reportedly separated the men from the women and shouted ethnic slurs.¹⁴⁴ 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.¹⁴⁵ 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.”¹⁴⁶

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.¹⁴⁷ Thirteen per cent of these IDPs reported having housing or property destroyed.¹⁴⁸ 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.¹⁴⁹

¹³⁵ 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.

¹³⁶ ERN 102707 - 102717, para. 15.

¹³⁷ ERN 103249 - 103254.

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

¹³⁹ ERN 102797 - 102802; ERN 102632 - 102652, paras. 24-25.

¹⁴⁰ 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.

¹⁴¹ Confidential documents on file with the Commission

¹⁴² Confidential meeting, 1 August 2019.

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

¹⁴⁴ ERN 102689 - 102690, paras. 10-11.

¹⁴⁵ ERN 102689 - 102690, para. 4; ERN 102594 - 102600, paras. 9-13.

¹⁴⁶ ERN 103137 - 103141.

¹⁴⁷ 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.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

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 Dinka language and saying they didn’t want the Luo there . . .”¹⁵⁰ 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.¹⁵¹ 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.¹⁵²

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.¹⁵³ Additionally, several interlocutors indicated the cattle being migrated belonged to high-ranking Government officials¹⁵⁴ 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.¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷

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.¹⁵⁸ Youth were able to purchase their weapons from SSPDF soldiers who needed the income because they had not been paid their salaries.¹⁵⁹ One youth leader told the Commission he had purchased his AK-47 from an SSPDF soldier for 60,000 SSP.¹⁶⁰

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,¹⁶¹ 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.¹⁶² 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.¹⁶³

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.

¹⁵⁰ ERN 102627 - 102631; and ERN 102609 - 102617, paras. 12-15.

¹⁵¹ ERN 102627 - 102631, paras. 5-6; ERN 102632 - 102652.

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

¹⁵³ 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.

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

¹⁵⁵ ERN 103249 - 103254; ERN 102872 - 102876.

¹⁵⁶ 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.

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

¹⁵⁸ Investigator’s Report; Confidential meeting, 9 July 2019.

¹⁵⁹ ERN 102850 - 102857, para. 11-12.

¹⁶⁰ ERN D120820 - 120826.

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

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

¹⁶³ ERN 102632 - 102652, para. 32; ERN 102618 - 102626, para. 15-17.

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-State Peace Conference Resolutions had not been honoured.¹⁶⁴ The Commission observed that Luo suspects in these incidents tended to be the ones pursued and arrested.¹⁶⁵ 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.¹⁶⁶

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.¹⁶⁷ The attacks resulted in hundreds of civilian casualties and thousands of cattle looted by both sides.¹⁶⁸

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 2019,¹⁶⁹ which killed and injured hundreds of civilians¹⁷⁰ including dozens of women, children and infants.¹⁷¹ 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.¹⁷² Civilian cattle raiders were supported by military [SSPDF forces]¹⁷³ and reportedly received their orders from a high-ranking Government official.¹⁷⁴ 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.”¹⁷⁵

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

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

¹⁶⁴ Confidential Meeting, 22 September 2019.

¹⁶⁵ Confidential Meeting, 1 August 2019.

¹⁶⁶ Confidential Meeting, 22 September 2019.

¹⁶⁷ 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.

¹⁶⁸ ERN 103303 - 103309, para. 4.

¹⁶⁹ 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.

¹⁷⁰ ERN 103290 - 103297, para. 5, ERN 103290 - 103297, para. 9; ERN 103285 - 103289, para. 9.

¹⁷¹ 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.

¹⁷² ERN 103290 - 103297, para. 20.

¹⁷³ ERN 103285 - 103289, para. 6; ERN 102982 - 102985, para. 6; ERN 103264 - 103268, para. 9.

¹⁷⁴ ERN 103290 - 103297 para. 17; ERN 103073 - 103076, para. 6.

¹⁷⁵ ERN 103290 - 103297, paras. 4-5, and 8-9.

¹⁷⁶ ERN 103290 - 103297, para. 7; ERN 103073 - 103076, para. 6.

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

¹⁷⁸ ERN 103290 - 103297, para. 12; ERN 103285 - 103289, para. 17.

attacked locations in the Turalei area (Warrap) resulting in the killing of 28 (22 Dinka from Turalei and four Bul Nuer from Mayom),¹⁷⁹ injuring of over 20,¹⁸⁰ the looting of thousands of cattle¹⁸¹ and burning down of shelters.¹⁸² Due to the magnitude of the incident, the Governor of Twic described the attack as a “military level operation.”¹⁸³ 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.¹⁸⁴

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.¹⁸⁵ 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.¹⁸⁶

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.¹⁸⁷ 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.¹⁸⁸ Before fleeing the scene, the attackers reportedly stole food items such as sorghum, flour, oil and beans.¹⁸⁹ Relatives of the dead expressed concerns to the Commission regarding the killings as well as compensation for the loss of their loved ones.¹⁹⁰

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.¹⁹¹ 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 . . .”¹⁹² 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

¹⁷⁹ ERN 103303 - 103309, para. 7; and Confidential meeting note.

¹⁸⁰ ERN 103303 - 10330, paras. 7 and 11.

¹⁸¹ ERN 103303 - 103309, para. 4.

¹⁸² ERN 103303 - 103309, para. 7.

¹⁸³ ERN 103303 - 103309, para. 5.

¹⁸⁴ ERN 103303 - 103309, para. 4.

¹⁸⁵ 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>.

¹⁸⁶ Ibid.

¹⁸⁷ ERN 102889 - 102893, para. 7.

¹⁸⁸ ERN 103234 - 103239, para. 12.

¹⁸⁹ ERN 103234 - 103239, para. 12.

¹⁹⁰ ERN 102889 - 102893.

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

¹⁹² ERN 103259 - 103263, para. 7.

added that women in the community support the White Army by rewarding them with food and water when they go to fight.¹⁹³ 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 2018.¹⁹⁴ 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.¹⁹⁵ 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 2019.¹⁹⁶ 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.¹⁹⁷ 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.¹⁹⁸

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.¹⁹⁹ 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.²⁰⁰ 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."²⁰¹

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'.²⁰² The Greater Upper Nile region is currently the most food insecure, followed by the Bahr el Ghazal region.²⁰³ In 2019, the Human Development Index, which measures basic dimensions of human development,

¹⁹³ ERN 103234 - 103239, para. 15.

¹⁹⁴ ERN 103353 - 103356; ERN 102913 - 102917, para 18.

¹⁹⁵ ERN 102913 - 102917; ERN 102918 - 102924.

¹⁹⁶ Confidential documents on file.

¹⁹⁷ ERN 103399 - 103406, para. 19.

¹⁹⁸ ERN D120814 - D120815.

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

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

²⁰¹ ERN 103377 - 103382, para. 8.

²⁰² 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>.

²⁰³ 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.²⁰⁴

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.²⁰⁵

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,²⁰⁶ 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

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

²⁰⁵ 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

²⁰⁶ Country Brief October 2019, WFP, available at https://docs.wfp.org/api/documents/WFP-0000110949/download/?_ga=2.48343718.1269336333.1575637372-1581897920.1575637372.

spent 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.²⁰⁷ 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".²⁰⁸

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 violence²⁰⁹ 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.²¹⁰ Children including young girls were also victims of sexual exploitation.²¹¹

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

²⁰⁷ 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'.

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

²⁰⁹ "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).

²¹⁰ ERN 103469 - 103474; ERN 102632 - 102652.

²¹¹ ERN 102991 - 102995

soldiers 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.²¹²

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.²¹³ 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.²¹⁴ 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 [...]”²¹⁵

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.²¹⁶

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.²¹⁷ 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.²¹⁸

²¹² ERN 102940 - 102943.

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

²¹⁴ ERN 102680 - 102688; ERN 102632 - 102652; ERN 102653 - 102659

²¹⁵ ERN 103475 - 103480.

²¹⁶ ERN 102587 - 102593.

²¹⁷ ERN 103469 - 103474.

²¹⁸ 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.²¹⁹ 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.²²⁰

Unity State 2018

58. In March 2019, the Commission reported that more than 125 women had allegedly been raped on the Nhialdu road²²¹ – in the Bentiu-Guit-Nhialdu triangle – over a 10-day period beginning in September and peaking in November 2018.²²² The Government of South Sudan disputed the allegations and dismissed with contempt media reports on the matter.²²³ The Government's internal investigation concluded that reported figures of 125 rapes over a 10-day period could not be verified.²²⁴ 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.²²⁵ 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.²²⁶ The UNMISS report confirmed on-going patterns of sexual and gender-based violence in the region since the outbreak of the conflict in 2013-14,²²⁷ 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.²²⁸ On 28 July 2019, the SPLM/SPLA (IO) Chairman and Commander in Chief, Dr Riek Machar, issued unequivocal orders to "release without delay"

²¹⁹ ERN 103499 - 103503.

²²⁰ See, e.g., ERN 103469 - 103474.

²²¹ A/HRC/40/CRP.1, paras. 456, 458.

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

²²³ 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.

²²⁴ Confidential Report, CHRSS Files.

²²⁵ Confidential Report, CHRSS Files.

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

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

²²⁸ Confidential Meetings, CHRSS Files.

women and girls held on SPLA (IO) bases in Western Equatoria (Sector 6).²²⁹ 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.²³⁰

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.²³¹

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.²³² 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.²³³ The situation is rapidly deteriorating with a backlog of more than 200 cases, increasing daily.²³⁴ Four judges have been appointed to handle the cases, comprising one female and three males.²³⁵

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,²³⁶ the United Nations Convention against Torture²³⁷ and the Convention on the Rights of the Child.²³⁸ 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).²³⁹ 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

²²⁹ ERN D120827 - D120828.

²³⁰ 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.

²³¹ ERN D120829 - D120829.

²³² 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.

²³³ Confidential Meeting.

²³⁴ Confidential Meeting.

²³⁵ Confidential Meeting.

²³⁶ Acceded to in 2015.

²³⁷ Ibid.

²³⁸ Ibid.

²³⁹ Signed in 2013.

equality before the law and prohibition of any form of discrimination,²⁴⁰ guaranteed by the Convention on Elimination of All Forms of Discrimination against Women. They also violated the right of victims to freedom from torture.²⁴¹ Certain conduct further violated rights against early and forced marriage,²⁴² the right to life,²⁴³ dignity²⁴⁴ and prohibition of all forms against discrimination²⁴⁵ 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 2008.²⁴⁶ They were further contrary to the Penal Code which prohibits rape and abduction of women for purposes of early marriage, or sexual abuse.²⁴⁷

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

²⁴⁰ CEDAW, Art. 2.

²⁴¹ UNCAT, Art. 2.

²⁴² Maputo Protocol, Art. 6.

²⁴³ *Ibid.*, at Art. 4.

²⁴⁴ *Ibid.*, at Art. 3.

²⁴⁵ *Ibid.*, at Art. 2.

²⁴⁶ § 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”.

²⁴⁷ §§ 247 and 273.

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

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.²⁵⁰ 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.²⁵¹ One interlocutor explained how State Security may determine the size of a workshop and the subject of discussion.²⁵² 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.²⁵³

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.²⁵⁴ 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.”²⁵⁵ Less than one week later, on 4 November, a French journalist on assignment with France24 was reportedly similarly deported.²⁵⁶

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.²⁵⁷ One civil society representative recalled how “staff are picked

²⁴⁸ Ibid.

²⁴⁹ 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.

²⁵⁰ Confidential meeting, 21 August 2019; ERN 102903 - 102908, para. 14.

²⁵¹ ERN 102996 - 103002, para. 5; ERN 102903 - 102908, para. 16.

²⁵² ERN 102903 - 102908, para. 16.

²⁵³ ERN 102996 - 103002, para. 5; Confidential meeting.

²⁵⁴ ERN 103529 - 103537; ERN 102903 - 102908; ERN D120812 - D120812; ERN D120785 - D120790.

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

²⁵⁶ 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>.

²⁵⁷ Confidential meeting, 7 November 2019; Confidential meeting, 14 November 2019; Confidential meeting, 15 November 2019; and Confidential meeting, 16 November 2019.

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

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.²⁶⁰ Another civilian was tortured by NSS Officers and repeatedly detained unlawfully in solitary confinement at the Blue House for several months in total.²⁶¹ 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.²⁶²

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.²⁶³

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,²⁶⁴ harassed and detained members of civil society considered critical of the government, infiltrated civic organizations,²⁶⁵ 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,²⁶⁶ freedom of association²⁶⁷ and freedom of assembly²⁶⁸ 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

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

²⁵⁹ Confidential meeting.

²⁶⁰ ERN 102903 - 102908, para. 10.

²⁶¹ ERN 103538 - 103547, paras. 31 -33.

²⁶² 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>.

²⁶³ 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.

²⁶⁴ ERN 102903 - 102908, para. 10

²⁶⁵ Ibid.

²⁶⁶ Art. 9.

²⁶⁷ Art. 10

²⁶⁸ Art. 11

of the 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.²⁶⁹ 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

²⁶⁹ 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).²⁷⁰
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

²⁷⁰ 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.

South 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.²⁷¹

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.²⁷²

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.²⁷³ 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”²⁷⁴ and also when its own agents acknowledge and adopt the conduct of non-State groups.²⁷⁵ States must investigate the use of lethal force

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

²⁷² Geneva Convention Act, 2012.

²⁷³ 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.

²⁷⁴ 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.

²⁷⁵ 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

by their agents, particularly those involved in law enforcement.²⁷⁶ For State investigations to be effective, they must be as prompt as possible, exhaustive, impartial, independent and open to public scrutiny.²⁷⁷ 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".²⁷⁸

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.²⁷⁹

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 2005.²⁸⁰ 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.²⁸¹

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.²⁸² These include requirements that parties to such conflicts must at all times abide by the principles of distinction, proportionality and precaution in attack.²⁸³ 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

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.

²⁷⁶ 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.

²⁷⁷ 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.

²⁷⁸ 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.

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

²⁸⁰ 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.

²⁸¹ 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.

²⁸² ICRC, *Study on Customary International Humanitarian Law*, Rules 1-24.

²⁸³ *Ibid.*

Peoples 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".²⁸⁴ 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".²⁸⁵

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.²⁸⁶ 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.²⁸⁷ 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.²⁸⁸

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".²⁸⁹

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

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

²⁸⁶ Justice Africa, "Justice in Practice: South Sudan", Spring 2015.

²⁸⁷ 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.

²⁸⁸ 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.

²⁸⁹ 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,²⁹⁰ the United Nations Convention against Torture²⁹¹ and the Convention on the Rights of the Child.²⁹² 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).²⁹³ 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.²⁹⁴ The Penal Code of South Sudan prohibits rape and abduction of women for the purpose of early marriage or sexual abuse, respectively.²⁹⁵

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."²⁹⁶ 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."²⁹⁷ 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 and women including freedom of expression, assembly and opinion. While South Sudan

²⁹⁰ Acceded to in 2015.

²⁹¹ Acceded to in 2015.

²⁹² Acceded to in 2015.

²⁹³ Signed in 2013.

²⁹⁴ 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".

²⁹⁵ Sections 247 and 273, respectively.

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

²⁹⁷ Ibid, para 23.

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."²⁹⁸

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.²⁹⁹

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,³⁰⁰ and requires parties to a conflict to keep a register of those deprived of their liberty,³⁰¹ 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

²⁹⁸ 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.

²⁹⁹ 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.

³⁰⁰ ICRC Rule 99.

³⁰¹ *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.³⁰² 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.³⁰³

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.”³⁰⁴ 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.

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

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

³⁰⁴ *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 Wunyk, 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

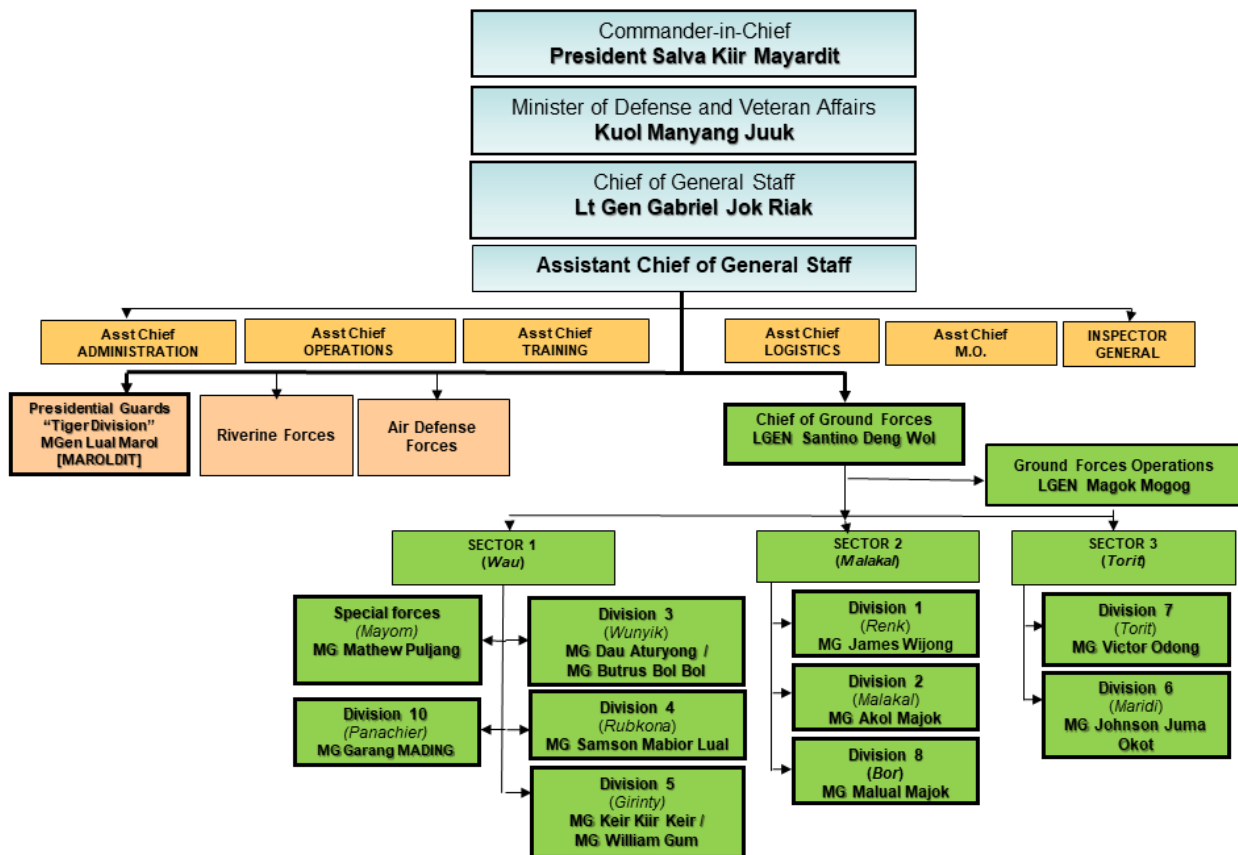
There is further a Special Forces unit with four brigades under MG Mathew Puljang based in Mayom, Unity State. The Presidential Guards, known as the “Tiger” Division and commanded by MGen Lual Marol [MAROLDIT] is headquartered in BILPAM in Juba (also known as the Jamus) with some of its forces believed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

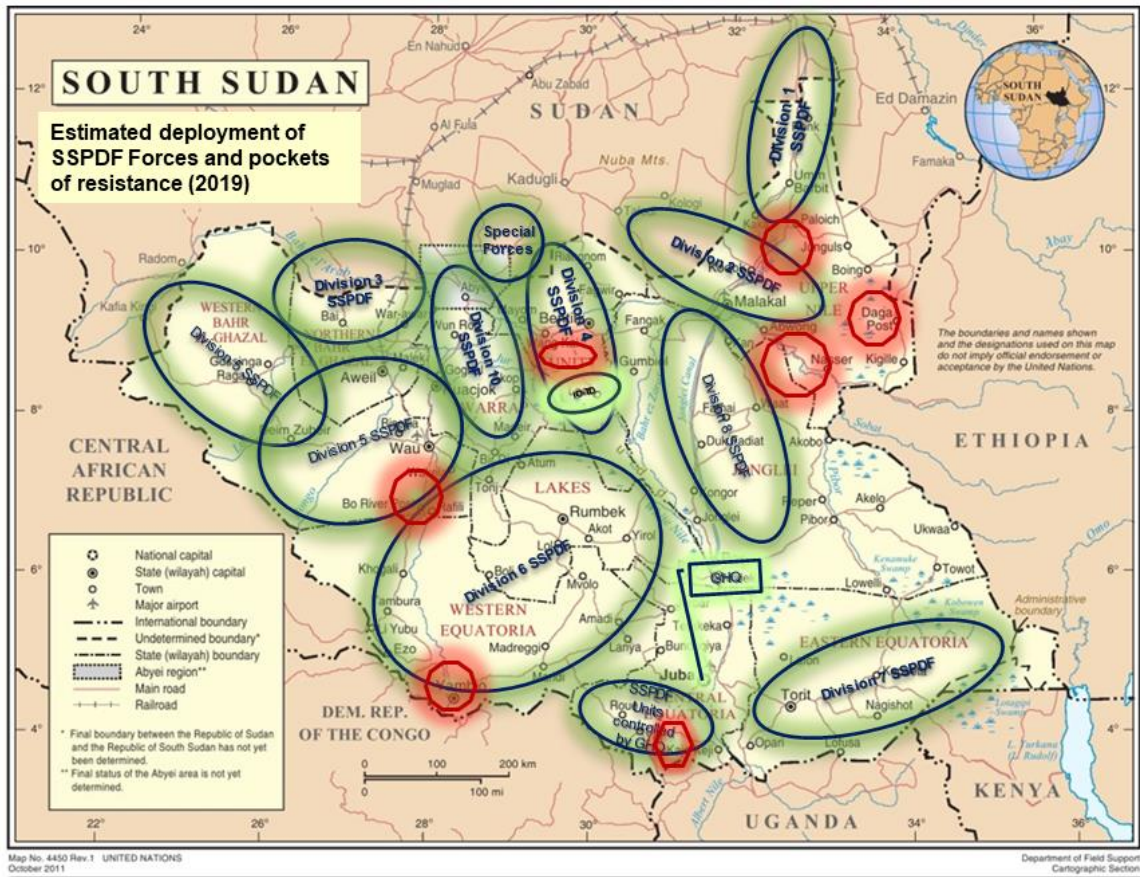
In May 2017, President Kiir issued Presidential Decrees restructuring the SPLA into three branches, namely: the ground force, air force and air defense Forces and Naval Forces. Each of the institutions was to be overseen by a commandenother Presidential Decree calls for the restructuring of the General 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)

