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**Human rights situation that require the attention of the Council**

## Report of the Commission on Human Rights in South Sudan\*

### *Summary*

This report, submitted pursuant to Human Rights Council resolution 34/25, gives an overview of the developments of the human rights situation in South Sudan, and provides information on recent incidents in 2016-2017 for which the Commission has been able to collect and preserve evidence. The Commission concludes that some of these violations may amount to war crimes and crimes against humanity. The report also provides an update on developments on transitional justice and puts forward recommendations. The Commission has prepared in addition a conference room paper for background and discussion purposes, which reflects in more detail the evidence it has collected and its findings<sup>1</sup>.

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\* The present report was submitted late in order to reflect recent developments.

<sup>1</sup> For detailed findings of the Commission see document A/HRC/37/CRP.2

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## I. Introduction

1. In its resolution 31/20, the Human Rights Council established the Commission on Human Rights in South Sudan for a period of one year. The Commission submitted its first report A/HRC/34/63 on 6 March 2017.
2. By resolution 34/25 the Council extended the mandate until 31 March 2018 and requested the Commission to: continue monitoring the human rights situation in South Sudan; make recommendations to prevent its further deterioration and provide reporting and guidance on transitional justice and reconciliation.
3. The Council also requested the Commission to “determine and report the facts and circumstances of, collect and preserve evidence of, and clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability, and to make such information available also to all transitional justice mechanisms, including those to be established pursuant to Chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including the Hybrid Court for South Sudan, once established in cooperation with the African Union.”
4. On 14 June 2016, the President of the Human Rights Council appointed Yasmin Sooka, Kenneth Scott and Godfrey Musila to serve as the three members of the Commission, with Ms. Sooka as its Chair. Mr. Scott resigned and was replaced by Andrew Clapham on 21 September 2017. Mr. Musila resigned on 31 January 2018.
5. The Commission was supported by a secretariat based in Juba. It conducted missions to Aburoc, Akobo, Bor, Kajo Keji, Lainya, Malakal, Pajok, Torit, Wau, Wau Shilluk and Yei within South Sudan, as well as to Addis Ababa and Gambella in Ethiopia and Adjumani, Arua, Elegu, Gulu, Kiryandongo-Bweyale, Kampala Moyo, Palabek and Palarunya in Uganda. The Commission met a wide range of victims, witnesses, government officials and members of civil society. It also organized a workshop on Sexual and Gender Based Violence in Juba.
6. The Commission took over 230 detailed individual witness statements and gathered over 58,000 documents, including confidential records, covering incidents in South Sudan since December 2013. All evidence is preserved in the Commission’s database and archives.
7. The Commission thanks the Government of South Sudan for facilitating its missions and responding to its requests for information. It is also grateful for the cooperation it received from the Governments of Ethiopia and Uganda during its missions to those States. Additionally, the Commission appreciates the assistance and contributions by UNMISS and United Nations agencies, civil society organizations, and experts, and pays tribute to the assistance provided by the late Ambassador Kuol Alor Kuol Arop.

## II. Methodology

8. The Commission focused on reporting the facts and circumstances of recent incidents in Western Bahr el Ghazal, Central and Eastern Equatoria, and Upper Nile, and on clarifying responsibility for alleged gross violations of human rights and related crimes committed in those locations in 2016 and 2017.
9. In light of the mandate’s emphasis on accountability, the Commission focussed on establishing the occurrence of violations and identifying those bearing responsibility for those violations and crimes. It sought to identify command structures, patterns of conduct and indicators of control and discipline.
10. Factual determinations on individual cases, incidents, and patterns of conduct provided the basis for the legal qualification as human rights violations and, where appropriate, international crimes such as war crimes and crimes against humanity.

11. The Commission employed a “reasonable grounds to believe” evidentiary standard. With respect to collection and preservation of evidence, the Commission’s work was informed by the necessity of collecting and preserving evidence to a standard that will support future accountability mechanisms, including criminal accountability.

12. Despite its time constraints, the Commission has gathered an enormous amount of evidence. Additional time and resources are required to analyse this evidence. Where the Commission found information linking individual alleged perpetrators to specific violations or to patterns of violations sufficient to warrant criminal investigations or prosecutions, this information is retained on a strictly confidential basis. In some instances, there was insufficient information to identify individuals responsible, but the armed groups responsible have been identified. In a few instances, although credible information exists that a violation occurred, responsibility could not be established in the time available to the Commission.

13. The Commission employed the best practices of fact-finding aimed at assuring the safety, security and well-being of witnesses. This includes inclusion of information only where sources granted informed consent, and where disclosure would not lead to any identification, or result in harm. The Commission thanks the victims and witnesses who shared their experiences.

### **III. Applicable Law**

14. The Commission has conducted its work within the framework of international human rights law, international humanitarian law, international criminal law, and the domestic law of South Sudan.

15. South Sudan is a party to the African Charter on Human and Peoples’ Rights; the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; and the Convention on the Rights of the Child (CRC). Relevant rules of customary international human rights law are also applicable.

16. A non-international armed conflict broke out in South Sudan on 15 December 2013. Consequently, parties to the conflict in South Sudan are bound by common Article 3 to the four Geneva Conventions of 1949 and Additional Protocols II and III of 1977 and 2005, as well as by customary international humanitarian law.

17. South Sudan has committed to prosecuting violations of international criminal law through a Hybrid Court for South Sudan, which the African Union (AU) is mandated to establish under the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS). The Draft Statute for the Hybrid Court sets forth the court’s jurisdiction over genocide, crimes against humanity, war crimes and other serious crimes under international and relevant laws of the Republic of South Sudan.

### **IV. Context and Background**

18. There are currently three armed structures in South Sudan claiming the heritage of the Sudan People’s Liberation Army: the Government forces (SPLA), the SPLA-IO loyal to Riek Machar (RM) and the SPLA-IO loyal to First Vice-President Taban Deng (TD). The SPLA and the SPLA-IO (RM) are supported by militias: the Dinka Mathiang Anyoor (now largely integrated into the SPLA) and the Nuer “White Army” respectively. The three armed structures and their associated militias favour guerrilla hit and run tactics over conventional battles, achieving success with light arms and minimal training, while living off the land. The Shilluk Agwelek militia has fought alongside both the SPLA and the SPLA-IO, and is primarily focused on the defence of Shilluk lands.

19. Since its outbreak in December 2013, the conflict has evolved beyond the power struggle between President Salva Kiir and Riek Machar. Despite the signing of the ARCSS

in August 2015, the conflict has spread and is no longer a single conflict, but a series of inter and intra-communal conflicts, reigniting and encompassing historical localised conflicts and contests over land, resources and power.

20. The SPLA suffered numerous defections while SPLA-IO split into two factions in July 2016. The SPLA-IO split strengthened the SPLA, as the SPLA-IO (TD) supports the government. The SPLA and the SPLA-IO demonstrate established hierarchical organisational structures that facilitate command and control and operational flexibility through the use of sectors, divisions, brigades and battalions. The majority of operations employ light infantry tactics, often with fire support from artillery and tanks. Priority is given to attack, and upon capture, little thought is given to defence against counter-attack. Inclusive planning, intelligence gathering and effective communication facilitate the exercise of command. Commanders on both sides have made use of poorly trained and undisciplined militias, which they have chosen to exploit rather than control.

21. New armed groups, currently estimated at 40, continue to emerge, mainly as a result of the spread of the conflict to the Equatorias and the northern part of the Upper Nile. The fragile situation has been exacerbated by the creation of 28, and later 32 States along ethnic lines by Presidential Order. During 2017, a number of senior officers defected from the SPLA and the two factions of SPLA-IO to form and join these new groups. There are also a large number of other armed groups which are participating in the revitalization process.

22. There have been numerous violations of the cessation of hostilities agreements since 2014. The latest Cessation of Hostilities Agreement (COHA) came into effect on 24 December 2017, following the IGAD-backed revitalization forum, obliging all forces to “immediately freeze in their locations,” halt actions that could lead to confrontation and release political detainees, women and children. Violations of the ceasefire were reported shortly thereafter, which have been condemned by the AU, the United Nations and IGAD.

## **V. Attacks on Civilians**

23. Civilians have borne the brunt of the conflict as it evolved to include different ethnic, political, and resource drivers. The incidents covered in this report reflect these different dynamics that are at play in each of the regions. Despite being multi-faceted, however, the conflict reveals consistent patterns.

24. Evidence shows that the SPLA has launched attacks directed against the civilian population where no opposition armed forces have been present to justify a military attack, and has intentionally killed unarmed and fleeing civilians in the incidents investigated by the Commission. The consistent narrative that emerges from these attacks against civilians and intentional killings is that they have been undertaken in retaliation for battlefield losses or killings of SPLA soldiers by opposition forces, or because civilians have been perceived to be sympathetic to the opposition due to their ethnicity or their place of residence in an opposition controlled area.

25. The brutality of attacks against civilians has not been limited to direct attacks on their lives but importantly has also included the systematic looting and burning of villages, destroying people’s sense of security and ability to support and care for themselves. As a result, millions of citizens have been displaced, and thousands are sheltering in the bush, resulting in untold deaths from starvation, thirst, exposure, and lack of access to medical care. These deaths are a direct and foreseeable result of the conflict, and no less part of the war’s casualties than those shot, beheaded, burned in their tukuls, or strung up from a tree.

## **VI. Sexual and Gender-Based Violence**

26. The Commission paid special attention to sexual and gender-based violence which remains a central feature of the conflict. The Commission documented many accounts of rape, gang rape, forced stripping or nudity, forced sexual acts, castration and mutilation of genitalia, which were perpetrated by the SPLA, the Mathiang Anyoor, National Security

Services personnel and Military Intelligence, as well as SPLA-IO, during military attacks in Greater Upper Nile, the Equatorias and Greater Bahr el Ghazal.

27. Some of the survivors the Commission spoke to had been subjected to sexual violence multiple times. Various instruments were used in these acts, including sticks, tree branches, knives, pangas, pliers, pincers and firearms. One survivor from Mathiang (Witness 302), in Upper Nile, told the Commission that she had been raped, and witnessed SPLA soldiers kill and rape a woman near Pagak in mid-August 2017: *“The other woman [they were] trying to rape was killed because she resisted. First, they forced her to the ground and one soldier inserted the upper part [muzzle] of his rifle forcibly to the woman’s vagina and then shot her dead.”*

28. The Commission also met with men and boys who were victims or witnesses of sexual violence perpetrated during detention, or as punishment during military attacks on civilians. A survivor described how he was gang raped, forced to strip and watch women being raped at a checkpoint on the Yei-Juba road in April 2016.

29. The Commission observes, however, that there has been almost no progress in investigating and bringing to account perpetrators of human rights violations, including of sexual violence in conflict. Despite the court-martial of 12 SPLA soldiers for the rape of humanitarian aid workers, among others, at the Terrain hotel in Juba in July 2016, justice for thousands of other survivors, including hundreds of women raped by the SPLA and other security services during July 2016, has not been delivered.

## VII. Impact of the Conflict on Children

30. The Commission paid special attention to violations and crimes against children, and documented all the six grave violations against children referred to in the Secretary-General’s reports on children and armed conflict: killing and maiming; recruitment or use of child soldiers; attacks against schools or hospitals; abduction; rape and other forms of sexual violence and denial of humanitarian access.

31. In discussions conducted with children displaced from the Greater Equatorias, Upper Nile and Jonglei, in Uganda and Ethiopia, children told the Commission of immediate relatives who were killed or fighting; witnessing the rape or killing of a family member; and separation from their families. The Commission documented numerous accounts where children were victimised on the basis of their ethnicity or their relatives or community members’ perceived political affiliation. The Commission also documented sexual assault and rape of children outside UNMISS PoC sites when they went to gather firewood.

32. Confidential documents received by the Commission showed extensive presence of children among the SPLA and SPLA-IO (TD) forces in Upper Nile. The Commission also observed children associated with armed forces and armed groups in Eastern and Central Equatorias, on the West Bank of the Nile, and in Western Bahr el Ghazal, some as young as twelve years old. Children told the Commission of being abducted from outside their homes and schools, and of voluntarily joining armed forces and groups to protect themselves and their families. Some children were forced to kill civilians or loot, and were subjected to corporal punishment if they did not obey orders. A recent report by the Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM) (2018/2) suggests that *“the recruitment and employment of ‘child soldiers’ goes on throughout the country.”*

33. The conflict in South Sudan has destroyed the education system. UNICEF estimates that 72 percent of South Sudanese children are out of school, with most schools non-functional due to displacement of teachers or the destruction of facilities and materials. The lack of food is also amongst the leading causes for children to drop out of school. The denial of humanitarian access, including interference in the delivery of critical aid, attacks on personnel and damage to facilities, has further undermined the right to education. The Commission also found schools repurposed as military campsites, and weapons and ammunition depots. Several children expressed despondence over the “impossible” choices they were forced to make and the trauma of those experiences. Concerning the future, the children expressed hope for peace and justice in South Sudan, above all.

## VIII. Emblematic Incidents

34. The African Union Commission of Inquiry on South Sudan, UNMISS Human Rights Division, the South Sudan Human Rights Commission, Amnesty International, Human Rights Watch and a number of South Sudanese civil society organisations and non-governmental organisations (NGOs) have documented human rights violations and crimes committed by both sides to the conflict since December 2013. Given the extensive body of work already done, the Commission chose to focus on incidents that are emblematic of crimes and violations committed over the past two years, during which there was limited reporting. The Commission has sought to clarify responsibility for these acts, as far as possible.

### A. Central Equatoria: July 2016 – December 2017

35. Central Equatoria is predominantly home to the Bari-speaking Equatorian tribes. With the exception of Juba, most of the Central Equatoria State, including Yei, Lainya, and Kajo Keji Counties, remained relatively peaceful when the civil war broke out in South Sudan in December 2013. But by the end of 2015, SPLA-IO activity had started to increase in Central Equatoria, particularly in Yei and the surrounding areas.

36. Following the return of Riek Machar to Juba in April 2016, fighting erupted between government and opposition forces in Juba in July. These events and human rights violations that occurred in Juba between 8 and 11 July 2016 have been documented by the UNMISS Human Rights Division and others.

37. Machar fled through the Equatorias and into the Democratic Republic of Congo. A battalion of SPLA-IO troops reportedly remained in Central Equatoria and moved freely through the countryside of Yei and Lainya counties. Approximately 600 SPLA and Mathiang Anyoor forces were deployed around town centres in Yei. From July to September, there were regular clashes throughout Yei River state as the SPLA carried out an intense military campaign to flush out remaining SPLA-IO elements.

38. By December 2016, SPLA-IO forces established a headquarters in Lasu and began guerrilla attacks against government installations and convoys from their locations in the bush and villages around Yei and Lainya Counties. A bitter guerrilla war followed, characterised by SPLA-IO ambushes and hit and run attacks countered by a punitive SPLA counter-insurgency.

39. The Commission received numerous reports of extra-judicial killing of civilians, particularly of young men suspected of supporting the SPLA-IO. SPLA soldiers also repeatedly abducted civilians who were later found dead. UNMISS Human Rights Division documented the killing of 114 civilians by pro-Government forces around Yei between mid-July 2016 and mid-January 2017, pointing out that the actual number of fatalities and injuries is likely to be much higher.

40. Multiple women and girls from the Lainya and Yei areas described how they were raped and gang raped by Government soldiers (SPLA), often while they were fleeing insecurity in the Lainya and Yei areas.

41. In addition to attacks on civilians themselves, the Commission heard of widespread looting and destruction of civilian property by SPLA and Mathiang Anyoor in the Yei and Lainya areas. Witness accounts of widespread burning of homes are corroborated by satellite images showing 6,300 destroyed structures in Yei town and its outskirts by March 2017 and 18,318 destroyed structures from Yei southwards to the border.

42. As a result of the widespread violations against civilians, the civilian population fled en masse, predominantly to Uganda. OCHA reported that by September 2016, 60-70 percent of the Yei population had fled. Indeed, over 163,000 people had crossed to Uganda between 8 July and the first week in September 2016, with over 4,000 people arriving every day. Many died on the way due to starvation, thirst, and lack of medical care.

43. As the fighting spread southward through Central Equatoria in the second half of 2016, the civilian populations from Lainya, Yei, and Morobo fled eastward into Kajo Keji County. In December 2016, OCHA reported that there were approximately 30,000 IDPs in Liwolo payam alone. Between October and December 2016, half of the population of Kajo Keji, including those displaced there, fled to Uganda.

44. Witnesses interviewed by the Commission attributed the violations from July 2016 onwards to both the SPLA (and its allied militia forces) and the SPLA-IO. These included killings, arbitrary arrests and detention, torture, rapes, beatings and looting of property. The victims of these violations also included the displaced civilian population in Kajo Keji and those fleeing through the county, on their way to refugee camps in Uganda.

45. The attacks on civilians by SPLA and Mathiang Anyoor soldiers in Kajo Keji followed a similar pattern to those perpetrated in Yei and Lainya Counties. Government forces arbitrarily detained and tortured youths in Kajo Keji, allegedly because they were children of SPLA-IO soldiers, went door-to-door killing and raping people and looted their properties. Consequently, between 22 January and 21 February 2017, 84,640 refugees fled to Uganda, the majority being from Kajo Keji.

46. The situation was further complicated when SPLA Deputy Chief of General Staff for Logistics, Thomas Cirillo, from Central Equatoria, resigned in February 2017, accusing the SPLA and Mathiang Anyoor of atrocities against civilians. General Cirillo founded the opposition group the “National Salvation Front” (NAS) in March 2017. A number of SPLA-IO Generals in Central Equatoria subsequently defected and joined NAS. This was followed by the SPLA-IO targeting civilians, with mainly young men detained and tortured on suspicion of supporting NAS.

#### *Violations and alleged crimes*

47. Although this section has focused on violations that occurred in Yei, Lainya, and Kajo Keji Counties since July 2016, the Commission heard of similar violations taking place across Central Equatoria. CTSAMM and UNMISS were repeatedly denied access to Lainya, Yei, and Kajo Keji and their surrounding areas which hampered information gathering.

48. The Commission finds reasonable grounds to believe that the SPLA and Mathiang Anyoor forces engaged in killings, rape, arbitrary detentions, torture, looting, and destruction of civilian property in Central Equatoria since July 2016.

49. The Commission also finds reasonable grounds to believe that the SPLA-IO soldiers committed violations including deprivation of physical liberty, rape, torture, and theft in and around Kajo Keji County since July 2016.

50. These amount to serious violations of human rights and humanitarian law, and may amount to war crimes and crimes against humanity.

## **B. Pajok, Eastern Equatoria, 2017**

51. In the payam of Pajok, there were divisions between Dinkas and local populations which were exacerbated by the fighting in the region, where pre-existing local conflicts within the Acholi clans became part of the broader conflict. The Acholi-Pajok clan was seen as supportive of the SPLA-IO while the other Acholi clans supported the SPLA.

52. Increasing SPLA-IO activity and SPLA crackdowns in neighbouring Magwi county, and the existence of an SPLA-IO base in the proximity of Pajok, led to growing insecurity. In the days prior to the April 2017 attack on Pajok, there was a significant increase in SPLA troop deployment in the area. Amidst rumours of an SPLA attack on the SPLA-IO base, some civilians fled, but many did not think the town itself would be attacked.

53. On the morning of 3 April 2017, SPLA soldiers attacked the town of Pajok, killing a significant number of civilians and looting the town. Some soldiers followed the main road to Pajok while the others moved around to the east of Pajok towards the SPLA-IO base.



54. SPLA soldiers reportedly crossed the river by the main road and then fanned out in the southern parts of the town. One resident (Witness 584) told the Commission that, hearing gunfire to the north, he had time to flee with his family. Nearly 1,000 people had already fled. However, he returned to get his father who, being too old to run, had been left behind. The gunfire having become heavy, his father urged him to leave him behind. The witness later learned that his father had been shot and his house had been burned down. The Commission also spoke with the cousin, who had buried the old man's body, one of thirteen that he had found in the town.

55. While the Commission could not definitively arrive at a final number of civilians killed on 3 April, a comparison of the names in the various reports indicates between 22-25 civilian deaths. Many more were injured. One witness (Witness 571) said he saw advancing soldiers shooting in the air, but when they saw him and some other people running away, they shot at them and his shinbone was broken. *"I could no longer walk, I had to leave all my luggage... I begged people to help me, but everyone was running for their lives, so I hopped. I would hop and stop, hop and stop."*

56. Systematic looting of the town followed the killing of civilians. Nine days after the attack in Pajok, soldiers were still removing civilian property with the knowledge of the military leadership, including bedding, solar panels, and cooking utensils and transporting everything to a well-guarded house. Houses, shops, schools and the clinic were looted. A large quantity of looted items were seen being loaded onto military trucks and taken to Magwi, under military escort. Even an investigation by local Members of Parliament found that the *"ferrying of looting properties to Magwi, Juba, and other nearby payams was still going on with the knowledge of the military leadership."*

57. UNMISS Human Rights Division also received reports of three incidents of sexual violence involving six women. In one incident, SPLA soldiers gang-raped four women, who subsequently fled to Uganda. The Commission interviewed one woman (Witness 388), who witnessed part of the same incident. She described fleeing with her three children when they were captured by soldiers and taken to a deserted village, along with three other women. The soldiers then beat her and threatened to kill her if she did not give them all her money. In the course of the attack, she saw soldiers take a 16 year-old girl into another hut, where they raped her.

58. The number of incidents of sexual assault committed during the attack on Pajok may be much higher than reported. A community leader told the Commission that for cultural reasons, Acholi women have reservations about speaking about being raped, due to stigma within the family and the community.

59. The April attack resulted in virtually all of the civilian population fleeing the town. Approximately 30,000 residents fled to Palabek refugee settlement in northern Uganda. Most were still there when the Commission visited on 18 December 2017.

60. The Commission finds reasonable grounds to believe that the SPLA deliberately attempted to prevent information about the events from Pajok from becoming public, and prevented UNMISS and CTSAMM from accessing Pajok immediately after the killings.

#### ***Violations and alleged crimes***

61. The Commission finds that there are reasonable grounds to believe that the SPLA intentionally directed attacks against the civilian population and deliberately killed civilians in Pajok on 3 April 2017. Furthermore, there are reasonable grounds to believe that the SPLA engaged in systematic looting and theft of private property either for personal or organisational use in the aftermath of the attack. The SPLA attack on civilians in Pajok in 2017 directly led to the displacement of nearly the entire population of the town.

62. These amount to serious violations of human rights and humanitarian law, and may amount to war crimes and crimes against humanity.

### C. Wau, Western Bahr el Ghazal, 2016 – 2017

63. Wau, Western Bahr el Ghazal, is an ethnically mixed town of several groups including Fertit and Dinka who have a history of conflict. Since the beginning of the current conflict, it has been consistently under Government control. However, due to the presence of opposition forces in the surrounding areas to the south and west of Wau town, known as the Wau Triangle, there has been fighting there since late 2015.

64. In late 2015, there was large-scale recruitment into opposition groups as well as additional deployments of mostly Dinka SPLA soldiers and Mathiang Anyoor. This coincided with an increase in attacks on Fertit villages and neighbourhoods in Wau town and area. A pattern developed of opposition forces ambushing SPLA forces. In retaliation for their losses, the SPLA attacked the civilian population, which it perceived as supporting the opposition. Killing, rape, looting and burning of houses by SPLA soldiers led to thousands of civilians being displaced.

65. Since December 2015, there have been a number of major outbreaks of violence against civilians in Wau town including 17-18 February 2016, early April 2016, 24-25 June 2016, and 10 April 2017, in addition to ongoing military skirmishes in the Wau Triangle.

66. In the weeks preceding 24-25 June 2016, hostilities escalated, including a number of ambushes against the SPLA in which soldiers were killed. This appears to have triggered a massive attack on civilians in Wau town on 24-25 June.

67. On 24 June, Dinka groups from the eastern side of the Jur river attacked residents in the largely Fertit neighbourhoods of Wau town. Severe fighting broke out between two 'youth armed groups' and later Government forces including SPLA got involved. Fighting lasted throughout the night into the following day. Witnesses recounted SPLA soldiers intentionally shooting at and killing Fertit civilians, including as they fled their homes toward the UNMISS base for protection.

68. Between 39 and 69 bodies were collected and recorded by the police, including those of at least 15 women and 10 children. The death toll is however likely to be much higher. Burning of homes and looting of over 100 shops by SPLA soldiers was also reported. The fighting and attacks on civilians resulted in massive population displacement with between 26,000 and 36,000, largely Fertit, people sheltering in places of refuge in Wau town by 28/29 June.

69. Regular armed clashes continued to occur in the Wau area after the June 2016 events. In early April 2017, there was a considerable reinforcement of SPLA forces in Wau. On 8 April, the SPLA mounted a new offensive against SPLA-IO forces who were in control of the Bazia area to the south and west of Wau. In the course of this operation, on 9 April, an SPLA convoy was ambushed in which two high-ranking SPLA officers and three soldiers were killed. One of the officers was the brother of the Governor of Rumbek. This incident appears to have been the specific catalyst for the subsequent outbreak of violence against non-Dinka civilians in Wau town, which began overnight on 9-10 April 2017.

70. On 10 April, there was heavy shooting in the south and south west areas of Wau town and SPLA soldiers and groups of armed men launched attacks on civilians. Witnesses recounted how the attackers went from house-to-house targeting Luo and Fertit by checking their ethnicity prior to shooting them.

71. Between 24 and 29 deaths were reported to the police as a result of the violence. The victims were almost exclusively male and appear to have been targeted on the basis of their Luo and Fertit ethnicity. IOM estimated that between 22,000 and 25,000 people were displaced in Wau town as a result of the 10 April violence.

72. South of Wau, signs indicating active military engagement were observed. Reports indicated that a number of clashes between the SPLA and the SPLA-IO took place between 16 April and June 2017. The Baggari area was abandoned, and attacks on civilians were reported by displaced people from the Bazia area. In December 2017, Bazia was largely deserted and the school, health clinic, and public buildings and water points had been

destroyed by the SPLA. Reportedly over 100 people were killed and eight women were raped, including girls under the age of 10, during the clash on 16 April. Burnt houses were observed in and between Taban and Bazia. UNMISS and CTSAMM were prevented from undertaking patrols to Bazia for a number of months, making it impossible to monitor the human rights situation.

#### *Violations and alleged crimes*

73. The Commission finds reasonable grounds to believe that SPLA soldiers engaged in killings of civilians, and looting and destruction of private property in Wau town on 24-25 June 2016 and killings of civilians in Wau town on 10 April 2017. These amount to serious violations of human rights and humanitarian law, and may amount to war crimes and crimes against humanity.

74. The Commission also received reports that human rights and humanitarian law violations occurred in February and April 2016 in Wau Town, and from April to October 2017 in the Bazia/Taban area; however, it recommends further investigations into these events prior to making factual findings.

### **D. West Bank Offensive, 2017**

75. Historical grievances between the Shilluk and the Dinka Padang over claims to Malakal and other lands on the East Bank of the river Nile were reignited after Shilluk Major General Johnson Olony's defection from the Government forces. By August 2015, the Government held Malakal and virtually the entire East Bank of the White Nile, while the SPLA-IO/Agwelek controlled the West Bank of the river. Tensions were exacerbated by the creation of new states that included contested parts of the East Bank in the Dinka-dominated Eastern Nile state, with Malakal as its capital; many perceived this as a power grab of Shilluk lands.

76. In late January 2017, fighting to the east and south of Malakal was followed by a SPLA coordinated offensive on the West Bank of the White Nile. The SPLA worked its way up the West Bank, pushing the SPLA-IO/Agwelek northwards, and commonly resorting to mortar and artillery shelling of villages. There are reasonable grounds to believe that an SPLA aircraft bombed areas near Wau Shilluk.

77. By early February, the SPLA had brought in 3,000 soldiers as reinforcements to capture the Shilluk-populated Wau Shilluk, ten kilometres north of Malakal. Heavy firing and shelling continued. Wau Shilluk was deserted except for those unable to flee due to age or infirmity. A number of shells killed at least three civilians. Witnesses stated that when the SPLA ground offensive reached the village, soldiers shot civilians as they fled. A number of older residents were burned to death in their tukuls.

78. Civilian and humanitarian objects including schools, churches, medical clinics and the market were looted, damaged or destroyed. A similar pattern of destruction and looting was witnessed in nearby Fathau, Both, and Padit villages.

79. Witnesses also observed multiple groups of Dinka-Akoka civilians and SPLA soldiers arriving by boat and removing all remaining possessions, including building and household items, and livestock from Wau Shilluk.

80. The SPLA offensive continued to push north, re-displacing IDPs from Wau Shilluk up the West Bank to Padit, Fathau, Lul and Kodok and, then as the SPLA shelled these areas, onwards to Aburoc. By 10 February 2017, an estimated 13,000 IDPs had arrived in Aburoc. Others were living in the bush around Wau Shilluk, Fashoda and Panyikang Counties and in Sudan. A Shilluk man (Witness 438) told the Commission of his devastating flight: *"Four of the villagers whom I was running and hiding with, died of hunger, thirst and, fatigue, while in the bushes on our way to Aburoc. The heat of the sun worsened our physical condition. So, during the day we took shelters in the almost balding bushes and moved up north in the evening to save the remaining energy that we had. One*

*among those four individuals that died in our journey was my eleven year-old son who got so weak due to starvation, thirst and exhaustion.”*

81. Meanwhile, in mid-February, Government aircraft from Juba began transporting largely-Dinka IDPs from Central/Eastern Equatoria to Malakal. Multiple flights were observed bringing over 2,000 people. According to a Government official, a total of 15,000 IDPs would be relocated in the region.

82. In late April, the northward offensive along the West Bank resumed, reportedly with a massive reinforcement of approximately 5,000 SPLA and SPLA-IO (TD) soldiers. The area between Padit and Lul saw extensive firing, including heavy artillery. The SPLA captured Lul on 25 April. According to a witness, there was one Agwelek company in Lul who were lightly armed and fled before the government forces arrived. Despite the lack of armed resistance, a number of witnesses said that SPLA soldiers fired at civilians and villages, reportedly killing at least three people. The soldiers looted food supplies and farm animals, before burning houses. Witnesses gave very similar accounts from Bol, Bot, and Oteng villages.

83. When the offensive reached Kodok on 26 April, it resulted in further displacement of civilians to Aburoc, where approximately 30,000 civilians, mostly elderly, women, and children sought refuge. A further 20,000 fled across the border into Sudan between 29 April and 6 May. The fighting in Kodok forced humanitarian organisations to evacuate staff to Aburoc. Villagers in Kodok later recounted that they did not have food because soldiers from both sides looted everything. Women also mentioned specific incidents of rape.

84. The SPLA offensive between January and May 2017 resulted in Government control of the entire stretch of the White Nile river from Malakal north to Renk. Minor clashes between the SPLA and the SPLA-IO/Agwelek forces and intra-Agwelek clashes continued over the next couple of months. This led to the defection of some Agwelek fighters to SPLA-IO (TD), culminating in the capture of Aburoc by SPLA-IO (TD) forces on 11 September 2017. In the shelling and firing, three women were reportedly killed. Amid allegations of looting, up to 10,000 people were displaced.

#### ***Violations and alleged crimes***

85. Based on the evidence collected, the Commission finds reasonable grounds to believe that SPLA soldiers deliberately killed civilians and extensively looted and destroyed civilian property during their ground offensive along the West bank of the Nile in 2017. The evidence provides reasonable grounds to believe that the SPLA directed attacks against the civilian population. These amount to serious violations of human rights and humanitarian law, and may amount to war crimes and crimes against humanity.

86. The Commission also has reasonable grounds to believe that the SPLA and SPLA-IO (TD) offensive led to a massive displacement of Shilluk civilians. The evidence makes clear that this was a direct result of widespread violations committed by the SPLA forces. This displacement gave rise to serious violations of human rights law.

87. These violations are not exhaustive. Access limitations enforced by the SPLA have restricted reporting and documentation. For example, allegations of rape could not be adequately investigated given the time constraints. The Commission recommends that these allegations be thoroughly investigated.

### **E. Pagak Offensive, 2017**

88. The south-eastern part of Upper Nile State, bordering Ethiopia, has been under SPLA-IO (RM) control since the conflict began in late 2013, with the SPLA-IO (RM) main headquarters located in the border town of Pagak. By many accounts, the Pagak Offensive to “liberate” the area from the SPLA-IO (RM), coupled with the reconfiguration of the Northern Upper Nile State on 6 July 2017, was an attempt to safeguard the Palouch oil fields, and their associated economic benefits, among the Dinka community.

89. In June 2017, the SPLA launched a sophisticated operation to dislodge the SPLA-IO (RM) from Pagak through Guelguk, Mathiang and Maiwut, which lie northeast of Pagak. SPLA forces utilized heavy artillery bombardment to attack numerous towns and villages along the line of advance. The Government forces reportedly engaged in systematic and widespread attacks on civilians and the looting and destruction of civilian objects throughout the campaign, causing over 40,000 persons to flee to Gambella, Ethiopia between mid-July 2017 and mid-January 2018. The Governor, local SPLA Commander, and the majority of the SPLA troops involved in the campaign were from the Nuer community, leading several witnesses (Witnesses 184, 189, 292, 333, 344, 371) to voice their concerns about further intra-ethnic fragmentation and a wider Government strategy to eradicate the Nuer community.

90. By 2 July 2017, the SPLA had arrived in Mathiang, continuing to engage mortar fire and heavy artillery. The SPLA-IO (RM) and Nuer White Army resisted the attack before withdrawing. SPLA forces destroyed humanitarian compounds, schools, a church, water points and a local hospital. The Commission also received information that SPLA-IO (RM) forces abducted three humanitarian workers. The Commission received numerous reports of civilians being subjected to arbitrary killings, assault and gruesome acts of sexual violence, in addition to the destruction and looting of their property.

91. One witness, from Malow (Witness 301) told the Commission how she watched as SPLA soldiers castrated her husband and forced her to hold his bloody testicles in one hand as she shielded their new-born child with her other hand. She then watched three SPLA soldiers rape her 70 year-old mother and coerce her twelve year-old son into having sex with his grandmother. After raping the grandmother, the SPLA soldiers shot and killed her. The woman's husband and one-month old baby subsequently died during their flight to Ethiopia.

92. As the SPLA continued east towards Maiwut, their tanks got bogged down in the seasonal mud, stalling the advance. The SPLA Chief of General Staff deployed attack helicopters to reinvigorate the campaign, with SPLA forces reaching Maiwut in late July.

93. Despite the SPLA-IO (RM) base being located two kilometres outside the town, the SPLA ground forces stormed Maiwut, raped women and massacred civilians in Maiwut and the surrounding villages. SPLA troops embarked on a similar pattern of looting and destruction, burning schools, the hospital, NGO facilities, as well as homes before advancing to Pagak.

94. One witness (Witness 333) recounted returning from seeking shelter in the bush to find that his mother had been blinded by SPLA soldiers who gouged her eyes out with spears as she unsuccessfully tried to defend her 17 year-old daughter from being raped by fourteen soldiers. Seventeen SPLA soldiers then raped the man's blind mother, while his father was found beheaded with his castrated penis stuffed in his mouth.

95. Witnesses reported that as the SPLA arrived in Pagak in late July 2017, they began shooting at civilians who had fled during earlier points in the offensive. Fierce fighting continued before the town was captured by 7 August 2017. SPLA IO (RM) forces had already counter-attacked to recover Mathiang and Maiwut.

96. Meanwhile, civilians who had fled earlier in the Government offensive described walking for four to five days without food or water to reach Pagak and the Ethiopian border with family members becoming separated or children dying along the journey from starvation and thirst. Several women were reportedly raped as they sought food for their children.

97. The intense fighting led to the evacuation of nearly all humanitarian personnel, which resulted in a dearth of aid for an estimated 50,000 civilians in an already dire humanitarian situation.

98. Buoyed by the SPLA's Pagak success, the Minister of Defence, Kuol Manyang declared that the SPLA would "crush all remaining rebels in South Sudan within 30 days." Intermittent fighting continued around Pagak up until December 2017.

### *Violations and alleged crimes*

99. The Commission finds reasonable grounds to believe that SPLA soldiers engaged in killings of civilians, rape and other forms of conflict-related sexual violence, theft or pillage, and destruction of civilian and humanitarian objects in Mathiang, Maiwut, and Pagak and the surrounding villages and areas during its offensive in south-eastern Upper Nile in 2017. The evidence provides reasonable grounds to believe that the SPLA directed attacks against the civilian population.

100. The Commission also has reasonable grounds to believe that the SPLA offensive through south-eastern Upper Nile in 2017 led to a massive displacement of civilians. The evidence makes clear that the displacement of civilians was a direct result of the widespread violations of international humanitarian law and human rights law committed by the SPLA forces. This displacement gave rise to serious violations of human rights law.

## **IX. Legal Findings**

101. The Commission found reasonable grounds to believe that the SPLA, both factions of the SPLA-IO, as well as the armed groups that support the parties to the conflict have committed serious human rights and international humanitarian law violations throughout the country. These have included deliberately targeting civilian populations and individual civilians, including on the basis of their ethnic identity and perceived political affiliations and by means of killings, abductions, rape and sexual violence, as well as the destruction of villages. Further violations include attacks against civilian objects, and humanitarian assistance or peacekeeping personnel; arbitrary arrest and detention; looting and pillaging; and conscripting children under the age of fifteen years into armed forces. The Commission has also found reasonable grounds to believe that these violations and alleged crimes have directly resulted in the massive displacement of the civilian population of South Sudan.

102. These acts amount to serious violations of human rights law, including under the Transitional Constitution of the Republic of South Sudan, 2011, particularly the right to life and human dignity (Article 11), the right to liberty and security of person (Article 12), the rights of the child (Article 17), the right to freedom of movement and residence (Article 27) and the right to property (Article 28). In relation to events occurring after 19 August 2016 when the African Charter on Human and Peoples' Rights came into effect in South Sudan, they also amount to the equivalent violations under the African Charter.

103. These acts constitute crimes under South Sudan's Penal Code 2008, including murder (Article 206), rape (Article 247), theft (Article 293) and mischief with intent to destroy house (Article 324). Moreover, SPLA soldiers are also subject to the provisions of the SPLA Act (2009) and the SPLA's Rules and Regulations, particularly Section 57 which establishes the offences of destroying and damaging property, plunder and committing any offence against the property or person of any inhabitant or resident of a country in which he or she is serving.

104. All parties to the conflict have also failed to abide by the principle of distinction and violated their obligation to distinguish at all times between civilian objects and military objectives. Furthermore, there have been violations of the principle of precaution which demands that in the conduct of military operations constant care is taken to spare civilians and civilian objects.

105. Furthermore, in relation to each of the incidents reviewed, the Commission finds reasonable grounds to believe that there was a nexus between the commission of these crimes and the non-international armed conflict ongoing in South Sudan since 15 December 2013. As such, they constitute violations of international humanitarian law under customary international law, as well as violations of Common Article 3 to the Geneva Conventions and Additional Protocol II, and which South Sudan has incorporated into its domestic law in its Geneva Conventions Act 2012. They may also amount to war crimes under Articles 4 and 5 of the Draft Statute of the Hybrid Court for South Sudan.

106. The Commission finds reasonable grounds to believe that in a number of instances, the attacks occurred as part of a widespread or systematic attack directed against a civilian population. As such, these alleged crimes may amount to crimes against humanity. In particular, the violations are being exacerbated by the ethnic dimension of the conflict, the temporary integration of ethnic militias into operations by the SPLA and the SPLA-IO and the defections and creation of new armed groups along ethnic lines. The ethnic dimension has led a battle of “them against us” for land, resources and control. In this regard, the Commission notes in particular that the targeted nature of some of the attacks against victims based on their ethnicity and perceived political affiliation may amount to the crime against humanity of persecution under Article 3(h) of the Draft Statute of the Hybrid Court for South Sudan.

### **A. Individual Responsibility**

107. In the incidents examined, the Commission has been able to identify several SPLA commanders, and in some instances commanders of other armed groups and Governors in relation to whom there are reasonable grounds to believe that they exercised command responsibility at the time that the violations and alleged crimes occurred.

108. Furthermore, in most instances, the Commission obtained evidence that, although there were instances when military discipline broke down, the SPLA and the SPLA-IO military hierarchies functioned effectively in terms of issuance, transmission, and respect for orders. In light of evidence of functioning lines of communication and the recurrent patterns of conduct of soldiers, there are reasonable grounds to believe that commanders knew or had reason to know of the conduct of soldiers under their command. The recurrent nature of the violations as well as the limited number of examples of punishment give rise to questions of whether they took reasonable measures to prevent or punish these alleged crimes. The Commission considers that there are reasonable grounds upon which criminal investigations and prosecutions should be undertaken in relation to these commanders under Article 8(4) of the Draft Statute.

### **B. State Responsibility**

109. The human rights violations perpetrated by the SPLA and government-controlled forces give rise to state responsibility on the part of the Republic of South Sudan. The Government also has a duty to investigate and prosecute these crimes and to provide reparations for victims.

110. Investigation Committees at National and State level have been established to investigate and report on some incidents covered by this report, including in relation to the Wau incidents of February 2016, June 2016, and April 2017, the events in Yei in 2016 and the events in Pajok in April 2017. These reports make multiple findings and recommendations, including that the SPLA prosecute those soldiers accused of committing atrocities against civilians and that it undertake a number of preventive steps. However, the Government authorities themselves acknowledge that most recommendations were not implemented.

## **X. Accountability and Transitional Justice**

### *Accountability*

111. Accountability for human rights violation and abuses in South Sudan has been a priority for the Human Rights Council and underpins the establishment of this Commission. In March 2017 the Council expanded the mandate of the Commission to inter alia collect and preserve evidence of alleged gross violations and abuses of human rights and related crimes and share this with transitional justice mechanisms including the proposed Hybrid Court of South Sudan.

112. The grave lack of accountability for gross human rights violations and serious violations of international humanitarian law perpetrated by all parties since 2013 is the foremost factor in perpetuating the current conflict. In rare instances when perpetrators have been prosecuted for conflict related crimes, it has been before military tribunals. Following the violence of July 2016, the government announced the establishment of Court Martials to prosecute SPLA soldiers allegedly responsible for crimes against civilians. It reported that 77 soldiers were convicted for various offences including murder, rape, theft and looting. Civil society groups reported that the trials did not meet international fair trial standards and involved awarding the death penalty. In April 2017, following an SPLA/IO ambush in Wau in which SPLA soldiers were killed, SPLA forces attacked civilians, killing more than 20 people. The state governor established a committee to investigate the attacks but to date there is no confirmation that any perpetrators were arrested.

113. Following intense international pressure, a military tribunal was constituted by the SPLA to deal with the attack on the Terrain Hotel in July 2016. Twelve SPLA soldiers are on trial for killing, looting, arson, rape, gang rape and sexual violence committed against civilians. The trial process is beset by irregularities including the restriction of defence attorneys' access to the defendants. The use of some witness protection measures in the trial however sets a precedent to support vulnerable victims and witnesses to testify in future trials involving sexual violence. The Commission is also concerned that no senior commanding officers are on trial. It notes that the South Sudanese government has consistently failed to prosecute soldiers for crimes against civilians in civilian courts in accordance with its own domestic law and international norms.

#### ***Transitional Justice***

114. South Sudan presents one of the most complex and challenging environments for ensuring accountability and promoting transitional justice. Chapter V of the Agreement for the Resolution of the Conflict in South Sudan (ARCSS) provides for the establishment of a Hybrid Court, a Commission on Truth, Reconciliation and Healing and a Compensation and Reparations Authority. The African Union, IGAD and the international community remain committed to Chapter V as the only viable option to address impunity but implementation has largely stalled despite recent initiatives to revitalize it.

#### ***Hybrid Court***

115. The ARCSS entrusts the AU with the responsibility of establishing a Hybrid Court for South Sudan to investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law, committed from 15 December 2013. In December 2017, the South Sudan Council of Ministers approved the legal instruments for the establishment of the court, including a draft statute of the Court and a draft Memorandum of Understanding between the African Union and the Government of South Sudan. The MOU is said to be with the Legislative Assembly, together with a Constitutional Amendment Bill, which will incorporate the peace agreement into the domestic law of South Sudan. The Draft Statute for the Hybrid Court sets forth the court's jurisdiction over genocide, crimes against humanity, war crimes and other serious crimes under international and relevant domestic laws.

116. The delay in the signing of the MOU and the failure to domesticate the draft statute sends a signal to those committing atrocities that they will not be held accountable, as the government may have no real intention of establishing the Court.

117. The Hybrid Court is expected to strengthen and complement the national justice system. Given its focus on prosecutions for the most serious crimes, the impunity gap is expected to be addressed by South Sudan's national courts. Prosecutions will require a strengthened and independent judiciary, and independent prosecutors and investigators capable of operating without political interference.



*Commission for Truth, Reconciliation and Healing (CTHR)*

118. The Government of South Sudan has also failed to establish the Commission on Truth, Reconciliation and Healing (CTHR) or conduct national consultations, so as to inform the legislation establishing the CTHR. While the government established a Technical Committee to support preliminary sensitization activities regarding the CTHR and held a few consultations, there has been no further progress in establishing the CTHR.

119. Given that political divisions triggered the current crisis, the process of establishing the CTHR needs to be transparent and include opposition groups, civil society organizations, women's groups and religious organisations. The Government's decision simultaneously to establish its National Dialogue compromises the setting up of the CTHR and signals the lack of political commitment.

120. A Norwegian Peoples Aid survey indicates that the majority of South Sudanese have a limited understanding of the proposed transitional justice mechanisms. Addressing this requires a comprehensive outreach program (beyond the National Dialogue) to inform and educate South Sudanese including victim communities.

121. Documentation of human rights violations remains critical, while ensuring that the "do no harm" principle is respected and a gender sensitive approach taken especially with victims of sexual violence.

*Compensation and reparation authority*

122. The ARCSS also provides for a Compensation and Reparation Authority for citizens whose property and livelihoods were destroyed by the conflict. The government needs urgently to establish an interim reparations programme; victims and survivors described desperate struggles to support themselves after the loss of breadwinners in the conflict. The high levels of mental and physical trauma also necessitate an emergency response with specific provisions for both male and female victims of rape and sexual violence. Victims and witnesses need an interim reparations programme for prompt medical and psycho-social services.

123. The Commission has been informed that work on establishing this body has not begun due to lack of funds. Funding for reparations will require that the government of South Sudan reprioritize its spending on the military and security in order to assist victims, and set up a Victim's Trust Fund funded by the national budget on an annual basis.

*National Dialogue*

124. The Government has prioritized the National Dialogue as its solution to the conflict. At best there is only limited participation from opposition figures. Participants say they are afraid to speak their minds openly because of the presence of the national security forces. Millions of South Sudanese who are refugees in neighbouring countries have also rejected the National Dialogue, with many refusing to talk to members of the Steering Committee who visited refugee camps in Ethiopia and Uganda.

125. The National Dialogue process is now perceived by most South Sudanese as compromised and an attempt to override the implementation of the peace agreement. This Commission believes that any genuine dialogue process must be anchored in Chapter V of ARCSS and should be led by an independent and credible entity.

## **XI. Conclusions and Recommendations**

### **A. Conclusions**

**126. There is sufficient evidence to conclude that the SPLA, both factions of the SPLA-IO, as well as the armed groups that support the parties to the conflict are deliberately targeting civilians on the basis of their ethnic identity and by means of**

killings, abductions, rape and sexual violence, as well as the destruction of villages and looting. These acts constitute war crimes and crimes against humanity.

127. These violations of international law and the related crimes committed by the individuals concerned are being exacerbated by the ethnic dimension of the conflict, the temporary integration of ethnic militias into operations by the SPLA and the SPLA-IO and the defections and creation of new armed groups along ethnic lines.

128. The ethnic dimension has led to the dehumanisation of the other in a battle of “them against us” for land, resources and control. Several incidents detailed in the report point to evidence of persecution on ethnic grounds as crimes against humanity.

129. The Commission has been able to identify a number of individuals, units and groups who bear responsibility for these violations and crimes and the individuals concerned should face prosecutions. Their names have been communicated on a strictly confidential basis to the High Commissioner for Human Rights. Access to this information will be determined according to the protocols established between the Commission and OHCHR.

130. Sustainable peace in South Sudan requires the AU, IGAD, the United Nations and the wider international community to address serious international crimes through the Hybrid Court. It was agreed under Chapter V of the 2015 peace agreement that the AU Commission would establish the Hybrid Court. This should now happen.

131. For millions of victims, justice remains a distant prospect when the government repeatedly uses blanket amnesties to protect leaders accused of atrocities and all sides renege on the peace deal. The domestic legal system is dysfunctional and lacks the ability to address serious crimes and gross violations of human rights and international humanitarian law.

132. The humanitarian crisis caused by the conflict deepens as the parties remain totally indifferent to the deliberate suffering of the people of South Sudan. Humanitarian aid has been deliberately blocked from reaching civilians perceived to be from the ‘other side’ or on the basis of ethnicity. Such restrictions are unlawful. People are fleeing as a result, leaving behind ghost towns and unattended crops, further exacerbating the food crisis. Hunger, lack of access to health care and schools are used to break down the other side in this conflict. The rights to life, physical integrity, to adequate food, water, healthcare, adequate accommodation and education are constantly violated.

133. Conflict-related sexual violence is endemic. Rape, mutilations of sexual organs and other forms of sexual violence, targeting girls, boys, women and men, are often committed in front of children, humiliate the victims, their families and their communities and destroy the social fabric, leaving behind a traumatised people and the seeds of yet more violence.

134. Critical evidence is being lost every day: witnesses are killed, threatened, disappear or are displaced. Physical evidence degrades, and documentary evidence is lost, concealed or destroyed. Nevertheless, the Commission has collected and preserved evidence, as per its mandate. Enhanced access to places of detention and survivors of human rights violations, will allow for the establishment of an important archive for meaningful transitional justice processes related to truth, accountability, reconciliation and healing.

## **B. Recommendations**

135. To the Government of South Sudan:

(a) Comply with obligations under both national and international law to promote and protect the rights of civilians, including issuing clear, public orders to all armed forces, security agencies and militias, to prevent and end all violations of

human rights and international humanitarian law, including unlawful killings, arbitrary detentions, torture, enforced disappearances, crimes of sexual and gender-based violence, and theft and looting of civilian property;

(b) Sign, with the African Union, as soon as possible, the Memorandum of Understanding on the establishment of a Hybrid Court;

(c) Take the necessary steps for the establishment of the Commission on Truth, Reconciliation and Healing, ensuring that selection and appointment of commission members should be conducted in an open and transparent manner, with candidates subjected to an independent vetting and screening process to ensure their independence, credibility and impartiality;

(d) Take the necessary measures to establish the Compensation and Reparation Authority;

(e) Establish an interim reparations programme and provide prompt medical services, including psycho-social support, to address the immediate needs of survivors, incorporating a gender-sensitive approach and paying particular attention to conflict-related sexual violence;

(f) Investigate all allegations of serious violations of human rights and international humanitarian law, as well as serious crimes under South Sudanese law, committed by the SPLA and other members of the security forces. The Government should ensure prosecutions conform with fair trial standards;

(g) Initiate a security sector reform process with a view to building a pluralistic and ethnically-inclusive security sector;

(h) Ensure and protect the freedom of movement of the population, humanitarian workers, humanitarian aid and commercial goods across the country;

(i) Establish conditions that are conducive to the return of IDPs and refugees to their homes, allowing them to live in freedom and dignity;

(j) Ensure the security and freedom of expression and work of civil society actors, including the media and human rights defenders; and create an environment conducive to the freedoms of speech, association and the media;

(k) Initiate civic engagement and consultations with victims, civil society, including human rights defenders, women leaders, religious and traditional leaders, to raise awareness on issues involved and frame Transitional Justice to meet their demands.

136. To the Armed Forces of the State, the Opposition Armed Groups, and Militia:

(a) Issue clear, public orders to all troops, and allied militias to prevent and end unlawful killings, arbitrary detentions, torture, enforced disappearances, conflict-related sexual violence, and looting of civilian property;

(b) Immediately vacate all schools and hospitals;

(c) Immediately release all children associated with armed forces;

(d) Allow unfettered access to the United Nations, ICRC, humanitarian organisations, and human rights defenders to enable them carry out their work in accordance with international law and their respective mandates.

137. To the African Union, United Nations and IGAD:

(a) Immediately establish the Hybrid Court in accordance with ARCSS, and appoint a Prosecutor with immediate effect, to identify those against whom indictments could be issued based on the available evidence.

(b) Set realistic deadlines for implementation the CTHR and the CRA;

138. To UNMISS:

(a) Support the Technical Working Committee to embark on a comprehensive outreach and education programme on the Chapter V institutions and assist with establishing these institutions in accordance with best international practices;

(b) Continue to support national justice institutions to prosecute serious crimes and ensure that all witnesses and victims receive appropriate protection and support.

(c) Continue to support UN Agencies and civil society organisations to document conflict related sexual violence and to design and establish mapping and documentation programmes which also disaggregate data of specific incidents of gender based violence and conflict-related sexual violence ensuring that the confidentiality and security of witnesses and victims are protected so as to ensure future accountability.

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