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## Human Rights Council

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Agenda item 4

### Human rights situations that require the Council's attention

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

### *Summary*

In the present report, submitted pursuant to Human Rights Council resolution 43/27, the Commission on Human Rights in South Sudan provides an overview of the situation of human rights in South Sudan and updates the Council on critical developments and incidents on which the Commission has collected and preserved evidence.<sup>1</sup>

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<sup>1</sup> See also the conference room paper containing the evidence gathered by and main findings of the Commission (A/HRC/46/CRP.2), available on the webpage of the Commission ([www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx)).

## I. Introduction

1. In its resolution 31/20, the Human Rights Council established the Commission on Human Rights in South Sudan for a period of one year. The Commission submitted its first report to the Council at its thirty-fourth session (A/HRC/34/63).
2. In its resolution 34/25, the Human Rights Council extended the mandate of the Commission for another year, and requested it to continue to monitor and report on the situation of human rights in South Sudan, to make recommendations to prevent further deterioration of the situation, and to report and provide guidance on transitional justice, including reconciliation.
3. The Human Rights Council also requested the Commission to determine and report the facts and circumstances of, to collect and preserve evidence of, and to clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability. The Council further requested the Commission to make such information available to all transitional justice mechanisms, including those to be established pursuant to chapter V of the Agreement on the Resolution of the Conflict in South Sudan, including the hybrid court for South Sudan, to be established in cooperation with the African Union.<sup>2</sup>
4. In its resolution 37/31, the Human Rights Council extended the mandate of the Commission for an additional year, and again in its resolutions 40/19 and 43/27. The current members of the Commission, appointed by the President of the Council, are Yasmin Sooka (Chair), Andrew Clapham and Barney Afako.
5. The Commission was supported by a secretariat based in Juba. It conducted missions to several locations within South Sudan, including Bor (Jonglei), Pibor (the Greater Pibor Administrative Area), Akop, Awul, Kuajok and Warrap town (Warrap), and Juba, Lasu, Lainya and Yei (Central Equatoria). It also conducted missions in Europe (undisclosed locations). The Commission met with a range of victims, witnesses, government officials, members of civil society and other key stakeholders.
6. During the current mandate, the Commission took more than 100 detailed individual witness statements and gathered more than 100 documents, including confidential records, covering incidents in South Sudan since December 2013. All of the evidence collected is preserved in the Commission's confidential database and archives.
7. The Commission extends its gratitude to the Government of South Sudan for facilitating its missions. It also appreciates the assistance and contributions of the African Union, the United Nations Mission in South Sudan (UNMISS), United Nations agencies, civil society organizations and experts.

## II. Methodology

8. The Commission submits the present report to the Human Rights Council pursuant to Council resolution 43/27. In the report, the Commission focuses primarily on establishing the facts and circumstances of incidents occurring between the signing of the Revitalised Agreement on the Resolution of the Conflict in South Sudan in September 2018 and December 2020.
9. In the light of the mandate's emphasis on accountability, the Commission also focused on establishing responsibility for violations and identifying individuals bearing responsibility for those violations and crimes. To clarify responsibility for international crimes, in particular, command or superior responsibility under international law, the Commission

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<sup>2</sup> In pursuance of its mandate, the Commission collects and preserves evidence that it stores in a database and that it catalogues by a unique evidence registration number (ERN). Reference is made to these numbers throughout the report so that States may use them when requesting to consult the evidence.

sought to identify command structures, patterns of conduct and indicators of control and discipline.

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

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

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

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

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

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

14. After more than nine months of delay, and two extensions of the pre-transitional period (initially from September 2018 to May 2019) approved by the Intergovernmental Authority for Development (IGAD), the Revitalized Transitional Government of National Unity of South Sudan was established in February 2020, following the resolution of a political standoff between the parties to the Revitalized Agreement on the Resolution of the Conflict in South Sudan concerning the number and boundaries of regional States. The parties also agreed to abolish the previously established 32 States, to re-establish 10 States, and to recognize three administrative areas. They further agreed to carry over into the new transitional period (from May 2019 to May 2022) certain security arrangements that could not be completed during the extended pre-transitional period. The First Vice-President and four Vice-Presidents were sworn in in February 2020; Cabinet Ministers and Deputy Ministers were appointed in March 2020.

15. Persistent political grandstanding, disagreement, suspicion and distrust among the main parties, however, resulted in undue delays in the achievement of key stages in the implementation of governance, political, social, economic, security and justice elements of the Revitalized Agreement intended to “restore permanent and sustainable peace, security and stability” in South Sudan.<sup>3</sup>

16. Prolonged contestation over power-sharing, including responsibilities at the State and local levels, has left vast areas of South Sudan in a governance and security vacuum, fomenting ongoing insecurity, particularly intercommunal and intracommunal violence. Beyond the Executive’s failure to guarantee safety and maintain the rule of law, legislative functions have also ground to a halt, as the parties have failed to agree on the reconstitution of the Transitional National Legislature, consisting of the National Assembly and the Council of States. Consequently, several critical pieces of legislation necessary for the implementation of key reforms stipulated by the Revitalized Agreement are still pending,

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<sup>3</sup> Revitalized Agreement, art. 1.2.2.

including the Constitutional Amendment Bill to rectify anomalies in the Constitutional Amendment Act of 2020, which would convert the Agreement to the Transitional Constitution of the Republic of South Sudan. The review and amendment of laws on national security, elections, resource, economic and financial management and anti-corruption are also outstanding.

17. Without a legislature, laws have not been passed to establish the commission for truth, reconciliation and healing, the hybrid court for South Sudan and the compensation and reparation authority and fund to address the legacy of conflict-related human rights violations and atrocity crimes, thus suspending the transitional justice response, and with it the prospects for healing, reconciliation and social recovery for South Sudan.

18. Regarding security, the Revitalized Transitional Government of National Unity of South Sudan has been unable to secure or provide adequate financial resources and logistical support for the unification, training and deployment of appropriate armed forces. Opposition forces in cantonment sites often lack access to basic amenities, such as food, water, sanitation and health care for themselves and their dependants. Despite donations, including from China, Egypt, Uganda and Ethiopia, operations at the cantonment sites and at training centres of the Unified Forces are inadequately supported, impeding the effective delivery of joint training. Planning for the deployment of the Necessary Unified Forces, including the full implementation of key policies, and a unified command structure for the Unified Forces, has been delayed. In addition, the anticipated disarmament, demobilization and reintegration of armed forces that will not be absorbed into the Unified Forces faces a delay, including from lack of financial resources to support the process.<sup>4</sup>

19. The delays have fuelled disaffection, mistrust and suspicion between the Government and opposition forces. Increasingly restless opposition groups, without access to socioeconomic benefits and unable to sustain their livelihoods owing to the delayed implementation of an appropriate disarmament, demobilization and reintegration plan, heighten the likelihood of regrouping.

20. Signatories and non-signatories to the Revitalized Agreement have continued to violate the permanent ceasefire, the Cessation of Hostilities Agreement and the Rome Resolution thereon.<sup>5</sup> Ongoing hostilities in various parts of the country have involved the National Salvation Front (a non-signatory to the Revitalised Agreement), the Sudan People's Liberation Army in Opposition (SPLA-IO) and the South Sudan People's Defence Forces (SSPDF). The proliferation and use of small arms and light weapons in intercommunal and intracommunal violence, cattle raiding and revenge attacks, including in Jonglei and Warrap States, has resulted in an ever-increasing humanitarian crisis, characterized by the mass displacement of affected communities and rising needs for shelter, food, sanitation and health-care services, among others.

21. Actual violence and threats have further impeded humanitarian operations in some areas. Killings and ongoing attacks on humanitarian workers have resulted in the suspension or temporary withdrawal of personnel. Furthermore, a special reconstruction fund that, in accordance with chapter III of the Revitalized Agreement, was to be created by the Revitalized Government by October 2019 to facilitate the reconstruction of infrastructure, especially in conflict-affected areas, and to provide assistance to internally displaced persons, returnees and families affected by conflict has not yet been established.

22. A range of factors, including intense competition for political power and national resources, poor democratic governance and a failure to manage diversity, plunged South Sudan into renewed conflict soon after its independence. Rampant corruption and economic crimes, which concentrate illicit wealth in a few hands, continue to foment grievances and

<sup>4</sup> Information received by the Commission during a confidential meeting held on 17 December 2020. See also Reconstituted Joint Monitoring and Evaluation Commission, report on the status of implementation of the revitalized agreement on the resolution of the conflict in the Republic of South Sudan for the period 1 July to 30 September 2020, paras. 25–31.

<sup>5</sup> See *ibid.*, paras. 18–24; and Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism Violation Reports (available at <https://ctsamvm.org/ctsamvm-violation-reports>).

drive conflict. A corrupt political system in which elite alliances of dominant ethnic groups marginalize and exclude others, while enjoying impunity for violations, contributes to violent competition at the national and local levels, where weak or absent State structures facilitate violations. Nevertheless, the Revitalized Agreement represents a broad and consensual road map capable of fostering the renewal and stability of South Sudan, on the condition that it is faithfully implemented and accompanied by a nation-building project rooted in democratic values and respect for all groups and citizens.

23. During his 2021 New Year's speech, President Kiir stated that the slow implementation of the peace agreement was not due to lack of political will but rather the need for continued dialogue between the parties to address the issues not included in the agreement. He pointed out that, with the sharing of responsibilities in nine of 10 States (with the Upper Nile State still pending) now completed, the process of the nomination of candidates to form the reconstituted Transitional National Legislative Assembly had commenced, including the announcement of deputy governors, and would continue in a phased manner.<sup>6</sup>

24. Nonetheless, the Commission remains concerned that the Revitalized Government has persistently failed to provide strong leadership and a clear road map for the implementation of the Revitalized Agreement, and instead continues to operate in an ad hoc manner, disregarding agreed timelines and impeding the realization of key measures required to move South Sudan towards stability. Regrettably, the measures enumerated by President Kiir remain insufficient to advance the full realization of the Revitalized Agreement.

25. The delays in the full implementation of the Revitalized Agreement are the result of continuing political competition and the drivers of conflict, which are finding new manifestations. Violence is increasingly witnessed in widespread localized conflicts and revenge attacks, for which perpetrators enjoy impunity for their human rights violations and atrocity crimes. Meanwhile, victims continue to bear the brunt of the physical, psychological, social and economic losses resulting from violations, without any form of recognition or reparation from the Government.

26. The implementation of the Revitalized Agreement lags woefully behind schedule. Of most concern, the Revitalized Government, which according to the Agreement is required to implement the measures laid out therein, has been only partially constituted, and few of the measures designed to set South Sudan on a transformative path have been taken.<sup>7</sup> Regrettably, this has left South Sudan still mired in conflict, heightened insecurity, a dire humanitarian situation and weak public institutions, infrastructure, laws, policies and political processes.

## **B. Ongoing conflict<sup>8</sup>**

27. Since November 2018, hostilities involving the SSPDF, local militias and the National Salvation Front (a member of South Sudan Opposition Movements Alliance) have persisted in Central Equatoria.<sup>9</sup> The ongoing clashes are motivated by, inter alia, territorial disputes, access to lucrative gold mines, illegal taxation, extortion and smuggling, and retaliation against persons suspected or accused of supporting opposing sides.

28. Levels of insecurity and violence in Central Equatoria vary from one region to another. In and around Yei town, civilians stated to the Commission that they were wary or afraid of SSPDF units, and feared members of both the SSPDF and the National Security

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<sup>6</sup> See Radio Tamazuj, "Kiir asks international partners for recognition in New Year's message", 1 January 2021.

<sup>7</sup> See Revitalized Agreement, annexure D, Revitalized Implementation Matrix 2018.

<sup>8</sup> Parts of Western Equatoria State were likewise affected by this conflict, while certain areas of Eastern Equatoria experienced violence related to conflict to gain control over natural resources and the spillover of fighting in Jonglei State. The Commission was unable to visit Western or Eastern Equatoria in 2020.

<sup>9</sup> Central Equatoria surrounds Juba and includes the vital overland supply route from Uganda through the border town of Nimule.

Service. A successful effort in mid-2020 to bring to justice 26 SSPDF soldiers for crimes committed against civilians improved the situation in only one village (Lasu), where soldiers stationed nearby had previously terrorized the civilian population.<sup>10</sup> Civilians and humanitarian workers continued to face the risk of road ambushes by armed perpetrators in Central Equatoria, who looted travellers' possessions, cars, motorbikes or, in the case of humanitarian workers, medicine and communications equipment.<sup>11</sup>

29. Members of SSPDF and SPLA-IO also harassed civilians during military operations against the National Salvation Front and destroyed and looted civilian property. One witness described an attack by government soldiers as a chaotic "rampage" of looting, beatings and rapes, with soldiers running amok. In June and September 2020, violence spilled over when SSPDF and SPLA-IO forces attacked South Sudanese citizens on the territory of the Democratic Republic of the Congo.<sup>12</sup>

30. Women and girls in Central Equatoria have been disproportionately affected and frequently been victims of conflict-related sexual violence (see para. 70 below). The Commission heard several accounts of rape and multiple incidents of gang rape perpetrated by SSPDF soldiers, and the extortion of food and household items by soldiers who had not received salaries or food rations.

31. National Salvation Front fighters, meanwhile, continued to abduct and forcibly conscript men, women and children, often in groups comprising dozens of victims. Abductees were used as fighters, porters or cooks, or sexually enslaved as "wives", for periods ranging from a few hours to months or years, following which they were either released or escaped. Although the National Salvation Front occasionally abducted SSPDF or SPLA-IO soldiers, the vast majority of victims during the period under review were civilians.

## IV. Localized conflicts

### A. Jonglei State and the Greater Pibor Administrative Area

32. While the signing of the Revitalized Agreement has led to a reduction in hostilities at the national level for the second year in a row, vast swathes of South Sudan have witnessed a massive escalation in violence perpetrated by organized tribal militias exceeding the violent conflict of December 2013.<sup>13</sup> The failure to meet key obligations of and the deadlines set by the Agreement has delayed gubernatorial appointments, creating a critical governance and leadership vacuum at the subnational level and undermined the ability of States to mediate and reconcile local grievances or to take concerted action to halt long-standing internecine conflicts.<sup>14</sup>

<sup>10</sup> See for example ERN 103721 – 103725; ERN 103726 – 103730; ERN 103741 – 103745a; ERN 103756 – 103760; and ERN 103761 – 103765.

<sup>11</sup> For example, on 10 August 2020, two vehicles of non-governmental organizations, including an ambulance, were ambushed on the Yei – Lasu road. The convoy was robbed, one civilian injured and another went missing. On 29 August 2020, suspected National Salvation Front fighters ambushed a humanitarian convoy near Lainya. They looted and destroyed vehicles and wounded one driver, while two others went missing.

<sup>12</sup> Areas of the Democratic Republic of the Congo bordering Central Equatoria accommodate numerous refugees from South Sudan. Some National Salvation Front fighters infiltrate refugee camps and communities to recuperate temporarily before returning to fight in South Sudan.

<sup>13</sup> The decline in hostilities at the national level may be attributed in part to the signing of the Revitalized Agreement and the unification of forces. Incidents of political violence have, however, spiralled out of control at the local level, driven by national actors who arm ethnic militias and paramilitary groups with military grade weapons using the ostensible cover of cattle-raiding, which in turn have led to reprisals and revenge killings, all under the cover and control of the parties to the conflict in South Sudan. See A/HRC/43/56, paras. 58 and 61.

<sup>14</sup> "Hundreds killed in inter-communal clashes in South Sudan", Aljazeera, 20 May, 2020. Most battles were carried out along tribal lines. Moreover, as cattle have always been central to the livelihoods of the Lou Nuer, Dinka and Murle communities throughout the region, as well as to their social and cultural systems, the spread of arms and increased militarization, commercialization of cattle and

33. Between February and November 2020, localized conflicts were waged in numerous States countrywide, the most devastating between allied Dinka and Nuer militias and Murle pastoralist militias in central and southern Jonglei State and the lowland, oil-rich Greater Pibor Administrative Area.<sup>15</sup>

34. Prior to the localized conflicts reported during the period under review, women and men stressed to the Commission that heightened tensions in Jonglei began following the signing of the Comprehensive Peace Agreement in 2005. After the outbreak of the conflict in 2013, the Sudan People's Liberation Army (SPLA) and SPLA-IO were supported by tribal militias, with the Dinka forming the Mathiang Anyoor (now largely integrated into SSPDF) and the Lou Nuer largely aligned with SPLA-IO.

35. The intense clashes and fighting at the localized level in Jonglei State and the Greater Pibor Administrative Area, which coincided with the formation of the Revitalized Government, broke out in four major waves: in Likuangole village (Greater Pibor Administrative Area), in February 2020; in PIERI town and its environs (Uror County, Jonglei State), in May 2020; again in Likuangole village, in May 2020; and in Gumuruk village (Pibor County), in June, July and August 2020. Between each attack, brutal acts of violence were perpetrated across the Jonglei State/Greater Pibor Administrative Area axis.

36. The violence across these regions was the worst recorded since the outbreak of the national conflict in South Sudan in December 2013, with waves of attacks and reprisals that left hundreds of South Sudanese women, men and children dead, maimed or destitute.<sup>16</sup> While men were targeted and killed during the attacks, hundreds of women, girls and boys were victims of abduction. Abducted women and girls were forced into sexual slavery, tortured and repeatedly gang raped, while abducted boys were forced to fight, and in some instances forcibly assimilated into rival groups, their ethnic and other identities completely erased.<sup>17</sup> As at December 2020, hundreds of abductees were still missing. Hundreds of thousands of civilians had been displaced by the violence and flooding.<sup>18</sup>

37. In addition to these gruesome violations, battles across Jonglei State and the Greater Pibor Administrative Area were further characterized by deliberate attacks on civilian infrastructure, including the torching of civilian homes (*tukuls*), the destruction of boreholes and water treatment installations, and the looting and destruction of objects belonging to local and international humanitarian organizations. In June 2020, in Gumuruk village (Pibor County), water treatment installations providing 15,000 households with clean water were destroyed.<sup>19</sup> Eight of the nine humanitarian workers killed in South Sudan in 2020 lost their lives in Jonglei and the Greater Pibor Administrative Area, including a nurse working with Médecins Sans Frontières and a South Sudan Red Cross volunteer.<sup>20</sup> Evidence gathered by

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rising dowry price have incentivized cattle raiding and child abduction, rendering localized conflicts even more deadly over recent years. See A/HRC/43/56, annex II, para. 30. See also Judith McCallum and Alfred Okech, "Drivers of conflict in Jonglei State", Humanitarian Practice Network, May 2013.

<sup>15</sup> See ERN TW303 – M0015, para. 8 and A/HRC/37/71, para. 18. Upon forming a self-defence group, the Lou Nuer youth community has often mobilized to protect their land from attack. See ERN 102918 – 102924, para. 12. Also known as the "White Army," the Lou Nuer has, however, its own command structure and has tended to operate independently of SPLA-IO. See ERN 103701 – 103714, para. 9. Local Murle community members later retaliated against attacks by allied Dinka and Nuer tribal militias. See ERN 103399 – 103406, para. 19.

<sup>16</sup> See ERN TW103 – A0015, para. 9; ERN TW107 – A0015, para. 5; and ERN TW303 – M0015, para. 9. Communities throughout Jonglei State and the Greater Pibor Administrative Area have been plagued by recurrent conflict, severe flooding and forced displacement for more than seven years. See Office for the Coordination of Humanitarian Affairs, Jonglei and Greater Pibor Administrative Area, Humanitarian Update, 8 December 2020, p. 2.

<sup>17</sup> ERN TW402 – M0010; ERN TW302 – M0010, para. 12.

<sup>18</sup> As at November 2020, 387,000 people were affected in Jonglei State, 141,000 in the Greater Pibor Administrative Area. See Office for the Coordination of Humanitarian Affairs, Humanitarian Update, 8 December 2020, p. 2.

<sup>19</sup> See ERN TW103 – A0015, para. 9; ERN TW303 – M0015, para. 24.

<sup>20</sup> All eight were killed between May and August 2020. See Office for the Coordination of Humanitarian Affairs, Humanitarian Update, 8 December 2020; see also "South Sudan clashes 'kill 300' in Jonglei state", BBC, 21 May 2020.

the Commission suggests that all of the battles were organized, highly militarized and coordinated, and appear to have been orchestrated to inflict maximum devastation.<sup>21</sup>

38. In the majority of attacks documented by the Commission, local militias were supported with both armed personnel and materiel, including heavy assault weapons provided by SSPDF or SPLA-IO forces. The Commission noted with deep concern that, during the period under review, parties to the conflict continued to exploit local rivalries, manipulating historical divisions between communities and instrumentalizing ethnic identities in order to marginalize and drive the displacement of populations presumed dissident to one party or another (see A/HRC/43/56, para. 61).<sup>22</sup>

39. On 23 June 2020, President Kiir established a 13-member high-level presidential investigative committee led by Vice-President James Wani Igga to address the root causes of the conflicts in Jonglei State and the Greater Pibor Administrative Area.<sup>23</sup> President Kiir appointed Joshua Konyi as chief administrator for Greater Pibor Administrative Area on 29 June, and Denay Chagor as governor of Jonglei State on 17 July, by which time most of the violence in both areas had subsided (S/2020/890, para. 3).

40. In the light, however, of the ongoing impact of the violence, in the form of displacement and a rapidly deteriorating humanitarian situation, exacerbated by the seasonal flooding in July, on 12 August 2020 President Kiir declared a three-month state of emergency for Jonglei State and the Greater Pibor Administrative Area.<sup>24</sup>

## **B. Romich, Tonj East County, Warrap State**

41. During his national address on 9 July 2020 to commemorate the ninth anniversary of the independence of South Sudan, President Kiir declared that the Government would be launching the “full-scale disarmament of the civilian population”. The Commission notes with concern that, in the course of the ensuing disarmament exercise, in which several security agencies participated, dozens of civilians were killed. Just two days before the violence broke out in Tonj East on 8 August, representatives of civil society had warned that “hasty top-down civilian disarmament” would worsen the security situation for civilians.<sup>25</sup>

42. The disarmament forces in Romich comprised elements of the Tiger Battalion, the National Security Service and SSPDF, all deployed together in the same barracks. The Commission received credible information that elements within the disarmament forces in Tonj East behaved lawlessly, raping women and girls.<sup>26</sup>

43. Fighting between civilians and disarmament forces began over a dispute in a market at approximately 4 p.m. on 8 August, and lasted until 7.30 a.m. the following day.<sup>27</sup> The disarmament forces used 12.7 mm guns mounted on the back of pick-up trucks, as well as rocket-propelled grenades, PK machine guns and AK-47 assault rifles (Kalashnikovs) to attack civilians, some of whom were also armed.<sup>28</sup> According to one witness, “they were shooting randomly”.<sup>29</sup> The following morning, the disarmament forces moved with their vehicles to nearby cattle camps, including Pajiklir, Parieng, Thikuel and Ramathieng, where they killed civilians and slaughtered hundreds of cattle.<sup>30</sup> Over the course of the two days,

<sup>21</sup> See ERN TW221 – L0015, para. 14.

<sup>22</sup> The Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 (2015) documented the specific involvement of the National Security Service (S/2020/1141, annex, para. 36).

<sup>23</sup> ERN TD102 – M0010. See also “Kiir sets up committee to resolve Jonglei communal violence”, Radio Tamazuj, 24 June 2020. Despite repeated attempts, the Commission was unable to obtain verified documents regarding the outcome or findings, if any, of the investigation committee. The Commission also notes with concern that, despite the establishment of the committee, violence continued into November, and that only the onset of seasonal floods brought an end to the fighting.

<sup>24</sup> Okot Emmanuel, “Kiir imposes state of emergency to contain greater Jonglei conflict”, Eye Radio, 13 August 2020.

<sup>25</sup> South Sudan Action Network on Small Arms, press release, 6 August 2020.

<sup>26</sup> See ERN TW213 – L0015, para. 12.

<sup>27</sup> ERN TW211 – L0015, para. 9; ERN TW210 – L0010, para. 4; ERN TW211 – L0015, para. 4.

<sup>28</sup> ERN TW210 – L0010, para. 4; ERN TW211 – L0015, para. 9.

<sup>29</sup> ERN TW211 – L0015, para. 9.

<sup>30</sup> ERN TW210 – L0010, para. 5.

at least 85 Luanyjang community members were killed, including 20 women and 10 children by disarmament forces.<sup>31</sup>

### C. Tonj North County, Warrap State

44. Between April and December 2020, Tonj North also experienced a number of attacks and retaliatory attacks between Dinka communities from Rualbet, Akop and Alabek on the one side, and from Awul, Aweng and Rualatok on the other. The attacks resulted in dozens of civilian casualties, burned homes, looted livestock and the displacement of tens of thousands of civilians.<sup>32</sup>

#### Violations and alleged crimes: findings

45. The Commission notes with grave concern that organized militias were supplied with personnel and arms, including military grade weapons, by the SSPDF and SPLA-IO. The attacks on civilians perpetrated by both government forces and armed opposition groups violated article 3 of the Geneva Conventions and provisions of Additional Protocol II, as well as customary international law, and constitute the war crimes of murder, pillage, unnecessary destruction of property and sexual violence.<sup>33</sup>

46. Furthermore, gross human rights violations and abuses amounting to serious violations of international humanitarian law were committed in the context of localized conflicts by armed militias affiliated to the SSPDF and SPLA-IO. Violations perpetrated against civilians included abductions, forced recruitment (including of children), murder, sexual violence, ill-treatment, looting and the unnecessary destruction of property. Many of these attacks revealed a shocking disregard for civilian lives.

47. Incidents of violence further violated the right to life and property ownership as guaranteed in articles 4 and 14 of the African Charter on Human and Peoples' Rights. They also violated the Transitional Constitution, notably the right to life, freedom from inhuman and degrading treatment and the right to property ownership, in addition to the Penal Code of 2008 and sections 57 and 206 of the Sudan People's Liberation Army Act, which prohibit the destruction and plunder of property. The Commission has reasonable grounds to believe that these acts may amount to war crimes<sup>34</sup> and other serious crimes under international law<sup>35</sup> included in the draft statute of the hybrid court for South Sudan.

## V. Starvation as a method of warfare, and freedom from hunger

### Starvation as a method of warfare

48. Over the past seven years, the acute food insecurity and malnutrition witnessed throughout South Sudan have been caused primarily by flooding and starvation used as a method of warfare. Indirect or incidental factors contributing to the hunger of millions of South Sudanese women, men and children are said to be primarily linked to the challenges posed by climate change, such as the delayed onset of seasonal rains, heavy flooding and drought, leading to poor harvests. For the second year in a row, flooding across South Sudan was the worst ever recorded, weakening the resilience of millions of civilians already suffering the effects of protracted armed and localized conflict. While South Sudan has experienced heavy flooding every year since 2005, the flooding during the period under review was the most devastating on record.<sup>36</sup>

<sup>31</sup> ERN TW212 – L0010, para. 13.

<sup>32</sup> ERN TD202 – L0025; ERN TW215 – L0015, para. 7; ERN TW216 – L0010, para. 7; ERN TW217 – L0015, para. 8; ERN TW218 – L0010, para. 12; ERN TW219 – L0015, paras. 8–9.

<sup>33</sup> See articles 4 and 5 of the draft statute of the hybrid court for South Sudan. See also Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Vol. 1: Rules* (ICRC/Cambridge University Press, 2005), pp. 590–603.

<sup>34</sup> Art. 4 (a), (b), (e) and (h) of the draft statute.

<sup>35</sup> Art. 5 (a)–(c) of the draft statute.

<sup>36</sup> Nhial Tiitmamer, "South Sudan's devastating floods: why they happen and why they need a coherent national policy", *Weekly Review*, The Sudd Institute, 12 December 2019.

49. The Commission found that government forces had used starvation as a method of warfare in Western Bahr el-Ghazal (between January 2017 and November 2018) and Jonglei (between 2017 and 2019) States. Government forces sought to marginalize and punish minority ethnic groups, including the Balanda Boor (Fertit) and Luo communities in Western Bahr el Ghazal State, whom government forces perceived as being hostile and sympathetic to the opposition (SPLA-IO), by depriving civilians of goods indispensable to their survival. Commanders also authorized their soldiers to pillage goods indispensable to the survival of these rural populations, including harvests (such as sorghum, cassava and okra) and livestock (chicken, cattle and goats).<sup>37</sup> The Commission also determined that the violations were part of a widespread or systematic attack directed against the civilian population in Western Bahr el-Ghazal State. Sustained attacks carried out against numerous towns and villages across the State over a number of years have resulted in significant numbers of deaths and cases of rape, and the destruction, torching and looting of properties. The resulting physical and food insecurity left civilians with no alternative but to flee their homes to safety elsewhere. The Commission concluded that the targeted nature of the attacks, including along ethnic lines, owing to perceived support for the opposition, can amount to the crime against humanity of persecution along political and/or ethnic grounds under article 3 (h) of the draft statute of the hybrid court for South Sudan.<sup>38</sup>

50. Members of armed groups also used starvation as a method of warfare in Central Equatoria in 2018. SPLA-IO forces deliberately obstructed the activities of international humanitarian aid organizations, and prevented them from delivering vital foodstuffs to communities in need, including through the arbitrary detention of humanitarian aid workers. At least 117 humanitarian actors were detained for prolonged periods in in South Sudan in 2018.<sup>39</sup>

### **Freedom from hunger**

51. Besides the use of starvation as a method of warfare, acute food insecurity increased for the second year in a row, in part owing to seasonal rains that caused extensive flooding and had a severe impact on rural populations in several counties along the White Nile River, particularly in Jonglei, Lakes, Unity and Upper Nile States.<sup>40</sup> Since the onset of the floods in July 2020, more than one million South Sudanese have been affected by the flooding and more than 856,000 people were displaced and forced to seek refuge on higher ground.<sup>41</sup> Women and children continued to be the most affected, and some 380 schools were forced to close. By late October, one third of the barely habitable schools were being occupied by displaced families.<sup>42</sup> Those displaced to even remoter areas lacked access to adequate health care.<sup>43</sup> According to one woman in the Greater Pibor Administrative Area, “Everything is

<sup>37</sup> The situation is exacerbated by the fact that soldiers are often not properly remunerated or able to support themselves, and are encouraged to loot as a means of sustaining themselves. See conference room paper of the Commission (A/HRC/40/CRP.1), available on the webpage of the Commission ([www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx)).

<sup>38</sup> See “‘There is nothing left for us’: starvation as a method of warfare in South Sudan”, conference room paper of the Commission on Human Rights in South Sudan (A/HRC/45/CRP.3), available on the webpage of the Commission at [www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx). See also draft statute of the hybrid court for South Sudan, arts. 3 (d), (h) and (j).

<sup>39</sup> Office for the Coordination of Humanitarian Affairs, South Sudan: Annual Humanitarian Access Review (January–December 2018), 25 February 2019. Two such incidents were reported in Central Equatoria in March and April 2018, both involving SPLA-IO forces. See also A/HRC/45/CRP.3.

<sup>40</sup> See A/HRC/45/CRP.3. See also South Sudan: Flooding Situation Report, Inter-Cluster Coordination Group, 18 November 2020; and South Sudan: Floods intensify impact of hunger and insecurity, Operational Update, 17 December 2020. Floods were the result when the White Nile River and the Akobo River bordering Ethiopia both overflowed. See “Food Insecurity in South Sudan: The Impact of Flooding and Conflict”, Borgen Magazine, 24 November 2020.

<sup>41</sup> South Sudan: Flooding Situation Report, Inter-Cluster Coordination Group, 18 November 2020. See also Office for the Coordination of Humanitarian Affairs, South Sudan: Flooding Snapshot, 21 October 2020.

<sup>42</sup> Ibid.

<sup>43</sup> ICRC, “South Sudan: Floods intensify impact of hunger and insecurity”, news release, 17 December 2020.

destroyed. Women are suffering and starving because they cannot do anything. There is just no way to move”.<sup>44</sup>

52. The floods also destroyed hectares of crops and led to the loss of livestock indispensable to the survival of local populations. Moreover, vital water sources became heavily contaminated, rendering vulnerable communities unable to flee at severe risk of contracting life-threatening waterborne diseases, including typhoid and cholera.<sup>45</sup> In November 2020, a man in the Greater Pibor Administrative Area told the Commission “there is no food, or clean water. We are all just drinking the same flood water that is being defecated in”.<sup>46</sup> As at December 2020, 7.5 million South Sudanese required humanitarian assistance.<sup>47</sup>

53. Both the Government of South Sudan and humanitarian actors have struggled to reach civilians and to provide humanitarian relief in flood-affected areas owing to blocked roads, overused airstrips and general insecurity.<sup>48</sup> In the meantime, the offices of some humanitarian organizations were flooded in Jonglei State.<sup>49</sup> In a welcome step, a flood task force, organized by the national Humanitarian Aid Commission, regularly deployed helicopters carrying medicine, hygiene materials, mosquito nets and water purification devices to affected regions, although community needs far surpassed the limited response.<sup>50</sup>

54. As at December 2020, populations in Akobo and Pibor (Jonglei State), Aweil South (Northern Bahr el-Ghazal State) and Tonj East, Tonj North and Tonj South (Warrap State) began to face “famine likely” or “catastrophe” conditions that were in part due to the delayed onset of seasonal rains and later flooding beginning in July.<sup>51</sup>

55. Jonglei State has been the worst affected, where the situation has been compounded by recurrent cycles of localized conflicts and the resulting insecurity. The impact of the coronavirus disease (COVID-19) pandemic and the economic crisis have put parts of the State at severe risk of being classified under phase 5 (famine) of the Integrated Food Security Phase Classification system.<sup>52</sup> The Commission interviewed numerous residents who had been affected by the floods- in Jonglei State, who all emphasized that they and their families, including young children, were acutely hungry, with many sharing only one modest meal a day.<sup>53</sup>

56. Throughout 2020, there were an estimated 1.3 million malnourished children living in South Sudan.<sup>54</sup> The Commission has previously detailed how acute malnutrition and food

<sup>44</sup> ERN TW106 – A0010, para. 18.

<sup>45</sup> ERN TW103 – A0015, para. 17.

<sup>46</sup> ERN TW103 – A0015, para. 16.

<sup>47</sup> Office for the Coordination of Humanitarian Affairs, South Sudan: Flooding Snapshot, November 2020.

<sup>48</sup> Ibid.

<sup>49</sup> ERN TW103 – A0015, paras. 17–18.

<sup>50</sup> “Food Insecurity in South Sudan: The Impact of Flooding and Conflict”, Borgen Magazine, 24 November 2020. See also ERN TW103 – A0015, para. 17; and ICRC, “South Sudan: Floods intensify impact of hunger and insecurity”.

<sup>51</sup> Integrated Food Security Phase Classification (IPC), “South Sudan: Analyses show populations in six counties facing ‘famine likely’ or ‘catastrophe’ conditions”, summary report, 12 December 2020, p. 1.

<sup>52</sup> Gumuruk, Lekuangle, Pibor and Verteth payams in Pibor county. See IPC, “South Sudan: Analyses show populations in six counties facing ‘famine likely’ or ‘catastrophe’ conditions”, p. 2. The IPC Acute Food Insecurity classification rates hunger levels from 1 to 5, and provides information to decision-makers by focusing on short-term objectives to prevent, mitigate or decrease severe food insecurity; see [www.ipcinfo.org/ipcinfo-website/ipc-overview-and-classification-system/ipc-acute-food-insecurity-classification/en](http://www.ipcinfo.org/ipcinfo-website/ipc-overview-and-classification-system/ipc-acute-food-insecurity-classification/en).

<sup>53</sup> See ERN TW106 – A0010, para. 7; ERN TW108 – A0010, para. 10; ERN TW111 – A0015, para. 8; ERN TW112 – A0010, para. 9; ERN TW118 – A0010, para. 11; and ERN TW119 – A0015, para. 13. From January to October 2020, the United Nations Children’s Fund (UNICEF) treated nearly 167,000 children suffering from severe acute malnutrition; see UNICEF, South Sudan Humanitarian Situation Report, No. 150, October 2020.

<sup>54</sup> Office for the Coordination of Humanitarian Affairs, South Sudan: Flooding Snapshot, November 2020.

shortages have a particularly gendered effect, with women inclined to prioritize feeding their children and the men over themselves, thereby exacerbating their own malnutrition.<sup>55</sup>

57. In response to warnings of famine by humanitarian actors, the Ministry of Agriculture and Food Security released a statement on 13 December 2020 urging restraint and noting that any famine designations were premature. The scale and severity of acute food insecurity in South Sudan is, however, expected to remain the highest recorded ever since 2014.<sup>56</sup>

58. In addition to the floods, the COVID-19 pandemic has had an impact on food security, particularly in Juba (Central Equatoria) and Bor (Jonglei). For example, after the spread of the virus in early April, the price of a kilogram of maize in Juba rose by 84 per cent, from 159 South Sudanese pounds (SSP) in April 2019 to 298 SSP in April 2020.<sup>57</sup> The price rises have been met with demonstrations; for example, members of civil society organizations staged a demonstration in Bor against escalating food prices and insecurity, blaming traders for profiteering from the pandemic and the rising costs.

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

59. Besides the use of starvation as a method of warfare in Western Bahr el-Ghazal, Jonglei and Central Equatoria States between 2017 and 2019 and the possible crimes against humanity, the Commission notes the increase in the displacement of people due to seasonal flooding in South Sudan, which has steadily worsened over the past two years, affecting more than one million South Sudanese and displacing more than 856,000 women, men and children over the past six months alone. The Commission draws attention to the international obligation of South Sudan to, in accordance with the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention) “provide internally displaced persons to the fullest extent practicable and with the least possible delay, with adequate humanitarian assistance, which shall include food, water, shelter, medical care and other health services, sanitation, education, and any other necessary social services, and where appropriate, extend such assistance to local and host communities”.<sup>58</sup> Under the Convention, members of armed groups are to be prohibited from hampering the provision of protection and assistance to internally displaced persons under any circumstances and impeding humanitarian assistance and the passage of relief consignments, equipment and personnel to internally displaced persons.

60. South Sudan is also bound by the provisions of the African Charter on Human and Peoples’ Rights. While there are no express provisions in the Charter guaranteeing the rights to food and housing – rights to which those affected by the flooding are entitled and currently being denied – the African Commission on Human and Peoples’ Rights has stated that the right to food is implicitly protected under the Charter through the rights to life, to health, and to economic, social and cultural development.<sup>59</sup> Similarly, though the right to housing or shelter is not explicitly provided for under the Charter, the combined effects of articles 14 (right to property), 16 (right to enjoy the best attainable state of physical and mental health) and 18 (right to family unit) should be read into the Charter as rights to shelter or housing.<sup>60</sup>

61. Moreover, national authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.<sup>61</sup> Internally displaced persons have the right to request and receive protection and humanitarian assistance from national authorities, and must not be persecuted or punished for making such requests.<sup>62</sup>

<sup>55</sup> See A/HRC/45/CRP.3.

<sup>56</sup> South Sudan Food Security Outlook Update, Fews Net, August 2020, p. 1.

<sup>57</sup> Edward Thomas, “South Sudan’s food imports in the time of COVID-19”, Rift Valley Institute, briefing paper, April 2020.

<sup>58</sup> See “Translating the Kampala Convention into practice: a stocktaking exercise”, *International Review of the Red Cross*, vol. 99, No. 1 (2017), pp. 365–420.

<sup>59</sup> www.achpr.org/public/Document/file/English/achpr30\_155\_96\_eng.pdf, paras. 64–65.

<sup>60</sup> *Ibid.*, para. 60.

<sup>61</sup> Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), principles 3 (1) and 25.

<sup>62</sup> *Ibid.*, principle 3 (2).

62. During the period under review, and across the White Nile, devastating floods particularly affected agropastoral communities whose livelihoods in South Sudan have consistently been shaped by planting and growing seasons. States are further under a particular obligation to protect against the displacement of pastoralist communities that have a special dependency on their lands.<sup>63</sup>

63. The right to food may be contained in articles 9 (3) and 11 of the Transitional Constitution of South Sudan, 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.

## VI. Sexual and gender-based violence

64. Sexual and gender-based violence, and in particular conflict-related sexual violence, has persistently been a hallmark of the conflict in South Sudan. As at September 2020, South Sudan had seen an estimated 88 per cent increase in the number of women victims of conflict-related sexual violence, and a 119 per cent rise in the number of abductions since the previous quarter.<sup>64</sup> The upsurge in localized conflict in Central Equatoria (Yei and surrounding areas), Jonglei and the Greater Pibor Administrative Area and Warrap (Tonj West and North) saw women and girls targeted by all sides.<sup>65</sup>

65. Similar patterns and trends were evident in the data and evidence gathered during previous reporting of the Commission.<sup>66</sup> The most alarming feature is the similarity in sexual and gender-based violations during the armed and localized conflicts.

66. The Commission documented the abduction of hundreds of women and children by militias and civil defence groups during localized conflicts in Jonglei and the Greater Pibor Administrative Area between May and September 2020.<sup>67</sup> The women and girls abducted have been forced into sexual slavery or forced marriage, and suffered multiple incidents of rape and sexual violence.<sup>68</sup>

67. Up to 50,000 fighters were involved in one attack in Padoy (Jonglei State)<sup>69</sup> during which massive numbers of civilians were abducted.<sup>70</sup> Interventions by local authorities to collect lists of the missing people and to engage with the leadership of various fighting groups have not been successful in locating those abducted.<sup>71</sup>

68. The Commission notes with concern that the practice of commodifying women as the spoils of conflict has been perpetuated at the local level, as government forces and militias aligned to them, SPLM-IO forces and other armed groups are given the license (as a form of “compensation”) to loot and pillage, abduct, rape and force women into sexual slavery and forced marriage. Far from existing in a vacuum, conflict-related sexual violence in South Sudan is rooted in the structural violence of conflict and is connected to the local political economy.

69. The Commission has consistently warned that women face greater exposure to sexual violence when communities and civilians live in close proximity to military units and armed groups. The Commission cautions against demobilization and disarmament when they lead to the deployment of military units and armed group in direct proximity to civilians (see

<sup>63</sup> *Ibid.*, principle 9.

<sup>64</sup> UNMISS, Quarterly brief on violence affecting civilians (July – September 2020).

<sup>65</sup> ERN TW103 – A0015; ERN TW109 – A0015; ERN TW121 – A0015; ERN TW123 – A0015; ERN TW124 – A0010; ERN TW222 – L0010, para. 11; and ERN TW224 – L0010, para. 15.

<sup>66</sup> See A/HRC/40/CRP.1.

<sup>67</sup> ERN TW103 – A0015; ERN TW109 – A0015; ERN TW121 – A0015; ERN TW123 – A0015; and ERN TW124 – A0010.

<sup>68</sup> See A/HRC/40/CRP.1.

<sup>69</sup> ERN TW226 – L0015.

<sup>70</sup> ERN TW109 – A0015; ERN TW103 – A0015.

<sup>71</sup> ERN TW122 – A0010; ERN TW123 – A0015; ERN TW124 – A0010.

A/HRC/34/63, para. 35).<sup>72</sup> Interlocutors in Tonj (Warrap) informed the Commission that SSPDF soldiers and National Security Service personnel deployed to the Romich area as part of a disarmament unit were responsible for serious violations, including extortion, assault and rape and sexual violence causing severe harm to women and girls.<sup>73</sup> A witness in Romich confirmed to the Commission that a woman detained and held in a makeshift prison compound had been raped by a soldier while in custody.<sup>74</sup>

70. The Commission also documented numerous incidents of pillaging, looting, the killing of civilians and the rape of numerous women and girls in Yei (Central Equatoria) by members of an SSPDF mobile force stationed outside of Lasu village between 2019 and 2020. Women testified that armed soldiers entered their compounds and *tukuls*, looted and torched their property, beat and killed their loved ones and elderly relatives and then proceeded to rape and gang-rape them.<sup>75</sup> Community protests around these violations led to the establishment of a district court martial.<sup>76</sup> During confidential meetings held in December 2020, complainants told the Commission that they feared for their physical safety, as the SSPDF in the area had threatened reprisals against them. The Commission documented that the husband of one survivor was allegedly killed by SSPDF soldiers in retaliation for the conviction of their colleague.<sup>77</sup>

71. South Sudanese women and girls also continue to be targeted by armed forces belonging to opposing sides and enemy communities on the basis of age and their reproductive capacity.<sup>78</sup> A male witness testified to the Commission about an attack by the Murle on his village in Jonglei, where armed militia members deliberately targeted pregnant women: “If the woman is pregnant, the Murle attackers just kill her. I saw how a pregnant woman was shot dead and also witnessed many pregnant women being killed.”<sup>79</sup>

72. Sexual violence, including rape, gang rape, abduction, sexual slavery, sexual mutilation and sexual torture have all been consistent features of the conflict in South Sudan since 2013, and are now being replicated in conflict at the local level.<sup>80</sup> The Commission also notes that the armed clashes at the local level have resulted in the mass displacement of the civilian population, particularly women and girls. One elderly woman seeking refuge in Juba from the conflict in Jonglei spoke of her experience as a result of the clashes in her village that led to her displacement seven times. She had lost several of her family members, some of whom she had been separated from, others killed or abducted.<sup>81</sup>

## VII. Transitional justice and accountability<sup>82</sup>

73. More than two years since the signing of the Revitalized Agreement and the establishment of the Revitalized Government, South Sudan has made no concrete progress in establishing any of the transitional justice mechanism provided for in chapter V of the Agreement to address accountability for conflict-related violations in South Sudan. Under chapter V, the Revitalized Government is required to establish a commission for truth, reconciliation and healing to investigate and document patterns of human rights violations and causes of the conflict in South Sudan, and together with the African Union to establish a hybrid court for South Sudan to investigate and prosecute individuals responsible for

<sup>72</sup> See also the conference room paper of the Commission (A/HRC/37/CRP.2), available on the webpage of the Commission ([www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx)).

<sup>73</sup> ERN TW210 – L0010, para. 14; ERN TW211 – L0015; ERN TW212 – L0010.

<sup>74</sup> ERN TW210 – L0010, para. 14.

<sup>75</sup> ERN 103726 – 103730; ERN 103731 – 103735; ERN 103741 – 103745; ERN TW113 – A0015; ERN TW114 – A0010; ERN TW115 – A0015.

<sup>76</sup> ERN 103741 – 103745 (a).

<sup>77</sup> ERN 103741 – 103745 (a).

<sup>78</sup> ERN TW226 – L0015, paras. 14–15.

<sup>79</sup> ERN TW226 – L0015, para. 16.

<sup>80</sup> *Ibid.*

<sup>81</sup> ERN TW123 – A0015.

<sup>82</sup> See the conference room paper of the Commission on transitional justice and accountability (A/HRC/45/CRP.4), available on the webpage of the Commission ([www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx)).

violations and atrocity crimes, and a compensation and reparation authority to administer a fund for victims.

74. Regardless of the delayed formation of the Revitalized Government in February 2020, the commission for truth, reconciliation and healing, the hybrid court and the compensation and reparation authority were to be operational by August 2020. The parties to the Revitalized Agreement, however, displayed a total lack of commitment to meeting agreed timelines and delayed reaching consensus on power-sharing provisions, including on the newly formed States, local governments and gubernatorial appointments, resulting in a protracted political stalemate and slow progress in the implementation of critical substantive measures envisaged during the transitional period of the peace agreement. For instance, the transitional national legislative assembly that was intended to enact domestic legislation for the establishment of the above-mentioned mechanisms has yet to be reconstituted. Furthermore, if the comprehensive transitional justice programme provided for under the Revitalized Agreement – with the goals of national healing and reconciliation, humanitarian and reconstruction initiatives, governance measures (including the establishment of State structures), security sector reform, judicial reform and reform of the economic sectors of South Sudan – were implemented, it would contribute to managing ethnic and religious diversity, building confidence in the State and, ultimately, providing a pathway for preventing the recurrence of conflict-related human rights violations.

75. The Commission notes with grave concern that persistent delays in the implementation of the provisions of chapter V of the Revitalized Agreement, including in the steps required to establish the transitional justice mechanisms, entrenches impunity and perpetuates the underlying causes and drivers of conflict, inter alia intense competition for political power, government resources and territorial control, poor governance, and the failure to manage diversity and to limit the influence of political elites. Transitional justice mechanisms and processes are essential for addressing the lack of accountability for human rights violations and atrocity crimes that has entrenched impunity and engendered marginalization and exclusion at all levels, breeding resentment among affected communities and fuelling cycles of violence and conflict.

## VIII. Conclusions

76. **On the basis of its findings, the Commission has reasonable grounds to believe that members of the Government of South Sudan have engaged in acts amounting to gross human rights violations and serious violations of international humanitarian law in the context of the armed conflict in Central Equatoria. Government forces have also failed to respect their obligation to respect the right to food and freedom from hunger generally, in accordance with articles 9 (3) and 11 of the Transitional Constitution of South Sudan. The Government has also been complicit in gross human rights violations and abuses by arming and supporting organized militia groups during localized conflicts in Jonglei State, the Greater Pibor Administrative Area and Warrap State.**

77. **At the subnational level, localized conflicts, often with the participation of organized armed militias affiliated with the South Sudan People's Defence Forces (SSPDF) or the Sudan People's Liberation Army in Opposition (SPLA-IO), were characterized by brutal attacks. Violations against civilians included abductions, including of children, murder, rape and other forms of sexual violence, physical and psychological torture and ill-treatment, looting and the destruction of civilian property, crops and other means of livelihood.**

78. **In Central Equatoria, incidents of sexual and gender-based violence, including conflict-related sexual violence, continued to be widespread and pervasive, including in the context of localized conflicts, and were characterized by a pattern of terror and subjugation. Violations documented by the Commission included rape and gang rape, sexual mutilation, forced marriage, abduction and sexualized torture. Children, including young girls, were also victims of sexual exploitation.**

79. **Arbitrary arrests and detentions, and other restrictions on freedom of expression, opinion and assembly, also continued to characterize daily life in South**

Sudan, in acts that violated the right to information and expression, and freedom of association and assembly under the African Charter on Human and Peoples' Rights. In addition, South Sudan, through continued acts of enforced disappearance, failed in its duty to investigate in good faith all allegations of human rights violations, in particular where the authorities alone had relevant information.

80. Localized conflict also continued to pose a massive risk to stability in South Sudan, given the lack of accountability for gross human rights violations and abuses and violations of international humanitarian law. The risk to stability is compounded by weak State structures, including at the subnational level, predatory elites and their competition for political power and economic resources, as well as the failure to manage ethnic divisions and plurality.

## **IX. Recommendations**

81. The Commission recommends that the Revitalized Transitional Government of National Unity:

(a) Implement fully the provisions of the Revitalized Agreement on Resolution of the Conflict in South Sudan, by prioritizing outstanding political appointments, urgent security arrangements, the establishment of the transitional national legislature and of the transitional justice mechanisms envisaged in chapter V of the Revitalized Agreement;

(b) Implement the transitional justice provisions described in chapter V of the Revitalized Agreement;

(c) Designate a lead entity to coordinate implementation by the Revitalized Government of the provisions of chapter V of the Revitalized Agreement, in coordination with the African Union and other regional and international entities;

(d) Ensure that the technical committee set up under the Ministry of Justice in 2016 to conduct national consultations on the establishment of the commission for truth, reconciliation and healing is fully representative of civil society, and works with the designated lead entity, the African Union Liaison Office to South Sudan, the Reconstituted Joint Monitoring and Evaluation Commission and South Sudanese civil society at large;

(e) Lead the development of a road map for the implementation of chapter V of the Revitalized Agreement, with a matrix to include and define the following elements:

(i) The preparation of relevant legislation for the establishment of the commission for truth, reconciliation and healing, the hybrid court for South Sudan and the compensation and reparation authority, ensuring their effectiveness and independence, with clear timelines and milestones;

(ii) The identification of funding paths for the transitional justice mechanisms and processes, ensuring their effectiveness and independence;

(iii) Measures for strengthening domestic criminal justice, including the military justice system, for exercising criminal jurisdiction over relevant crimes;

(iv) Identification of community-based, including traditional, mechanisms for promoting accountability and reconciliation within the communities of South Sudan;(v) Traditional methods of compensation and reparations for violations and crimes in South Sudan;

(vi) Consideration of relevant outcomes of the national dialogue, and other consultations conducted by faith-based and other organizations;

(vii) Development of a consultation plan for the continual engagement, and to raise the awareness of, citizens, victims and domestic stakeholders in the development and implementation of the above measures, with special regard for

the participation of women, youth and marginalized groups;(viii) Define and clarify working relationships and responsibilities between implementing entities, including the Revitalized Government, the African Union, IGAD, the Reconstituted Joint Monitoring and Evaluation Commission, UNMISS and international and regional actors;

(f) Finalize the process for the adoption of the memorandum of understanding with the African Union to facilitate and expedite the establishment of the hybrid court and the commission for truth, reconciliation and healing;

(g) Establish an interim reparations programme to address the immediate needs of victims and survivors, including through medical and psychosocial support, incorporating a gender-sensitive approach and focusing particular attention on conflict-related sexual violence;

(h) Promote accountability for conflict-related sexual violence;

(i) Establish a committee drawn from the Ministry of Gender, Child and Social Welfare, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), UNMISS, the Office of the Special Representative of the Secretary-General on Conflict-Related Sexual Violence, the Commission on Human Rights in South Sudan, experts on sexual violence and representatives of South Sudanese civil society to address accountability for conflict-related sexual violence;

(j) Mandate the committee to advise on the role to be played by domestic and military courts in the prosecution of conflict-related sexual violence and on a coherent, comprehensive and gender-sensitive investigation and prosecutorial strategy;

(k) Strengthen the national capacity for the collection and preservation of evidence, including by setting up a database and collecting forensic data to facilitate the work of the transitional justice mechanisms envisaged in chapter V of the Revitalized Agreement and of domestic courts;

(l) Ensure effective functionality and leadership of the Revitalized Government in implementing the Revitalized Agreement;

(m) Take steps to address competition and marginalization, which undermine national cohesion and stability and fuel ethnic violence and abuses at the national and community levels;

(n) In accordance with the Revitalized Agreement, adopt and promote a strategy for national reconciliation and healing, contributing to the management of plurality and ethnic diversity and the prevention of localized conflict;

(o) Ensure the timely investigation of all allegations of serious violations of human rights and international humanitarian law, and also of serious crimes under South Sudanese law, committed by the SSPDF, the National Security Service and other members of the security forces;

(p) Facilitate the realization of the right to return of refugees and internally displaced persons;

(q) Establish conditions that are conducive to the return of internally displaced persons and refugees to their homes, allowing them to live in freedom and dignity;

(r) Ensure that family members who have been separated through abduction, especially women and children taken during localized conflicts, are reunited with their families and provided with access to social integration programmes;

(s) Act with urgency and due diligence to eliminate and prevent practices that constitute forced marriage, and to tackle the root causes thereof, and ensure that instances of forced marriage are investigated and, as appropriate, prosecuted;

(t) In accordance with the Revitalized Agreement, initiate reforms to ensure that the security sector is pluralistic and ethnically inclusive;

(u) Ensure that military discipline is upheld alongside the principle of command responsibility, and that personnel are vetted, taking into account past human rights and international humanitarian law violations;

(v) Accelerate disarmament, demobilization and reintegration programmes, and sensitize the population to ensure their broad acceptance;

(w) Cease and prevent the redistribution of firearms collected in the context of the disarmament, demobilization and reintegration process;

(x) Take effective measures to prevent and respond to any acts that may amount to the crime of starvation, such as the destruction of crops or livestock in the context of localized conflict, or the displacement of populations by non-State actors;

(y) Ensure unfettered access to the United Nations, the International Committee of the Red Cross (ICRC) and humanitarian workers to allow them to carry out their work in accordance with their mandates and international law;

(z) Take effective measures to prevent acts aimed at interfering with the freedom to express opinions, such as attempts to intimidate or silence civil society, journalists, legal professionals, human rights defenders and political groups, investigate such interference, and ensure that perpetrators are prosecuted and that victims are provided with redress, as appropriate;

(aa) End all repressive campaigns against the media and civil society actors, including those who cooperate with the United Nations;

(bb) Create an environment in which the rights to freedom of speech and of association and to freedom of the media are respected;

(cc) Repeal laws that restrict or weaken the activities of civil society and non-governmental organizations, including those of monitoring and reporting on government policies and human rights violations;

(dd) Implement fully the three media laws – the Media Authority Act, the law on the right of access to information, and the Public Broadcast Company Law – and establish the relevant media institutions, in accordance with all relevant and applicable domestic and international laws;

(ee) Investigate the role played by the National Security Service in violations of fundamental rights, such as unlawful detentions, arbitrary arrests, enforced disappearances and torture, including sexual torture, and hold to account those responsible;

(ff) Investigate enforced disappearances to establish the fate and whereabouts of persons disappeared, and bring perpetrators to justice.

82. The Commission recommends that the SSPDF, factions of the SPLA-IO and non-State armed groups:

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

(b) Immediately vacate all schools, hospitals and any other civilian infrastructure;

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

(d) Allow unfettered access to the United Nations, ICRC, humanitarian organizations and human rights defenders in accordance with their mandates and international law.

83. The Commission recommends that the African Union and IGAD:

(a) Ensure that the memorandum of understanding for the establishment of the hybrid court for South Sudan is completed and signed by the African Union Commission and the Revitalized Government. The memorandum of understanding should include a matrix, a road map, clear timelines and the roles of the Revitalized Government and the African Union;

(b) Agree on a clear timeline for the establishment of the hybrid court for South Sudan, the commission for truth, reconciliation and healing and the compensation and reparation authority in accordance with Revitalized Agreement, and appoint a prosecutor and senior officials as a matter of urgency;

(c) Ensure the effective engagement of the Revitalized Government and its designated mechanisms for achieving the expeditious implementation of the measures envisaged in chapter V of the Revitalized Agreement;

(d) Facilitate the Liaison Office to the African Union for South Sudan to assist the Revitalized Government and other entities to implement the measures envisaged in chapter V of the Revitalized Agreement;

(e) Ensure adequate funding for the mechanisms envisaged in chapter V of the Revitalized Agreement.

84. The Commission recommends that the United Nations Mission in South Sudan:

(a) Support the technical committee set up to conduct national consultations on the establishment of the commission for truth, reconciliation and healing in undertaking comprehensive outreach and education on the processes required for the implementation of the measures envisaged in chapter V of the Revitalized Agreement, and assist in establishing the mechanisms in accordance with best international practices;

(b) Continue to support national justice institutions to investigate and prosecute serious crimes, ensuring that witnesses and victims receive appropriate protection and support;

(c) Support efforts to establish a dedicated database for the collection and preservation of evidence for transitional justice;

(d) Continue to support United Nations agencies and civil society organizations in documenting conflict-related sexual violence, and designing and establishing mapping and documentation programmes, disaggregating data of gender-based violence and conflict-related sexual violence for future accountability, while ensuring the confidentiality and security of witnesses and victims.

85. The Commission recommends that Member States and development partners:

(a) Provide the necessary political support to the Revitalized Government and other entities for the full implementation of the Revitalized Agreement;

(b) Commit political financial and technical assistance to support transitional justice processes in South Sudan, particularly in the implementation of the provisions of chapter V of the Revitalized Agreement, in accordance with best practices and standards;

(c) Support the efforts and capacities of civil society and victims' groups to ensure their effective engagement in transitional justice processes in South Sudan.

Annex

Map of South Sudan

