

18 February 2021

English only

Human Rights Council

Forty-sixth session

22 February–19 March 2021

Agenda item 4

Human rights situations that require the Council's attention

**Detailed findings of the Commission on Human Rights in
South Sudan^{*}, ^{**}**

* Reproduced as received.

** The information contained in the present document should be read in conjunction with the official report of the Commission on Human Rights in South Sudan (A/HRC/46/53).

I. Introduction

1. In its resolution 31/20 (2016), 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 (2017), 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.¹

4. In its resolution 37/31 (2018), the Human Rights Council extended the mandate of the Commission for an additional year, and again in its resolutions 40/19 (2019) and 43/27 (2020). 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 (Greater Pibor Administrative Area), Akop, Awul, Kuajok, and Warrap town (Warrap State), and Juba, Lainya, Lasu, and Yei (Central Equatoria State). 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 organisations, and experts.

II. Methodology

8. The Commission submits the present report to the Human Rights Council pursuant to Council resolution 43/27 (2020). 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 January 2021.

¹ 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.

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

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

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

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

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

III. COVID-19: impact and response

"During the lockdown and curfew in April and May there was a lot of violence every evening when they made everyone close all shops by force".

—South Sudanese male, aged 29, from Juba (September 2020).²

14. According to the South Sudanese Ministry of Health, confirmed cases of COVID-19 in South Sudan have affected 3,929 persons as at 25 January 2021, with 3,613 recoveries and 64 deaths, and cases documented in the previous UN protection of civilian sites in Juba (Central Equatoria) and Bentiu (Unity).

15. In response to the rapid global spread of COVID-19, the Government of South Sudan moved quickly to impose a range of preventive measures, including lockdowns of varying degrees of severity. Even before the first confirmed case of COVID-19 in Juba on 5 April 2020, President Kiir issued a Presidential Order on 20 March for the formation of a High Level Task Force on Coronavirus, a new entity to be chaired by the President and with the first Vice President Riek Machar as deputy chair.³ On 15 May, the High Level Task Force was reconstituted by the President as the National Taskforce.⁴ The Commission spoke to South Sudanese civilians who highlighted that the staff comprising the National Taskforce was made up of military

² ERN TW201-L0005, para. 12.

³ Final Communication from The Presidency No.59, The High-Level Task Force on COVID-19 Pandemic, 18 May 2020.

⁴ Republic of South Sudan, The President, Republican Order No.12/2020 for the Appointment of Members of The National Task Force Committee on COVID-19, 15 May 2020.

Unrelatedly, and around the same time, First Vice President Machar and several members of the previously constituted High Level Task Force tested positive for the virus.

officials rather than medical personnel, scientists and academics, whom in their view were not equipped to manage pandemic-related issues.⁵

16. In the initial days and weeks of the outbreak, across South Sudan, the Government relied on coercive methods to police its COVID-19 public health measures. The Commission notes that while law enforcement plays a critical role in preventing the spread of the disease and in protecting people, heavy-handed security responses to the pandemic exacerbated existing threats to peace and security, which critics link to the presence of military officials rather than medical experts and scientists.

17. Prior to the lifting of the nationwide curfew on 8 May 2020, the Commission received credible information indicating that, between March and early May, the National Security Service (NSS) was not only involved in supporting other security institutions such as the police and the SSPDF in implementing a strict 7 p.m. curfew.⁶ The Commission heard numerous accounts that police and NSS personnel committed severe abuses and physical assaults against those perceived to have broken curfew and lockdown rules, including excessive use of force, arrest and detention, degrading treatment, and extortion.⁷ Given its enforcement powers, the NSS was also granted observer status on the National COVID-19 Task Force.⁸

18. South Sudanese citizens have raised that in many instances, those who have been in breach of the restrictions have received unduly harsh treatment. On 3 April 2020, police officers reportedly arrested, detained, and harassed 23 children in Torit (Eastern Equatoria) after they violated Government orders prohibiting large gatherings of people. On the same date, several NSS personnel and police officers arrested, detained, and extorted a local trader in Torit for allegedly violating movement restrictions implemented to prevent the spread of COVID-19. On 26 April 2020, a pastor in Juba was stripped partially naked by police and NSS personnel for holding church services, and he along with two other church members was arrested.⁹

19. During the lockdown in Juba in May 2020, one shop owner who did not close his shop at 7 p.m. was beaten and arrested by SSPDF officers.¹⁰ The same month, in the Hai Thora area of Juba, military officers stormed a local market at 6.30 p.m. and began beating civilians to force them to return to their homes.¹¹ Also in May, the owner of a tea shop in Juba was beaten by police officers for allegedly not observing the social distancing of the seats in her tea shop.¹²

20. Incidents of corruption have also marred the COVID-19 response in South Sudan. The Commission received allegations that COVID-19 funds were being misused and that healthcare workers were not being paid.¹³ In response, the Undersecretary of the Ministry of Health was dismissed after being accused of selling COVID-19 kits. In late April and May 2020, when a Chinese foundation donated large shipments of facemasks, civilians in Juba recalled that “they were not freely accessible”.¹⁴ The Ministry of Health had sold the donated facemasks to pharmacies for 500 SSP, and the pharmacies were selling them to citizens for 1,000 SSP.¹⁵

21. COVID-19 and the necessity for social isolation also increased the vulnerability of women and girls to hunger, food insecurity, domestic violence, and early child and

⁵ See, e.g., ERN TW201-L0005, para. 9.

⁶ Confidential meeting, date withheld.

⁷ See, e.g., ERN TW201-L0005, para. 11.

⁸ Confidential meeting, date withheld.

⁹ Confidential meeting, 19 May 2020.

¹⁰ ERN TW206-L0010, para 13.

¹¹ ERN TW201-L0005, para. 11.

¹² ERN TW228-L0010, para. 7.

¹³ ERN TW201-L0005, para. 9.

¹⁴ ERN TW201-L0005, para. 9.

¹⁵ ERN TW201-L0005, para. 9.

forced marriage.¹⁶ As the pandemic spread in South Sudan, pre-existing gender inequalities were exacerbated as women and girls endured heightened risks and challenges in securing their livelihoods and accessing adequate medical care, education, or redress for human rights violations.

22. Witnesses informed the Commission that the additional economic pressures faced by families during the lockdowns led to an increase in early child and forced marriage. While great progress has been made in raising awareness on gender equality and women's rights, cultural practices such as early child and forced marriage that accord unequal treatment to women, and place male members of families in authority over women, continued to dictate gender relations.¹⁷ Across South Sudan, women and girls are often prized as sources of wealth, and social capital is attached to their bodies. During the reporting period, the Commission documented how a non-governmental organisation was called to deal with a case of an adolescent girl and her mother who were threatened with severe beating and death for opting to continue her education instead of marrying a man old enough to be her grandfather. The intervention of local traditional leaders and civil society convinced her family to allow her to return to study, although her brother demanded compensation from the Chief and the civil society actors of the cattle he would have obtained from the old man.¹⁸

23. The Child Act of South Sudan (2008) defines children as persons under the age of 18 and guarantees such persons protection from violations of their liberty and security of person.¹⁹ Article 17 of the Transitional Constitution provides that every child is protected from exploitative practices and abuse and should not be subjected to harmful cultural practices, including protection from abduction and trafficking.²⁰ The Commission calls on the Government of South Sudan to recall its commitment to end child marriage by 2030.²¹

24. The lack of protection mechanisms and a climate of pervasive insecurity further undermined the ability of women and girls to seek redress for such harms. The R-TGoNU and, in particular, the Ministry of Gender, Child and Social Welfare and Ministry of Justice must prioritise systematic and culturally-aware sensitisation efforts in parts of the country where these practices continue. Planning and coordination of social protection interventions for extraordinary emergency situations like COVID-19 should be developed and factored into peace building responses. Finally, local authorities playing mediation roles in these cases must be resourced and supported.

25. Also, despite the economic implications of the pandemic as noted above, the Commission urges the Government to carefully consider feasible measures to ensure that there will be significant movement in implementation of the peace agreement, including the full package of Chapter V measures (see Sec. VIII, below).

IV. Freedom of expression, opinion and assembly; arbitrary arrest and detention²²

“The Government is desperate, and therefore anyone who is criticising it, irrespective of wherever he is from, will face consequences”.

—Male South Sudanese, detained by the National Security Service in 2020²³

¹⁶ Confidential meeting, 13 May 2020; see also ERN TW232-L0010, paras. 4 and 6.

¹⁷ Ibid.

¹⁸ Confidential Meeting, August 2020; see also ERN TD301-B0001.

¹⁹ Child Act (2008), sections 9, 12, 14, 15, 19, and 36.

²⁰ Transitional Constitution of South Sudan (2011), Art. 17

²¹ UNFPA, “Statement on ending child marriage in South Sudan by the Ministry of Gender, Child and Social Welfare and UNFPA”, 3 December 2018.

²² Certain details concealed subject to the principle of “do no harm”.

²³ ERN TW202-L0010, para. 19.

26. The Commission notes with concern that since the onset of the conflict in December 2013, there has been a systematic erosion of fundamental rights and freedoms in South Sudan which has manifested in widespread attacks on members of civil society, human rights defenders, journalists, and others perceived to be critical of the Government.²⁴ Critics of the Government are systematically silenced, intimidated, detained or subjected to enforced disappearance, mainly by the National Security Service.²⁵ Since the independence of South Sudan in July 2011, the securitisation and dominance of one ethnic group in particular within the State security apparatus, particularly by the NSS, continues to steadily increase.²⁶

27. Prior to independence, including during the 2010 Sudanese general election, similar patterns of repression were already present. State security forces deliberately prohibited the publication of newspapers through censorship; they harassed and arrested journalists, and shut down civil society organisations deemed critical of the Government of Southern Sudan.²⁷

28. Since its first report to the Human Rights Council in March 2017, the Commission has warned of concerted clampdowns by the Government of South Sudan and National Security Services on freedom of expression and opinion.²⁸ In the same report, the Commission noted that the National Security Service Law effectively granted the NSS unfettered powers, including to arrest and detain suspects, monitor communications, and to conduct searches and seize property without any judicial oversight.²⁹

29. In February 2019, the Commission noted in its report to the Council the shrinking of civic space and the role played by the NSS in the intensification of surveillance, unlawful detention, and torture of those perceived to be critical of the Government. This has included the continued surveillance of those previously detained as well as their family members.³⁰ In the period between February 2019 and January 2020, the Commission underscored that surveillance and increased securitisation were severely undermining the work of human rights defenders and the media, affecting the publication of newspapers and the work of journalists and freedom of the press more generally.³¹

30. The Commission notes with grave concern that the formation of the R-TGoNU on 22 February 2020 has not prevented the NSS from continuing to engender a climate of fear and distrust within communities during the period under review. The NSS has expanded its tentacles to reach beyond security institutions, to include civil society organisations, media houses, and universities countrywide.

31. Moreover, civil society and religious organisations are prevented from hosting events without first obtaining a security clearance from the NSS. NSS officers also demand that civil society organisations furnish them with participant lists as a pre-condition for approving their events.³² These “approvals”, though not required by law, involve the Criminal Investigation Department, Military Intelligence, and the NSS, with each entity charging a fee of 4,000 SSP to process the request.³³

²⁴ See, e.g., A/HRC/40/CRP.1, paras. 238-239; see also A/HRC/43/56, Annex II, paras. 71-81.

²⁵ See, e.g., A/HRC/43/56, Annex II, para. 72.

²⁶ The Commission refers to the “securitisation of the state” to denote the use of extraordinary means including unlawful conduct by Government security forces and agents in the name of state security. The Commission refers to the “ethnicization of the state” as the phenomenon whereby members of tribes and ethnic groups have sought to express political hegemony over other ethnic outgroups through positions of power.

²⁷ See, e.g., <https://www.hrw.org/world-report/2010/country-chapters/sudan>.

²⁸ A/HRC/34/63, paras. 45-52.

²⁹ *Ibid.*, para. 46. The National Security Service Law took effect in early 2015.

³⁰ A/HRC/40/CRP.1, paras. 268 and 343.

³¹ A/HRC/43/56, para. 7.

³² ERN TW204-L0020, paras. 5 and 7; ERN TW206-L0010, paras. 8-9.

³³ ERN TW204-L0020, para. 8.

Furthermore, NSS members taking part in any activity demand reimbursement for transportation expenses they incur.³⁴ The Commission has documented numerous incidents of raids by the NSS on the offices of civil society organisations and media houses in order to threaten, harass, and intimidate them. Some civil society activists also reported being stopped at police and military checkpoints and detained for hours for questioning—actions that generally follow activities where civil society members have publicly raised human rights issues.

32. Across the country, NSS officers also routinely visit the offices of civil society organisations and demand to use their resources including computers, internet access, and electricity.³⁵ According to the staff of one civil society organisation, “We are allowing this because we want to have peace”.³⁶ The Commission’s secretariat have also faced targeted attempts by NSS personnel to surveil and obstruct their investigations. For 2020, the World Press Freedom Index compiled by Reporters Without Borders ranked South Sudan 138 out of 180 countries.³⁷

33. Nevertheless, despite the heightened securitisation, intimidation, and threats, human rights defenders and civil society organisations have steadfastly continued to report on the fragility of peace, the egregious on-going violence, the assault on fundamental freedoms, as well as on economic violations and crimes, even as NSS officers have continued to threaten, harass, intimidate, arbitrarily arrest, and detain them.³⁸ At any given time, there are approximately 100 to 200 detainees in the NSS detention facility “Blue House” in Juba, many of whom have been arrested and arbitrarily detained simply for expressing their opinions.³⁹ In one case, a journalist was charged and convicted of defamation before the Juba County Court for reporting on alleged corruption by the Minister of Finance and Economic Planning (see paras. 49-57, below).⁴⁰

The South Sudan National Youth Union (2019-2020)

34. The South Sudan National Youth Union (SSNYU) was established in 2011 by the Ministry of Culture, Youth, and Sports as an official umbrella body for South Sudanese youth, and has served as a platform for the Government to easily access and mobilise youth. During the previous reporting period, NSS officers began to interfere with the activities of the SSNYU which had convened in November 2019 to elect a new Chairperson. The Youth Union was targeted given its capacity to inspire change among a vital constituency. Although state-level governors were selecting and sending five youth representatives from each of the then-32 states to the convention, totalling 160 representatives, the Commission received credible evidence that NSS officers had influenced the Governors in the selection process.⁴¹

35. Of the 160 youth representatives gathered at the venue in November 2019, half are believed to have been undercover NSS officers who infiltrated the gathering.⁴² The Commission also received credible information indicating that the NSS

³⁴ ERN TW204-L0020, paras. 9 and 11; ERN TW206-L0010, para. 10.

³⁵ ERN TW205-L0025, para. 7.

³⁶ Ibid.

³⁷ Reporters Without Borders, <https://rsf.org/en/south-sudan>. This ranking is based on several criteria including pluralism, media independence, media environment and self-censorship, legislative framework, transparency, and the quality of infrastructure supporting the production of news and information.

³⁸ See, A/HRC/43/56, paras. 33-43; see also, e.g., ERN TW203-L0015, para. 15; ERN TW207-L0015, paras. 4, 7 and 10; ERN TW208-L0010, para. 7.

³⁹ ERN TW202-L0010, para. 17; see also “What Crime Was I Paying For?” Abuses by South Sudan’s National Security Service, Human Rights Watch, 14 December 2020.

⁴⁰ ERN TW201-L0005, para. 19.

⁴¹ ERN TW202-L0010, para. 6.

⁴² Ibid.

supported one of its own staff members for the Chairperson position, and intimidated and threatened the opposing candidate.⁴³

36. In April 2020, after the NSS had secured the election of one of its own officers from Pibor as the Chairperson, the officer was responsible for the arrest and silencing of young men in Juba who criticised him on certain administrative issues related to his leadership of the SSNYU.⁴⁴ The Commission documented the arbitrary detention of a civil society representative from Juba who wrote an article critical of the Chairperson, and circulated it on social media in May 2020.⁴⁵ He was summoned to the NSS Central Intelligence Division in Juba where he was accused of attempting to mobilise young adults against the Government.⁴⁶ One NSS officer threatened him saying that if he did not stop writing he “would face consequences” and “end up like Jamal Khashoggi.”⁴⁷ Although the man was released with a warning, he was rearrested on the streets of Juba on 29 May by NSS personnel who assaulted him, beat him with their pistols, and drove him to the Blue House where he was once again detained.⁴⁸

37. The civil society representative described how he and other detainees were subjected to cruel, inhuman and degrading treatment by NSS officers while in the Blue House. They were forced to sleep on the floor in overcrowded cells in which 30 inmates were packed against each other. Inmates were also not allowed to go outside, depriving them of recreation and fresh air. For two months during the COVID-19 pandemic between May and June, the detainees were not allowed to exit their congested cells for any reason.⁴⁹

38. While in detention, the civil society representative was interrogated four times on four separate occasions, with each session lasting at least five hours.⁵⁰ Two NSS officers questioned him about his writings, and why he had the contact numbers of diplomats and international organisations on his mobile phone.⁵¹ Contrary to what the Commission had previously been told by the NSS—that family members and lawyers may regularly visit Blue House detainees (who are transferred to the NSS Legal Affairs Office in Juba for such visits)—this was not the case here. Both the wife and lawyer of the civil society representative were refused access to visit the detainee referred to above at the Blue House on at least seven occasions.⁵² After having spent nearly four months arbitrarily detained in the Blue House, he was forced to sign a warning letter, instructed to “stop campaigning against the State”, and released.⁵³

39. In another incident documented by the Commission, NSS officers arrested a journalist after he had published an article on 25 August 2020 which alleged that the SSPDF had accused National Salvation Front (NAS) elements of illegal goldmining.

⁴³ ERN TW202-L0010, para. 5.

⁴⁴ *Ibid.*, para. 7.

⁴⁵ *Ibid.*, para. 8.

⁴⁶ *Ibid.*, para. 9.

⁴⁷ *Ibid.*, para. 9.

⁴⁸ *Ibid.*, paras. 9-10.

⁴⁹ *Ibid.*, para. 16. Also, many of South Sudan’s prisons continue to be overcrowded, unsanitary, and with inadequate medical care – all conditions conducive to the spread of COVID-19. Regarding the possible decongestion of such facilities, a circular was issued in March 2020, though decisions on how to implement it do not appear to have been taken. The Director of a given facility has been given the authority to decide whom to release. In some parts of the country no releases occurred because people were either not informed of the circular or have not received clear instructions. At the same time, arrests relating to the breaking of curfew or social distancing measures increased the number of prisoners in detention facilities, particularly in the Equatorias in April and May.

⁵⁰ *Ibid.*, para. 12.

⁵¹ *Ibid.*, paras. 13 and 15.

⁵² Confidential meeting, date withheld; ERN TW202-L0010, para. 14.

⁵³ ERN TW202-L0010, para. 18.

The article had also stated that elements within NAS had denied the allegations.⁵⁴ On 28 August, the journalist presented himself at the Blue House in a response to a summons from the NSS.⁵⁵ During an interrogation session, NSS officers cited the fact that his article had included a denial from NAS and demanded that the journalist provide details of his NAS contacts and their phone numbers.⁵⁶ The NSS officers also threatened to shut down the newspaper because it “wrote badly about the Government”.⁵⁷

40. On 3 September, the journalist received a telephone call purporting to be from an uncle in the Tomping area of Juba asking him to meet.⁵⁸ It turned out, however, that the call was from the NSS.⁵⁹ Later, people close to the detained journalist were shown pictures of him in an NSS uniform. This appeared to be an effort to demonstrate that he was a member of the NSS who had defected. The NSS personnel also stated that they had forgiven the journalist for his writing and suggested that he was being detained only for “administrative reasons”.⁶⁰

The National Security Service tribunals

41. In December 2019, the NSS announced the establishment of a special five-judge tribunal to try its members responsible for criminal acts, breaches of the National Security Act (2014), and any other laws and regulations. Although the internal workings of the NSS are mostly shrouded in secrecy, the Commission has unearthed the following details regarding the current functioning of the NSS tribunals.

42. There are currently two separate tribunals in Juba for NSS members alleged to have committed human rights violations, comprising a summary tribunal and a non-summary tribunal.⁶¹ The tribunals have jurisdiction to adjudicate cases related to human rights violations and breaches of the NSS Act. Four of the five current judges are military judges, and the fifth is a high court judge.⁶²

43. Despite only having been established one year ago, the tribunals have already overseen several cases. Some cases involved murders of civilians and NSS personnel. At least one NSS member was convicted and sentenced to death for murder.

44. The Commission notes with grave concern that the death penalty is still being applied in South Sudan, including in the NSS tribunals. The African Commission on Human and Peoples’ Rights has stated that it has “on several occasions passed resolutions calling on States to abolish the death penalty, or to establish a moratorium in line with the continental and global trend. The vast majority of African States have now abolished the death penalty in law or in practice.”⁶³ The African Commission has also set out stringent procedural guarantees to be applied in the case of any use of the death penalty.⁶⁴ The Commission, however, has no indication that such safeguards are in place, meaning such executions can constitute a violation of the right to life under the African Charter.

45. The Commission also notes with concern that the NSS tribunals have referred cases related to sexual and gender-based violence, including allegations of rape perpetrated by NSS personnel, to customary and civil courts. Outside of the NSS tribunals, the Commission notes that NSS personnel appearing before civil courts and

⁵⁴ ERN TW230-L0010, para. 4.

⁵⁵ *Ibid.*, paras. 9-10.

⁵⁶ *Ibid.*, para. 11.

⁵⁷ *Ibid.*, para. 12.

⁵⁸ *Ibid.*, para. 18.

⁵⁹ *Ibid.*, para. 20.

⁶⁰ *Ibid.*, para. 10.

⁶¹ Confidential meeting, date withheld.

⁶² *Ibid.*

⁶³ General Comment 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), para 22.

⁶⁴ *Ibid.*, paras. 24-26.

being subject to civil authority is a welcomed step. In cases of rape and other forms of sexual violence, the Commissions further highlights that women’s groups in South Sudan prefer referrals to civil courts as the customary courts lack procedural safeguards and exhibit deeply entrenched cultural biases towards women and girls, further impeding guarantees of international fair trial standards and meaningful access to justice. Such referrals further violate the obligations undertaken by Government of South Sudan as a State Party to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).⁶⁵

46. Other cases being tried by the NSS tribunals include incidents of torture perpetrated by NSS officers.⁶⁶ Although trials are open to the public, the Commission received numerous accounts of how the NSS continues to instil fear through the systematic monitoring, surveillance, and intimidation of family members of detained individuals, rendering the prospect of attending open trials unrealistic for many South Sudanese.⁶⁷ The Commission is further concerned that tribunals run primarily by NSS personnel may not comply with international fair trial standards related to minimum guarantees for the accused.

47. In regard to incidents of torture, cruel, inhuman and degrading treatment, the NSS previously allowed a humanitarian organisation to visit the Blue House and see detainees, but stopped granting access in 2018.

48. The NSS also has a functioning Crime Investigation Department and has instituted a Public Relationship Department within the NSS’s own Legal Affairs Department, which includes a complaints procedure which civilians are supposed to be able to access. All complaints lodged are directed to the Director General of Internal Security Bureau of the NSS, currently Lieutenant General Akol Koor Kuc.⁶⁸ Notwithstanding the formal process, the Commission interviewed a witness who tried to file a complaint with the NSS Complaint Board after he had been arrested and arbitrarily detained in the Blue House in late 2019. His complaint was never processed. When he contacted the relevant office, he was told “we do not know about it”.⁶⁹

Adverse impacts of defamation laws

Salvatore Garang Mabiordit Wol v. Zechariah Makuach Maror (Case nr. 47/2020)

“Freedom of expression does not exist in South Sudan. It is the right for every citizen to protest, but it is difficult for the journalists to cover any such issues”.

—South Sudanese female journalist, from Juba, Central Equatoria (2020)⁷⁰

49. South Sudan’s Penal Code creates an offence of defamation, a charge that is susceptible to manipulation and serious misuse by the Government—often at the

⁶⁵ See, e.g., A/HRC/43/56, para. 29. In its General Recommendation 35, the CEDAW Committee concluded that “women’s right to a life free from gender-based violence is indivisible from and interdependent on other human rights, including the rights to life, health, liberty and security of the person, equality and equal protection within the family, freedom from torture, cruel, inhumane or degrading treatment, and freedom of expression, movement, participation, assembly and association.” Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19. The Committee further noted that “States parties are responsible for preventing such acts or omissions by their own organs and agents, including through . . . investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities.” *Ibid.*, para. 23.

⁶⁶ See, e.g., ERN TW501-M0005, para. 7.

⁶⁷ See, e.g., ERN TW227-L0015, para. 29.

⁶⁸ Confidential meeting, date withheld.

⁶⁹ ERN TW201-L0005, para. 24.

⁷⁰ ERN TW207-L0015, para. 11.

instigation of officials—seeking to silence criticism, including from journalists.⁷¹ The following case illustrates how officials have resorted to this law to interfere with legitimate investigative journalism: In March 2020, journalist Zechariah Makuach Maror in Juba received a call from what he described as “a strange number”. It was an NSS officer who was aware that his organisation was reporting on alleged corrupt practices taking place within the Ministry of Finance and Economic Planning.⁷² Specifically, the NSS personnel referred to an article written about the then Minister of Finance, which had alleged that the Minister was involved in corruption relating to the handling of Ministry contracts.⁷³ NSS personnel threatened the journalist, warning him that such reporting was “not healthy”, and that, if his organisation did not stop, he would be arrested.⁷⁴ The NSS officer was also aware that the journalist had previously been arrested for writing articles critical about the Government in November 2019.⁷⁵ In protest, the journalist requested that the NSS charge him so that he could clarify his rights.⁷⁶

50. The following month, in April 2020, the journalist was arrested by the police and accused before the Juba County Court of “defamation” based on the allegations printed in the same article.⁷⁷ While the Minister of Finance did not appear before the Court, the defence argued that, pursuant to the Media Authority Act (2013), the case should have been adjudicated by the Press and Broadcast Complaints Council.⁷⁸

51. Although under the Media Authority Act, Government officials acting in their official capacity lack standing to file a defamation action against journalists,⁷⁹ this has not prevented cases being brought that clearly seek to protect the interests of individual officials. Furthermore, the Media Authority Act states that defamation complaints must be filed before the Press and Broadcast Complaints Council, which is tasked to investigate the merits of each complaint. Thereafter, the Council must attempt to negotiate a resolution that may include an agreement by a journalist or news medium to correct any false information they have published, and/or provide an apology.⁸⁰

52. In accordance with the Media Authority Act, both the Press and Broadcast Complaints Council and the Hearings Panel had been established and were functional prior to the case having been brought before the Juba Court.⁸¹ The current membership of both bodies is comprised of secretariat staff rather than jurists, as required under the Act. This severely undermines the competence of these bodies to

⁷¹ Sec. 289(1-3); see also Joint Declaration on Criminal Defamation by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression (2002), stating that “Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”

⁷² ERN TW201-L0005, para. 6.

⁷³ *Ibid.*, para 13

⁷⁴ *Ibid.*, para. 6.

⁷⁵ *Ibid.*, para. 6; ERN 103614-103619, para. 16.

⁷⁶ *Ibid.*, para. 7.

⁷⁷ *Ibid.*, para 13; See also Family of a journalist to appeal court ruling in favor of finance minister, Eye Radio, 15 September 2020, available at <https://eyeradio.org/family-of-a-journalist-to-appeal-court-ruling-in-favor-of-finance-minister>.

⁷⁸ The Media Authority Act (2013) created the Media Authority which began operating in February 2017 with a mandate to regulate, develop and promote an independent and professional media in South Sudan. Media Authority Act (2013), Art. 7(1); see also ERN TW201-L0005, para 16; Media Authority Act (2013), Art. 21(6)(g).

⁷⁹ *Ibid.*, Art. 28(3)(b).

⁸⁰ *Ibid.*, Art. 28(4).

⁸¹ ERN TW203-L0015, para. 5; Media Authority Act (2013), Arts. 21-22.

hear such complaints.⁸² Moreover, the tenure of the Board of Directors of the Media Authority expired in March 2020, and new members have not yet been appointed.⁸³

53. Multiple witnesses have reported to the Commission that NSS agents have infiltrated the Media Authority and it is apparent that the two organisations coordinate operations.⁸⁴ As previously reported by the Commission and underscored by witness testimony, “some officials in the Media Authority are either from the NSS or have links to the NSS.”⁸⁵ The on-going infiltration of NSS members into the ranks of the Media Authority has subverted the Media Authority resulting in the criminalisation of allegations of defamation, rather than referring them to arbitration as required by law.

54. During the trial, Zechariah’s defence lawyer received anonymous threatening phone calls, was suspended from a prominent position he had held in the legal community, and another defence counsel took over Zechariah’s case.⁸⁶

55. On 14 September 2020, the County Court convicted Zechariah of defamation, sentenced him to two years’ imprisonment at Juba Central Prison, and handed down a fine of 5,000 South Sudanese Pounds, though his sentence was later reduced to one-year due to a chronic illness.⁸⁷ Two days after the judgment was pronounced, President Kiir dismissed the Minister of Finance and Economic Planning without explanation.⁸⁸ Zechariah’s case went on appeal before the High Court of Juba on 28 September, resulting in his acquittal on charges on 15 December.⁸⁹

56. Notwithstanding the acquittal in this case, the Commission notes with concern that the very threat of criminal proceedings inevitably has an effect on freedom of expression including media freedom with the inevitable consequence of self-censorship, particularly when the practice is to detain accused persons during the course of the proceedings.

57. The Commission is therefore concerned about the continued use of South Sudan’s laws of criminal defamation to silence dissent and ultimately freedom of expression. It notes that similar laws and practices were used by Sudan to obstruct demands for independence for the people of South Sudan. Moreover, the clampdown on journalists and civil society activists contradicts the spirit and provisions of Chapter IV of the Revitalised Peace Agreement which commit political leaders to ensure that the R-TGoNU is transparent and accountable. The Agreement also commits the Government to involve media, civil society, women’s organisations, youth, and faith leaders in policy advocacy against corruption, and to raise public awareness to strengthen the capacity of the public to resist and prevent corruption.⁹⁰

Violations and alleged crimes: findings

58. The responsibility of the Government to promote and protect democratic space and foster an inclusive political environment, including through freedom of expression and movement, peaceful assembly, and association, is central to the State’s duty to uphold justice and the rule of law. Violations of fundamental freedoms in South Sudan do not occur because of a lack of a sound legal policy framework or

⁸² ERN TW203-L0015, para. 5; Media Authority Act (2013), Arts. 21(2) and 22(2).

⁸³ ERN TW203-L0015, para. 7; Media Authority Act (2013), Art. 8.

⁸⁴ A/HRC/40/CRP.1, para. 125.

⁸⁵ ERN TW203-L0015, para. 9; see also ERN TW230-L0010, para. 9; A/HRC/40/CRP.1, para. 244.

⁸⁶ ERN TW201-L0005, para 16.

⁸⁷ *Ibid.*, para. 19; ERN TW229-L0015, para. 11.

⁸⁸ ERN TW201-L0005, para. 19; ERN TW229-L0015, para. 4.

⁸⁹ Case number 47/2020; see also ERN TW229-L0015, paras. 7 and 16. Zechariah was acquitted pursuant to Art. 289(3) of the Penal Code which includes a public interest exception to the crime. See, e.g., <https://eyeradio.org/journalist-zachariah-released-after-three-months>.

⁹⁰ R-ARCSS, 4.4.1.5.; see also R-ARCSS 4.1.1.

the absence of laws which require that violations be prevented and punished, rather the violations are a manifestation of the on-going and entrenched impunity across state institutions and national leadership, which allows those in positions of authority to act in flagrant disregard for the law in the belief that they will not be held accountable for their actions.

59. The Commission has collected evidence which indicates that members of the State Security forces unlawfully detained journalists and editors,⁹¹ harassed and detained members of civil society considered critical of the Government, infiltrated civic organisations,⁹² suspended newspapers deemed critical of the state, and ignored journalists' legitimate accreditations. Collectively and individually, these acts were contrary to the national and international human rights obligations of South Sudan. The Commission has concluded that these actions of the Government through its security organs and Media Authority constitute a violation of international human rights law and breached the human rights provisions of the Transitional Constitution of South Sudan.

60. Specifically, the actions of the Government violate the right to information and expression,⁹³ freedom of association⁹⁴ and freedom of assembly⁹⁵ under the African Charter on Human and Peoples' Rights. The acts are also in contravention of Article 24 of the Transitional Constitution of South Sudan (2011) which guarantees the right to freedom of expression, reception and dissemination of information and the Media Authority Act (2013) which enshrines principles of freedom of the press including reiterating the fundamental nature of Article 24 of the Transitional Constitution. Additionally, criminal defamation laws in effect serve to censor the media contrary to Principle XII of the African Commission on Human and Peoples' Rights' "Declaration of Principles on Freedom of Expression in Africa" and numerous other international instruments concerning the freedom of expression. Based on the Commission's findings, there is sufficient evidence to hold to account the individuals and entities involved for the violations of above-mentioned fundamental rights and freedoms and to take steps to ensure that such violations cease now and in the future.

V. Enforced disappearance, torture, and murder

61. Enforced disappearances have become the norm in South Sudan. Beyond the devastating spate of abductions by members of armed groups and organised militias under the command and control of parties to the conflict in Jonglei and Central Equatoria States and Greater Pibor Administrative Area (see Section VI., below), the Commission notes with concern on-going incidents of enforced disappearances as Government forces continued to systematically disappear, torture, and in some instances murder dissidents during the period under review.

62. Over the last three years the Commission has met with family members and documented numerous cases of enforced disappearances at the hands of Government officials. Unfortunately, in all of the cases documented by the Commission, and despite repeated inquiries by family members and relatives, civil and military Government officials have consistently refused to acknowledge any arrest or detention, leaving families struggling to cope with the uncertainty about the fate and whereabouts of their loved ones. The Government of South Sudan has failed to confirm the fate and whereabouts of these individuals, in violation of the right of families to the inalienable truth about what has happened to them.

⁹¹ ERN 102903-102908, para. 10

⁹² Ibid.

⁹³ African Charter, Art. 9.

⁹⁴ Ibid., Art. 10.

⁹⁵ Ibid., Art. 11.

63. The Commission investigated the arrest and detention of 64 young men held in Yei (Central Equatoria) in August 2016. Only a few of them were eventually released in 2017, amidst fears that the rest may have been killed. One interviewee stated:

“I think the publicity became too much, and the authorities had to yield. Eventually, 24, possibly a few more, of them were released. The rest disappeared and were never seen again. One young man I knew, named X,⁹⁶ was amongst those that were released following the pressure mounted on the Government. He told me that many other young men were detained there with him. Their captors would come around regularly and take the detainees away, one at a time. Those taken away never returned and the number of young men there began to decrease gradually. He said that the soldiers would also regularly take them out of the detention cell and force them to dig graves. They did not know who was going to be buried there. About 24 of the young men were eventually released.”⁹⁷

64. In September 2017, a man working for the SPLA Military Intelligence Branch disappeared in a densely populated area of Juba after attending a celebration with his family and friends.⁹⁸ His family reported his disappearance to the police in the Munuki neighborhood of Juba, to the Military Intelligence Branch as well as to the Ministry of Foreign Affairs; but found that no follow-up action had been taken by any government entity.⁹⁹ The Commission has reasonable grounds to believe that the Military Intelligence Branch may have been responsible for his enforced disappearance.¹⁰⁰

65. The following month, in late October 2017, a male university student also disappeared in another densely populated neighborhood of Juba.¹⁰¹ The man’s name appeared on an internal government list of individuals alleged to have been sympathetic to the SPLA-IO, though his family denied that he had any political affiliations.¹⁰² Despite repeated attempts by his family to determine his fate and whereabouts, they have to date not received any response from the Government.¹⁰³

66. Similarly, one evening in July 2019, a man in his 30s left his home in Lomoko village near Yei town (Central Equatoria) to visit friends and is alleged to have been taken by Government forces.¹⁰⁴ His wife and eight young children are now faced with his disappearance.¹⁰⁵ In another incident, a man informed the Commission of the unlawful detention and subsequent enforced disappearance by an SSPDF officer of his wife along the Mokaya-Yei road (Central Equatoria) in mid-2019. The Commission has reasonable grounds to believe that an SSPDF officer is responsible for her disappearance and has included him as a person of interest in the Commission’s confidential database. Although the husband reported to the SSPDF that she was missing, there was no investigation or follow-up and he has not seen nor heard from her since.¹⁰⁶

67. Since early 2019, the Commission has heard from relatives of disappeared persons how detainees disappear while being transferred between different NSS sites.¹⁰⁷ The threat of enforced disappearance also continues to be used as a method

⁹⁶ Name redacted.

⁹⁷ ERN 100571-100581

⁹⁸ ERN TW225-L0015, para. 5. On 2 October 2018, President Salva Kiir issued Republican Order No. 18/2018 changing the name of the South Sudan People’s Liberation Army (SPLA) to the South Sudan People’s Defence Forces (SSPDF).

⁹⁹ ERN TW225-L0015, para. 7.

¹⁰⁰ Ibid., para. 8.

¹⁰¹ ERN TW214-L0010, paras. 4-5 and 9.

¹⁰² Ibid., para. 7.

¹⁰³ Ibid., para. 10.

¹⁰⁴ ERN TW120-A0010, para. 5.

¹⁰⁵ Ibid., para. 8.

¹⁰⁶ ERN TW401-M0005.

¹⁰⁷ ERN 102500-102507.

to intimidate journalists and discourage them from performing their work. In October 2020, one journalist told the Commission how he had been threatened by NSS officers who warned him that he could disappear and that “the law will not protect you”.¹⁰⁸

68. The Commission also verified reports of extrajudicial executions in Yei between May and June 2019.¹⁰⁹ Some of the victims’ bodies were later found by the roadside.¹¹⁰ Families and friends had no indication as to what had happened to their loved ones before their bodies were discovered.

69. On-going incidents of enforced disappearance continue to place vulnerable South Sudanese women and men outside the protection of the law and increase their vulnerability to grave violations such as torture, including through acts of sexual violence, and murder by Government forces, primarily members of the NSS. The Commission is also in possession of credible information identifying 21 men who were unlawfully detained, tortured and murdered by the NSS at the Blue House and Riverside detention facilities between 2016 and 2019.¹¹¹ Based on the accounts of 130 former detainees and the evidence in its possession, the Commission has reasonable grounds to believe that each of the 21 men detained was tortured and murdered by NSS personnel.¹¹² The majority of the detainees had been sexually tortured which included brutal acts of sodomy.¹¹³

70. The Commission also received and analysed credible reports of 176 cases of enforced disappearances in Wau (Western Bahr el Ghazal) and Yei (Central Equatoria) perpetrated since the onset of the conflict in 2013, including related incidents of torture and murder.¹¹⁴ Victims include members of civil society and activists who were detained indefinitely and held outside of the protection of the law.¹¹⁵

71. A more recent case involved the disappearance of two senior SPLA-IO military commanders in Yei in early May 2020. Four additional SPLA-IO soldiers were also arrested on different dates between 16 and 18 May 2020. Confidential reports seen by the Commission suggest that the disappearances were linked to the defection of a Major General from the SPLA-IO to the South Sudan People’s Defence Forces (SSPDF).¹¹⁶ The Commission has reason to believe that the SPLA-IO commanders may have been targeted to stifle their dissent regarding the defection.¹¹⁷ The Commission also notes with concern that Government authorities have failed to acknowledge that any of these persons have disappeared. There is no indication that any investigations have been carried out into their disappearance.¹¹⁸

72. Government security forces and agents also continue to use unofficial detention facilities, in effect removing detainees from official oversight and monitoring, and placing them in conditions where torture and ill-treatment is more likely, and where the absence of official registries and documentation raised the likelihood of enforced disappearance.

73. On 8 January 2020, the United States Government sanctioned the Second Vice President Taban Deng Gai citing his reported involvement in serious human rights

¹⁰⁸ ERN TW230-L0010, paras. 15-16.

¹⁰⁹ ERN TW116-A0010.

¹¹⁰ Ibid.; ERN TW117-A0015.

¹¹¹ Riverside is another NSS detention facility located in Juba.

¹¹² The names of the 21 victims are on file with the Commission.

¹¹³ ERN TD201-L0020.

¹¹⁴ ERN TW231-L0015; ERN TW206-L0010; ERN TD406-M0030. The Commission was unable to independently verify each individual case, nor the current scale of enforced disappearances across South Sudan.

¹¹⁵ ERN TW206-L0010; ERN TD407-M0035.

¹¹⁶ ERN TD408-M0040.

¹¹⁷ ERN TD409-M0045.

¹¹⁸ ERN TW214-L0010; ERN TW225-L0015.

abuse, including the disappearance and death of Samuel Dong Luak and Aggrey Idri.¹¹⁹ The Second Vice President responded by asking the Kenyan Government to reveal those who were responsible for the disappearance of human rights lawyer Dong Samuel Luak and SPLM-IO member Aggrey Ezbon Idri in 2017.¹²⁰ Although both men initially disappeared on Kenyan territory, they were last seen by several witnesses in NSS custody in South Sudan.¹²¹

Violations and alleged crimes: findings

74. In cases where there has been no acknowledgement of arrests or detentions by the state, the Commission continues to find reasonable grounds to believe that a significant number of those arrested and detained by the NSS and the SSPDF were the subject enforced disappearances.¹²²

75. By denying any knowledge of specific cases of enforced disappearance, and by failing to provide evidence that they investigated such incidents, South Sudanese authorities have violated their obligations under international human rights law. Through acts of enforced disappearance, South Sudanese authorities further violated fundamental rights such as the right to a fair trial and judicial guarantees. The Government of South Sudan has failed in its duty to investigate in good faith all allegations of human rights violations, in particular where the authorities alone had the relevant information, as is often the case of persons subjected to enforced disappearance.

76. The incidents of enforced disappearances documented by the Commission also violate the right to liberty and security of the person and constitute a grave threat to the right to life.¹²³ The enforced disappearances that the Commission documented also implicate the rights to a fair trial and to judicial guarantees. Enforced disappearances also impact the right to recognition as a person before the law, which is a fundamental rights enjoyed by all South Sudanese under the law. The loss of this right means that the disappeared persons are unable to access remedies to challenge the violations. In cases where South Sudanese are detained in clandestine facilities, they are unable to launch a legal challenge and lose the ability to take part in legal procedures.

77. Other related human rights that were violated included effective safeguards against arbitrary arrest and arbitrary detention. The Commission received dozens of reports of incommunicado detention of civilians by the NSS, including civil society activists and journalists.¹²⁴ It appears that these persons do not have access to relatives and legal counsel.

78. When committed as part of a widespread or systematic attack against any civilian population, an enforced disappearance would also amount to a crime against humanity under the Draft Statute of the Hybrid Court for South Sudan.¹²⁵

¹¹⁹ Treasury Sanctions South Sudanese First Vice President for Role in Serious Human Rights Abuse, U.S. Department of the Treasury, 8 January 2020, available at <https://home.treasury.gov/news/press-releases/sm869>.

¹²⁰ Taban seeks Kenya's help in clearing his name after US sanctions, Eye Radio, 15 January 2020, available at <https://eyeradio.org/tabam-see-kenyas-help-in-clearing-his-name-after-us-sanctions>.

¹²¹ ERN TW502-M0010; ERN 102433-102439; ERN D112912-D112913; ERN D119317-D119319; ERN D120530-D120539; ERN TW220-L0010.

¹²² A/HRC/40/69.

¹²³ See Articles 1 and 4 of the African Charter on Human and Peoples' Rights; see also Declaration on the Protection of all Persons from Enforced Disappearance Adopted by General Assembly resolution 47/133 of 18 December 1992, at Art 1.

¹²⁴ ERN TD410-M0050; see also Defend Defenders, Targeted but not deterred: Human Rights Defenders Fighting for Justice and Peace in South Sudan, May 2020.

¹²⁵ Art. 3(i). The draft legislation pending before the National Legislative Assembly would add a Section 206B to the Penal Code thereby allowing for the trial and punishment of certain crimes against humanity at the national level. See Art. 206B.

79. The Commission also finds there are reasonable grounds to believe that, between 2016 and 2019, members of the NSS engaged in the regular use of torture at its Blue House and Riverside detention facilities. Acts of torture and cruel, inhuman or degrading treatment are violations of Article 18 of the Transitional Constitution (2011).¹²⁶ They are also violations of the Code of Criminal Procedure Act (2008) which provides that “An arrested person shall not be subjected to any treatment against human dignity nor shall he or she be physically or morally abused.”¹²⁷ Such acts also amount to crimes under South Sudan’s Penal Code (2008), including criminal force.¹²⁸

80. South Sudan is also a State party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹²⁹ Acts of torture and cruel, inhuman or degrading treatment perpetrated by the NSS constitute violations of the Convention Against Torture, and are also violations of the African Charter on Human and Peoples’ Rights.¹³⁰ These acts of torture (as well as complicity in torture) constitute a criminal offence under the Convention Against Torture and all States parties to this treaty will have an obligation either to extradite or to submit the case to their competent authorities for the purpose of prosecution, where a person alleged to have committed the offence of torture is present on their territory.

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

82. The systematic use of enforced disappearances has both direct and indirect impacts on the loved ones of those disappeared. The most immediate and direct impact cited by family members and friends of disappeared persons is not knowing the fate nor whereabouts of the victims, and whether they are alive or dead.¹³¹ Additional trauma stems from the fear that they too could be targeted in the future.¹³²

83. While South Sudan has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance, many of the human rights violations associated with enforced disappearances are also prohibited under South Sudanese law. Article 12 of the Transitional Constitution 2011 protects the rights to a fair trial and to personal liberty. Article 19 grants a detention period of up to 24 hours as part of an investigation after which the individual must be released on bond or appear in court. The sheer scale and frequency of cases of enforced disappearances are a result of the complete impunity which officials enjoy, and indicate that in practice these constitutional provisions are ignored or not implemented, with the relevant State institutions failing in their duty to protect the rights of victims.

84. The Commission further notes the recent reports by credible non-governmental organisations detailing the degree of enforced disappearances in

¹²⁶ Transitional Constitution (2011), Art. 18.

¹²⁷ Code of Criminal Procedure Act (2008), Sec. 93(1).

¹²⁸ Sec. 224.

¹²⁹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

¹³⁰ African Charter on Human and Peoples’ Rights, Art. 5.

¹³¹ Legacies of Enforced Disappearances in South Sudan, Briefing Paper. Intersections of Truth, Justice and Reconciliation in South Sudan. David Deng and Ren Willems.

¹³² ERN 102126-102140; ERN TW214-L0010; ERN TW225-L0015; ERN TW231-L0015; ERN TW206-L0010; ERN TD411-M0055; ERN TW116-A0010; ERN TW117-A0015; see also <https://www.hrw.org/news/2020/08/28/south-sudan-thousands-still-missing>.

South Sudan, with no response or corresponding investigations to date by the Government.¹³³

85. Despite the Commission's continuous public reporting on enforced disappearances over the course of its four mandates, Government authorities have failed to launch impartial investigations to clarify the fates and whereabouts of the victims.¹³⁴ Where there is sufficient evidence to prosecute, Government authorities have an obligation to prosecute those responsible. Full reparations should also be made to victims for the loss suffered.¹³⁵ The national South Sudan Human Rights Commission is mandated to investigate cases of missing and disappeared persons, though it has not been possible to determine whether this has been done.¹³⁶

86. Chapter V of the R-ARCSS provides for the formation of a Commission on Truth, Reconciliation, and Healing (CTRH), which would document and report on past human rights violations and abuses over a specified time period and to make recommendations for how the Government can address the legacy of violations including enforced disappearances. Although some of the most egregious incidents of enforced disappearance happened years ago, they continue to have a profound impact. Beyond reparations, the Commission encourages the Government of South Sudan to expedite the formation of the CTRH for citizens to receive clarity and certainty on the fate and whereabouts of all disappeared persons.

87. The Commission has also noted that suspected perpetrators of enforced disappearance continue to travel to states that have ratified the International Convention for the Protection of All Persons from Enforced Disappearance. As explained above, these states may prosecute the crime of "enforced disappearance" when the alleged perpetrator is present on their territory.¹³⁷

88. South Sudan should put in place comprehensive legal and administrative processes to ensure the legal, institutional, and procedural pre-conditions for protection against enforced disappearance. These include the duty to investigate and punish human rights violations.

89. In some instances, relatives remained without knowledge about the fate or whereabouts of a disappeared person for extended periods of time which may amount to torture or cruel, inhuman or degrading treatment.¹³⁸

VI. Localised conflicts

90. While the signing of the R-ARCSS has seen a reduction in hostilities at a national level for the second year in a row, vast swathes of South Sudan have seen a significant escalation in violence perpetrated by organised ethnic militias, on a scale that exceeds the manifestations of localised violence witnessed since the outbreak of the conflict in December 2013.¹³⁹ The delay in gubernatorial appointments has created critical

¹³³ See South Sudan: Thousands Still Missing, Human Rights Watch, 28 August 2020, available at <https://www.hrw.org/news/2020/08/28/south-sudan-thousands-still-missing>; and Defend Defenders, Targeted but not deterred: Human Rights Defenders Fighting for Justice and Peace in South Sudan May 2020.

¹³⁴ See, e.g., A/HRC/40/69.

¹³⁵ ICRC, Customary International Humanitarian Law: Volume 1: Rules, rule 150.

¹³⁶ Confidential Note.

¹³⁷ International Convention for the Protection of All Persons from Enforced Disappearance, at Art. 9.

¹³⁸ The UN Working Group on Enforced or Involuntary Disappearances has noted that the anxiety and grief caused by the enforced disappearance of a family member constitutes "suffering that reaches the threshold of torture [and] the State cannot restrict the right to know the truth about the fate and the whereabouts of the disappeared as such restriction only adds to, and prolongs, the continuous torture inflicted upon the relatives." See A/HRC/16/48, p. 15.

¹³⁹ The decline in hostilities at the national level may be attributed in part to the signing of the R-ARCSS and the unification of forces. Incidents of political violence have spiralled out of

governance and leadership vacuums at the subnational level and has undermined state capacities to mediate and reconcile local grievances or take concerted action to halt longstanding internecine conflicts.¹⁴⁰

91. Between February and November 2020, localised conflicts were waged in numerous states countrywide, with the most devastating occurring 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 (GPAA).¹⁴¹ The Commission notes with concern that these and other localised conflicts continued to represent a situation of persistent insecurity for women and girls in particular, regardless of the community affected.

Likuangole village, Greater Pibor Administrative Area (February 2020)

92. In both February and May 2020 (see paras. 100-101, below), tens of thousands of Lou Nuer/Dinka Bor militia members including children aged between 15 and 17 years attacked the Murle community in Likuangole village, situated some 30 kilometres north of Pibor town.¹⁴² The attacks were conducted systematically in a coordinated manner with the attackers arriving both in vehicles and on foot from multiple fronts, including from Ayod, Akobo, Nyirol and Twic East Counties in Jonglei State, as well as from Nasser city bordering Jonglei and Upper Nile States to the northeast.¹⁴³ They killed scores of civilians, raided and pillaged some 100,000 head of cattle, abducted women and children and burned all civilian homes (*tukuls*) to the ground.¹⁴⁴ Due to their strength in numbers and the brutality of the violence they perpetrated, they were able to capture Likuangole village within days.¹⁴⁵

control at the local level, however, and were 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 led to reprisals and revenge killings – all under the cover and control of parties to the conflict in South Sudan. See A/HRC/43/56, paras. 58 and 61.

¹⁴⁰ Hundreds killed in inter-communal clashes in South Sudan, AlJazeera, 20 May 2020, available at <https://www.aljazeera.com/news/2020/5/20/hundreds-killed-in-inter-communal-clashes-in-south-sudan>. 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 militarisation, commercialisation of cattle and rising dowry price have incentivised cattle raiding and child abduction rendering localised 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, available at <https://odihpn.org/magazine/drivers-of-conflict-in-jonglei-state>.

¹⁴¹ Prior to the localised conflicts during the reporting period, women and men in Jonglei State 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 then-SPLA and the SPLA-IO (RM) were supported by tribal militias, with the Dinka forming the Mathiang Anyoor (now largely integrated into the SSPDF) and the Lou Nuer largely aligned with the SPLA-IO. ERN TW303-M0015, para. 8; A/HRC/37/71, para. 18. Upon forming a self-defence group, the Lou Nuer youth community has often mobilised to protect their land from attack. See, e.g., ERN 102918-102924, para. 12. Also known as the “White Army,” the Lou Nuer has its own command structure, however, and has tended to operate without orders from the SPLA-IO (RM). ERN 103701-103714, para. 9. Local Murle community members later organised themselves to retaliate against attacks by allied Dinka and Nuer tribal militias. See, e.g., ERN 103399-103406, para. 19; see also Confidential meeting, Bor (Jonglei State), 4 November 2020.

¹⁴² Credible estimates range between 15,000 to 30,000 heavily armed militia members. ERN TW103-A0015, paras. 6-7; ERN TW104-A0020, para. 6; ERN TW105-A0025, paras. 6 and 8.

¹⁴³ Within Nyirol, the attackers came from Lankien Boma. ERN TW104-A0020, para. 5; ERN TW105-A0025, paras. 5-6.

¹⁴⁴ ERN TW103-A0015, para. 9; ERN TW107-A0015, paras. 6 and 8; ERN TW110-A0010, para. 11; ERN TW243-L0015, para. 4.

¹⁴⁵ ERN TW105-A0025, para. 5; ERN TW110-A0010, para. 11.

93. Lou Nuer/Dinka Bor militia members employed both light and heavy weapons including AK-47s (“Kalashnikovs”), PK machine guns (PKMs) and rocket-propelled grenades (RPGs) in carrying out the attacks.¹⁴⁶ While some were dressed as ordinary civilians others donned blue and green camouflage fatigues and green boots.¹⁴⁷ Witnesses reported seeing military personnel from both the SPLA and SPLA-IO among the group of attackers.¹⁴⁸

94. Though only men and boys participated in the actual attacks, they were accompanied by a number of women who witnesses noted were preparing meals for the fighters. In addition, the attackers were led by a woman who performed traditional rituals to “clear passages.”¹⁴⁹ The attackers stayed in Likuangole village for one month.¹⁵⁰

95. In response, approximately 800 members of the Murle Lango “age-set” group organised themselves in Pibor, took up arms including AK-47s and mobilised to defend Likuangole village.¹⁵¹ Though the Murle are an acephalous society (lacking in centralised authority), male members of the Murle community across the GPAA fall into group hierarchies based on “age-sets” distinguishable by name, clothing colour and scar patterns carved onto their skin.¹⁵² Dozens of men from the Lango “age-set” group who took up arms were killed in Likuangole.¹⁵³ The younger Kurenen and Botonyan “age-set” groups united in Pibor and stayed back to defend other areas, though they were unarmed.¹⁵⁴

Pieri town, Uror County, Jonglei State (May 2020)

96. Thousands of heavily armed members of the Murle community began organising themselves for a counterattack in early May 2020.¹⁵⁵ Over two days, between 16 and 17 May, the Murle militia members systematically attacked ethnic Lou Nuer villages to the northwest in Uror County (Jonglei State), including Pieri town and an additional 28 villages over a 25 kilometre radius.¹⁵⁶ As with the attacks by allied Dinka/Nuer militia members on Likuangole in February, attacks by armed Murle elements resulted from meticulous planning, preparation and the mobilisation of a sizeable number of fighters. Some wore military fatigues while others wore ordinary civilian clothing.¹⁵⁷ A Médecins Sans Frontières staff member and two aid workers from a local NGO were killed in Pieri.¹⁵⁸

¹⁴⁶ ERN TW105-A0025, para. 6; ERN TW110-A0010, para. 12.

¹⁴⁷ ERN TW105-A0025, para. 7; ERN TW110-A0010, para. 12.

¹⁴⁸ ERN TW105-A0025, para. 7; ERN TW110-A0010, para. 12; see also ERN TW103-A0015, para. 12; ERN TW110-A0010, para. 17.

¹⁴⁹ ERN TW105-A0025, para. 7.

¹⁵⁰ ERN TW104-A0020, para. 9; ERN TW105-A0025, para. 9.

¹⁵¹ The Lango “age-set” group comprises men aged in their 20s to 30s. See ERN TW110-A0010, paras. 6 and 13.

¹⁵² See, e.g., A historic peace in Pibor, South Sudan, inspired youth to reconcile their differences, Finn Church Aid, 21 September 2018, available at <https://www.kirkonulkomaanapu.fi/en/latest-news/articles/a-historic-peace-in-pibor-south-sudan-inspired-youth-to-reconcile-their-differences>.

¹⁵³ ERN TW110-A0010, para. 15.

¹⁵⁴ *Ibid.*, para. 13.

¹⁵⁵ The Commission reviewed pictures and video footage of the mobilisation of the attackers and verified claims that they were from the Murle community through, inter alia, body markings typical of Murle tradition, the appearance of beads belonging to various Murle “age-set” groups, as well as through interviews with persons who reported witnessing the capture of some attackers. ERN TW303-M0015; ERN TD101-M0005; ERN TD104-M0010; Confidential meetings, 5 November 2020.

¹⁵⁶ Such as Jokria, Golgol, Guanchat, Pamai, and Payai villages.

¹⁵⁷ ERN TW221-L0015, para. 14.

¹⁵⁸ Tit-for-tat killings leave hundreds dead in South Sudan, *The New Humanitarian*, 21 May 2020, available at <https://www.thenewhumanitarian.org/news/2020/05/21/South-Sudan-Jonglei-killings>.

97. During the attack on Pieri, the Luo Nuer recovered a total of 920 rifles, 44 PKMs and 23 RPGs left behind by Murle militia members. Similar to the Luo Nuer/Dinka Bor militia, the Commission notes with grave concern that the Murle militia also had access to high grade military weaponry, and that at least some captured AK-47 bore the markings of the South Sudan Police Service.¹⁵⁹ Assaultants were also carrying “new” firearms, not seen before by the local population.¹⁶⁰ On 18 May, Lou Nuer elders released a statement claiming that Murle politicians were behind the violence.¹⁶¹ Indeed, the Murle attackers had arrived with military officers and one Murle colonel was killed during the attacks.¹⁶²

98. Over 500 civilian homes (*tukuls*) were looted and torched during the attacks. Around 60 of some 80 *tukuls* were burned down along the Pieri-Gatwell road, while in Manyan village 35 of approximately 60 *tukuls* were set on fire.¹⁶³ In Jokreal village, a staggering 423 *tukuls* were also burned down. In one case, a 9-year-old child was burned alive inside a *tukul* in Jokreal that had been set on fire.¹⁶⁴

99. The Commission received credible information indicating that at least 211 individuals were killed during the attacks in Pieri town and its environs, comprising 154 male and 57 females, and another 300 were injured (290 males and 10 females). A further 25 women and 48 children were abducted during the attacks, the vast majority of whom remain missing at the time of writing (January 2021).¹⁶⁵

Likuangole village, Greater Pibor Administrative Area (May 2020)

“The reason for the attack was that the Dinka want to take our land, because we have oil and other things”.

—South Sudanese Murle male, from Likuangole village (GPAA) (December 2020)¹⁶⁶

100. Lou Nuer/Dinka Bor militia members next returned to Likuangole village in May and into June, arriving in Thangajong, and continuing to Verteth and Kengeng towns near Pibor. Just as they had in February, they targeted and killed Murle civilians for the second time, raided cattle and abducted women and children.¹⁶⁷

101. Across both the February and May attacks in Likuangole village, Lou Nuer/Dinka Bor militia members again burned down all houses (*tukuls*), and looted and destroyed both international and national humanitarian aid facilities.¹⁶⁸ Overall, at least 100 women and children were abducted from the area.¹⁶⁹ At the time of writing (January 2021), the majority of abductees remain missing.

Jebel Boma, Pibor County (May 2020)

¹⁵⁹ ERN TD101-M0005.

¹⁶⁰ ERN TW221-L0015, paras. 4 and 9.

¹⁶¹ Alan Boswell, Twitter, 20 May 2020, available at <https://twitter.com/alanboswell/status/1263044163966304261>.

¹⁶² Members of the SSPDF recognised the deceased Colonel. See ERN TW221-L0015, para. 18.

¹⁶³ ERN TD101-M0005.

¹⁶⁴ Ibid.

¹⁶⁵ Ibid. Some estimates indicate that over 300 were killed. See, e.g., ERN TW221-L0015, para. 8; South Sudan clashes ‘kill 300’ in Jonglei state, BBC, 21 May 2020, available at <https://www.bbc.com/news/world-africa-52745377>. In a similar attack against Pieri town in February 2020, one witness noted regarding abductions that “Murle militia members gradually emptied the entire town of children” except for those who ran away to hide and who later gradually returned. See ERN TW402-M0010.

¹⁶⁶ ERN TW243-L0015, para. 14.

¹⁶⁷ ERN TW107-A0015, para. 6.

¹⁶⁸ ERN TW103-A0015, para. 9.

¹⁶⁹ Ibid., para. 14; ERN TW107-A0015, para. 6; ERN TW110-A0010, para. 11.

“I went to Pibor town and I saw guns being sold there. There the black guns used by the NSS being sold for 25,000 SSP each. The children all have guns”.

—South Sudanese man, from Torit County (Eastern Equatoria) (November 2020)¹⁷⁰

102. Also in May 2020, approximately 500 members of the Topotha Kum community from Jebel Boma attacked the neighboring Murle in Jebel Boma, killing 30 individuals and wounding 14 others. Another 11 women and 7 children (5 boys and 2 girls) were abducted, and 130 head of cattle were raided, including 100 from one man in Labrab village in Jebel Boma.¹⁷¹ The Commission was unable to determine whether the Topotha Kum tribe had links to the Lou Nuer/Dinka Bor militia, or to the SSPDF or SPLA-IO.

Padoy village, Akobo County (May 2020)

103. In May 2020, up to 9,000 Murle militia members attacked ethnic Nuer residents in the Padoy village of Akobo County.¹⁷² The attack began at night, with “the Murle just shooting and killing people” as they attempted to flee.¹⁷³ Attackers carried AK-47s, PKMs and RPGs as well as what witnesses referred to as “new guns” they had never seen before.¹⁷⁴ Some of the local Nuer population, in particular those that were armed, tried to defend themselves.¹⁷⁵

104. Murle militia members raided cattle and other civilian property in Padoy, and burned down at least one community warehouse where food was being stored.¹⁷⁶ They also raped women and girls as young as 17 years old, and targeted pregnant women to murder rather than rape.¹⁷⁷ In addition to the rapes, children were also abducted. As one witness recalled, “If the child agreed to go with them, then they took the child, but if not, the Murle attackers killed the child”.¹⁷⁸ In the aftermath of the attack, Government officials counted 370 dead including women, men and children as young as 3 years old, and another 50 injured.¹⁷⁹

Gumuruk village, Pibor County (June, July and August 2020)

“Our abductors raped us for 10 consecutive days. We did not cook nor wash for them. They just used us as their ‘wives’ to have sex”.

—South Sudanese Murle woman, from Gumuruk (November 2020)¹⁸⁰

105. Between June and August 2020, up to 50,000 allied Gawar Nuer from Ayod County and Dinka Bor from Twic East, Duk and Bor mobilised in West Pibor and launched a largescale coordinated attack on southwest Pibor, including on the Manyabol area and then continued towards Gumuruk village in Pibor County before advancing up to Jebel Boma.¹⁸¹ Upon capturing Gumuruk they stayed in the area for

¹⁷⁰ ERN TW303-M0015, para. 21.

¹⁷¹ ERN TW105-A0025, para. 13; ERN TW108-A0010, para. 9.

¹⁷² ERN TW226-L0015, para. 4.

¹⁷³ Ibid., para. 6.

¹⁷⁴ Ibid., para. 5.

¹⁷⁵ Ibid., para. 12.

¹⁷⁶ Ibid., para. 11.

¹⁷⁷ Ibid., paras. 13-14 and 16.

¹⁷⁸ Ibid., para. 13.

¹⁷⁹ Ibid., paras. 6-7.

¹⁸⁰ ERN TW106-A0010, paras. 13-14.

¹⁸¹ ERN TW104-A0020, para. 13; Confidential meeting, Bor (Jonglei State), 4 November 2020; ERN TW103-A0015, para. 8; ERN TW105-A0025, paras. 10-11; ERN TW110-A0010, para. 16. Throughout July and into August the attackers remained active in the south of Pibor, though they did not reach Pibor town. TW103-A0015, para. 10. Attackers were organised into two distinct groups: the first group proceeded to Verteth town along the Pibor River, down south to Mawo village, south Pibor and Jebel Boma. The second group launched attacks in the GPAA in mid-July, towards Likuangole, and retreated to Akobo in early August 2020. Confidential meeting, Bor (Jonglei State), 4 November 2020.

up to three months.¹⁸² Civilians recalled how the attack was “worse than” the attack in February 2020.¹⁸³

106. The assailants arrived both in vehicles and on foot, and were armed with heavy weapons including AK-47s and RPGs. While most were dressed in camouflage military fatigues witnesses recalled seeing others in civilian clothes. They were accompanied by children as young as 15 years who belonged to the Kurene “age-set” group.¹⁸⁴ Upon their arrival in Gumuruk, thousands of civilians began fleeing en masse. At the time of writing (January 2021), only a fraction of the original population has returned to Gurumuk.¹⁸⁵

107. In addition to the militia members, attackers included uniformed men from both the SSPDF and SPLA-IO, particularly from the SPLA-IO 8th Division from Bor.¹⁸⁶ In June, they entered Kavatuoch village in Jebel Boma where they raided 80 head of cattle and abducted three girls and two boys.¹⁸⁷

108. Throughout Gumuruk, Manyabol and Jebel Boma, the assailants killed and maimed civilians, raided over 175,000 head of cattle, burned down civilian houses (*tukuls*) and looted and destroyed international and national NGO compounds. At least 140 women and children including infants were also abducted. Many of the women were abducted and compelled by their attackers to follow them as they proceeded to neighbouring villages, and were forced into sexual slavery and raped repeatedly along the way.¹⁸⁸

109. One abducted woman described being taken by Gawar Nuer/Dinka Bor militia members to Ayod village, from where she ultimately escaped after having walked alone for two days alone towards Verteth.¹⁸⁹ She explained to the Commission in horrific detail how she had been abducted near Gumuruk alongside a young woman who was carrying an infant on her back.¹⁹⁰ For ten consecutive days, both women were brutally beaten and raped by their captors.¹⁹¹ As she revealed the cavernous scars on her back, she recalled how the assailants sadistically “beat us when we cried”.¹⁹² Owing to the trauma she had endured during the rapes and acts of torture, she could not remember whether the violations took place in July or August.¹⁹³ At the time of writing (January 2021), the young mother abducted alongside her remains in captivity, although it is believed that she was taken by her captors to Bor city.¹⁹⁴

110. In the aftermath of the violence in both Jonglei and the GPAA, residents in both Likuangole and Gumuruk explained to the Commission how Government officials had made promises to the local communities that their cattle would be returned and that abducted women and children would be brought back. The Commission notes with grave concern, however, that no tangible progress on either front has thus far been made.¹⁹⁵

Yuay village, Jonglei State (August 2020)

¹⁸² See, e.g., ERN TW243-L0015, para. 11.

¹⁸³ ERN TW224-L0010, para. 6.

¹⁸⁴ *Ibid.*, para. 9; ERN TW103-A0015, para. 11; ERN TW105-A0025, para. 11.

¹⁸⁵ ERN TW103-A0015, para. 11; ERN TW103-A0015, para. 13.

¹⁸⁶ ERN TW103-A0015, para. 12; ERN TW105-A0025, para. 10; ERN TD101-M0005.

¹⁸⁷ ERN TW105-A0025, para. 15; see also ERN TW105-A0025, para. 16.

¹⁸⁸ Confidential meeting, Bor (Jonglei State), 4 November 2020; ERN TW103-A0015, paras. 9 and 14; ERN TW105-A0025; para. 12.

¹⁸⁹ ERN TW106-A0010, paras. 8-10.

¹⁹⁰ *Ibid.*, paras. 11.

¹⁹¹ *Ibid.*, para. 13.

¹⁹² *Ibid.*, para. 15.

¹⁹³ *Ibid.*, para. 10.

¹⁹⁴ *Ibid.*, para. 11-12.

¹⁹⁵ ERN TW109-A0015, para. 19.

111. In early August 2020, numerous Murle militia members carrying “guns and knives” launched a late night attack against Yuay village in Jonglei State. As with all previous Murle militia attacks documented by the Commission, some of the assailants wore military fatigues while others were dressed in civilian clothes.¹⁹⁶

112. In all cases where children refused to go freely with the attackers, they were killed. Residents in Yuay village described how children were either abducted, shot or slaughtered with machetes. In some instances, the Commission heard of mothers and fathers forced to acquiesce in letting the Murle militia members take their children away, rather than watching them be murdered before their eyes.¹⁹⁷

113. The assailants further caught and raped women attempting to flee Yuay village. In one case, a woman recalled watching as another woman was caught and gang-raped by three men brandishing knives and guns. After the men left, she was in so much pain that she was unable to walk.¹⁹⁸ In addition to acts of murder, abductions and rape, attackers also looted civilian property and burned all civilian homes (*tukuls*) in Yuay village to the ground.¹⁹⁹

Jebel Boma County, Jonglei State (November 2020)

114. On 6 November 2020, members of the Topotha Kum tribe from Jebel Boma County attacked the Murle community in Jebel Boma for the second time (see para. 102, above), killing 4 people, abducting one young boy and raiding some 130 head of cattle.²⁰⁰

115. Compounding their suffering and the multiple displacement caused by localised conflicts in Jonglei State and the GPAA during the reporting period, an estimated 205,000 people in Jonglei and another 15,000 in the GPAA were again displaced by floods between May and November 2020, in many instances causing secondary or tertiary displacement (see Sec. VII, below).²⁰¹

Tonj North, Warrap State (April-December 2020)

116. Between April and December 2020, the security situation in Tonj North (Warrap State) was also characterised by intercommunal violence and a number of attacks and counter-attacks between Dinka communities from Rualbet, Akop, and Alabek on one side, and those from Awul, Aweng and Rualatok on the other. The attacks resulted in dozens of civilian casualties, burned villages, and displaced tens of thousands of women, men, and children.²⁰²

117. The violence is thought to have begun over an elopement: in 2019, a girl from Awul eloped with a man from Rualbet who did not have any head of cattle to offer her family.²⁰³ When the man from Rualbet came to Awul with others to get the girl, her father shot him in his hand.²⁰⁴ The High Court in Warrap town ruled that the father had to pay eight cows as compensation to the man’s family for his injured hand. However, the father refused to pay.²⁰⁵ The Court of Appeal in Wau later overruled the judgment, and, as a result, no compensation was ultimately paid.²⁰⁶

¹⁹⁶ ERN TW223-L0015, para. 4.

¹⁹⁷ *Ibid.*, para. 8.

¹⁹⁸ *Ibid.*, para. 12.

¹⁹⁹ *Ibid.*, para. 13.

²⁰⁰ ERN TW105-A0025, para. 14.

²⁰¹ Jonglei and Greater Pibor Administrative Area Humanitarian Update, United Nations Office for the Coordination of Humanitarian Affairs (OCHA), 8 December 2020, available at https://reliefweb.int/sites/reliefweb.int/files/resources/jonglei_humanitarian_update_081220.pdf.

²⁰² ERN TD202-L0025.

²⁰³ ERN TW219-L0015, para. 4; ERN TW218-L0010, para. 5.

²⁰⁴ ERN TW219-L0015, para. 4; ERN TW218-L0010, para. 5.

²⁰⁵ ERN TW218-L0010, para. 5.

²⁰⁶ *Ibid.*, para. 5.

118. In April 2020, the man from Rualbet organised armed men and attacked Rualalok where they first shot dead a young man who was fetching water at a borehole.²⁰⁷ Over the next seven days, armed men from Rualbet, Akop, and Alabek killed up to 30 civilian men and wounded others in Rualatok and Ageng (Awul payam).²⁰⁸ Due to the clashes, entire villages in Awul payam were destroyed, houses were burned down, cattle and commodities looted, and the entire population of Awul Payam was forced to run away fearing for their lives.²⁰⁹ One woman recalled that if the armed men “met women in the houses, they beat them.”²¹⁰

119. On 8 May 2020, a commercial driver from Akop, on his way home, was stopped by young men in Awul.²¹¹ They wrongly assumed that the driver was from Alabek and suspected that he wanted to deliver ammunition.²¹² Six men severely beat the driver who died as consequence of his injuries early the next day in the Physical Health Care Centre in Warrap town.²¹³

120. Following the death of the driver, a peace committee was established by President Kiir with involvement of the Director General of the Internal Security Bureau of the National Security Service, Akol Koor, who is from Awul.²¹⁴ The of the committee was not to retaliate, but to make peace between the communities, and to wait for a judgment of the High Court in Warrap town.²¹⁵

121. On 24 June 2020, the judgment was rendered. Six accused men who confessed to killing the driver were imprisoned and fined to pay 31 head of cattle in compensation to the family of the victim.²¹⁶ However, family members of the deceased driver were not satisfied with the judgment, and organised revenge attacks, leading to a second wave of attacks on communities in Awul payam.²¹⁷

122. The next day, on 25 June, armed men from Akop, Rualbet, and Alabek attacked Ageng (Awul payam), killing 11 men and wounding other civilians. They also burned down civilian homes and looted numerous livestock.²¹⁸ Those civilians who had returned to Ageng after the first attack were forced to flee again for their lives.²¹⁹ One victim lost two houses, one in each attack.²²⁰

123. In July 2020, an unknown gunman murdered a man from Alabek.²²¹ The community in Alabek thought that the killer was from Awul though they did not witness the killing.²²² As a result, Alabek youth alongside Rualbet youth attacked a cattle camp in Awul payam, looted all head of cattle, and murdered 10 civilians.²²³ In addition, 16 other civilians from Alabek and Rualbet were killed by Awul youth.²²⁴

²⁰⁷ ERN TW218-L0010, para. 6; ERN TW219-L0015, para. 5; ERN TW238-L0010, para. 5

²⁰⁸ ERN TW218-L0010, paras. 6 and 8; ERN TW240-L0010, paras. 4 and 5; ERN TW241-L0015, para. 4; ERN TW239-L0015, para. 6; ERN TW217-L0015, para. 4.

²⁰⁹ ERN TW241-L0015, para. 5; ERN TW239-L0015, paras. 4-5; ERN TW238-L0010, para. 5; ERN TW240-L0010, paras. 5-6.

²¹⁰ ERN TW217-L0015, para. 6.

²¹¹ ERN TW233-L0015, para. 5; ERN TW235-L0015, para. 4.

²¹² ERN TW233-L0015, para. 5; ERN TW235-L0015, para. 5.

²¹³ ERN TW233-L0015, paras. 5-7; ERN TW235-L0015, para. 4.

²¹⁴ ERN TW218-L0010, para. 9; ERN TW215-L0015, para. 5; ERN TW233-L0015, para. 9.

²¹⁵ ERN TW218-L0010, para. 9; ERN TW215-L0015, para. 6.

²¹⁶ ERN TW233-L0015, para. 6.

²¹⁷ ERN TW233-L0015, para. 7; ERN TW235-L0015, para. 7; ERN TW219-L0015, para. 8; ERN TW218-L0010, paras. 10-12; ERN TW216-L0010, para. 6.

²¹⁸ ERN TW218-L0010, para. 12; ERN TW219-L0015, paras. 8 and 9; ERN TW215-L0015, para. 7; ERN TW216-L0010, para. 7; ERN TW217-L0015, para. 8.

²¹⁹ ERN TW241-L0015, paras. 6 and 7.

²²⁰ *Ibid.*, para. 9.

²²¹ ERN TW218-L0010, para. 13.

²²² *Ibid.*, para. 13.

²²³ *Ibid.*, para. 13.

²²⁴ *Ibid.*, para. 13.

124. Towards the end of July 2020, President Kiir established a second committee to address the on-going violence. Although violence subsided for a few months, in mid-December Kirik youth, who are aligned with Rualbet and Akop youth, twice attacked Awul payam, resulting in the death of five males.²²⁵

125. The Commission notes with concern that renewed outbreaks of violence in Tonj North are particularly disappointing as Tonj North has been one of the calmest areas in Warrap State over the past years. Reports received that the youth used new firearms, which are different from those used by the SSPDF, may indicate that attackers in Tonj North benefitted from external support.²²⁶

126. Since 2016 and over the course of its mandates, the Commission has consistently highlighted the lack of political will on the part of the Government to address serious violations of international human rights and humanitarian law and related crimes. The lack of accountability has contributed to the on-going conflict and the prevailing sense of impunity. Despite Government statements announcing investigations into the most serious criminal acts, investigation reports are rarely published and there is hardly any evidence to show that those responsible have been held accountable.

127. Nevertheless, the Commission welcomes the Government's deployment of investigation committees to areas which have suffered armed and localised conflict, including in Jonglei, Central Equatoria, and Unity States. The Commission notes with concern, however, that the findings of these investigative committees have not been published, with the exception of one instance, regarding violence in Sherikat neighbourhood of Juba in June 2019 (released in September 2020). While it is commendable that the Government formed two committees to address the violence in Tonj North, these efforts did not succeed in pacifying the situation with lasting effect.

128. All of these investigations have not led to any prosecutions of those responsible for the murders, incidents of sexual and gender-based violence, and other crimes and violations. Instead, the Government has in some cases deliberately silenced the victims who courageously report the violations they have suffered.²²⁷

129. The resurgence of localised violence in South Sudan illustrates, and exacerbates, existing social and political polarisation in the country. While localised conflicts have been a feature of Southern Sudanese society since before independence, local communities have become new arenas of contestation, often fuelled by organised political support from outside these communities. Investigating the violence and ensuring accountability for abuses are critical first steps and require investment and commitment.

130. The Commission notes with grave concern the statements made by President Kiir while addressing a peace conference for Jonglei and the GPAA in Juba on 27 January 2021. Specifically, the President was quoted as saying, "Next time when you go and fight, I will not come to your rescue again nor form a committee to go to the war zone. I have decided that any other fighting that erupts, I won't send either soldiers or the police. I will leave you to fight yourselves until one section runs from the other".²²⁸ Such statements may imply the abdication of state authority and the relinquishment of state obligations in the context of localised conflicts, as well as the deliberate failure and lack of political will by the Government of South Sudan to address the root causes of these conflicts meaningfully, to conduct investigations into violations and crimes perpetrated during localised conflicts, or to hold members of

²²⁵ ERN TW202-L0010, para. 22.

²²⁶ ERN TW232-L0010, para. 10.

²²⁷ See A/HRC/43/56, Annex II, para. 63.

²²⁸ South Sudan's Kiir to Stay Out of Inter-communal Conflicts, VOA News, 29 January 2021, available at <https://www.voanews.com/africa/south-sudans-kiir-stay-out-inter-communal-conflicts>.

organised militia groups, senior commanders, and the security forces accountable. Failing to take steps to decisively deal with these incidents is in clear violation of the Government's obligations under international and domestic law.

131. In a society where ethnicity remains the primary identity, addressing the phenomenon of localised conflicts requires concerted effort and engagement from all sections of Government and all levels of political and civic leadership. A holistic transitional justice response, as envisaged in Chapter V of the R-ARCSS, will be necessary if the full complexity of the localised conflicts is to be understood, prevented and addressed, so that healing of the society can be achieved.

VII. The situation of internally displaced persons

132. Staggering levels of displacement remained a key feature of the South Sudanese conflict during the reporting period. The Commission continued to encounter civilians who had been uprooted multiple times since the onset of the conflict in 2013. In particular, new displacements arose due to armed conflict in Central Equatoria, localised conflicts, and climate stresses, including drought and floods.²²⁹ In Yei, the Commission heard how displaced women and girls living in refugee and IDP settlements face the threat of sexual violence on a daily basis, perpetrated by military personnel.²³⁰

133. The brutal nature of the localised conflicts waged in Jonglei and Warrap States and Greater Pibor Administrative Area further displaced hundreds of thousands of women, men, and children, many of whose homes (*tukuls*) were deliberately burned down by members of organised militias or SSPDF or SPLA-IO forces. Acts of forced displacement, pillage, and destruction of property placed civilians in precarious humanitarian situations, separating them from livelihood sources and, most critically, without the requisite protections against sexual and gender-based violence, even from those whose role is to provide such guarantees.

134. At the time of writing (January 2021), around 1.6 million individuals are entering their eighth year of internal displacement. Multiple conflict-induced displacements over decades have left large segments of the population across South Sudan suffering the consequences of severe acute malnutrition, and periodic episodes of communicable disease, including measles, malaria, diarrheal diseases, and tuberculosis or other immuno-compromising health conditions — all comorbidities which render them more susceptible to communicable diseases including COVID-19.²³¹

135. To address the needs of displaced persons concerning aid and their return and reintegration, the Ministry of Humanitarian Affairs had launched a plan on 1 October 2019 titled “the National Framework on Return, Resettlement and

²²⁹ ERN TW122-A0010; ERN TW123-A0015.

²³⁰ ERN TW113-A0015.

²³¹ See, e.g., Communicable diseases and severe food shortage situations, United Nations World Health Organization (WHO), 25 August 2005, available at https://www.who.int/diseasecontrol_emergencies/guidelines/Severe_food_shortages.pdf; See also <https://news.un.org/en/story/2020/05/1064012>. On 13 May 2020, the first COVID-19 cases were confirmed by UNMISS in two protection of civilian sites in Juba and Rubkhona, two of the most densely populated sites in South Sudan. As widespread testing and treatment options for COVID-19 remain limited, access to water and sanitation, including soap, are largely non-existent for many persons internally displaced. A man displaced in Mangateen camp (Juba), for example, described congestion within the camp and the attendant lack of access to adequate healthcare, water and sanitation. ERN TW101-A0005. More difficult still, as mentioned above, is the practicality of maintaining “social distancing” or self-quarantine. This is nearly impossible in overcrowded settings, with families crammed together in small shelters or tents. While hand-washing stations have been set up in some sites, given the already dire socio-economic conditions most South Sudanese experience, it is likely that civilians will continue with their usual activities, including congregating in large groups and therefore increasing their susceptibility to the virus.

Reintegration” which acknowledged that, between January and March 2018, seven million South Sudanese women, men, boys, and girls – comprising over half of the population – were in need of assistance countrywide. It also noted that, throughout 2018, 6.3 million individuals were food insecure; 1.3 million girls and boys were affected by acute malnutrition; and 4.8 million individuals were in need of humanitarian health services.²³² On 21 May 2020, the World Health Organization and the United Nations High Commissioner for Refugees signed an agreement to improve health services for refugees, displaced, and stateless persons, which was welcomed by the South Sudanese.²³³

136. Moreover, despite the launch of the action plan, the humanitarian situation for displaced persons has not improved over the past two years. On 7 May 2020, the Special Representative of the Secretary-General for South Sudan highlighted the dangers of overcrowded living conditions in the United Nations protection of civilian sites, noting the difficulties of social distancing in such sites and encouraging displaced persons to return to their homes where possible.²³⁴ Beginning in early 2019, and in addition to overcrowding, internally displaced persons have been experiencing diminishing humanitarian aid at some previously designated protection of civilian sites (eg, Bor in Jonglei State), and Government forces deliberately denied food and humanitarian aid into at least mid-2019 (see A/HRC/43/CRP.3).

137. The Commission further remains concerned by the on-going re-designation of the protection of civilian sites to IDP camps. In late January 2020, a memorandum of understanding was signed between the Governor of Unity State and UNMISS concerning the re-designation of the largest protection of civilian site in South Sudan to an IDP camp, located in Bentiu (Unity State), which is currently home to some 97,320 displaced civilians.²³⁵ This development means that following the transition of the Bentiu protection of civilian site into an IDP camp there will be one remaining protection of civilians site operated by UNMISS, located in Malakal (Upper Nile State), which currently houses some 33,137 people.²³⁶

138. The Commission notes that once protection of civilian sites are re-designated, national security forces assume responsibility for ensuring security. Troops and police from UNMISS no longer guard the camps, but may in certain

²³² Confidential document, ERN D120766-D120773. See also Framework for Return, Reintegration and Relocation of Displaced Persons: Achieving Durable Solutions in South Sudan February 2017, Republic of South Sudan, Ministry of Humanitarian Affairs and Disaster Management (MHADM), available at <https://www.refworld.org/pdfid/5b72a64a4.pdf>.

²³³ WHO and UNHCR join forces to improve health services for refugees, displaced and stateless people, 21 May 2020, available at <https://www.who.int/news-room/detail/21-05-2020-who-and-unhcr-join-forces-to-improve-health-services-for-refugees-displaced-and-stateless-people>.

²³⁴ See Transcript of SRSG and Head of UNMISS Press Conference on Covid-19, United Nations Mission in South Sudan, 7 May 2020, available at <https://unmiss.unmissions.org/transcript-srsg-and-head-unmiss-press-conference-covid-19>. On 8 April 2020, Commission Chair Yasmin Sooka had similarly stressed the complications involved with implementing social distancing for persons internally displaced. See “A severe coronavirus outbreak across South Sudan would have disastrous consequences for millions of vulnerable civilians, UN experts note”, 8 April 2020, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=25781&LangID=E>. The High Level Task Force had further echoed the sentiment of the Special Representative of the Secretary-General for South Sudan in their call for displaced civilians to “return home”.

²³⁵ The MoU for the protection of civilian site in Bentiu includes a transition plan, and at the end of the transition period UNMISS will cease providing protection to the site where after it becomes an IDP camp.

²³⁶ UNMISS offers protection to these sites per its Security Council mandate, and the sites serviced by humanitarian organisations. The PoC site in Bor (Jonglei State) was re-designated from a protection of civilian site to an IDP camp on 22 September 2020.

circumstances deploy if a specific situation warrants it. Without sustained protection provided to the newly constituted IDP camps, several IDPs have expressed their intention to return to their places of origin or habitual residence.²³⁷ Given the scale and severity of localised conflicts in Jonglei, the GPAA, and Warrap, and the armed conflict in Central Equatoria, as well as severe flooding including in areas including those along the White Nile, there is no possibility of safe returns for some IDPs. The Commission highlights the responsibility of the Government to ensure the health, well-being, and safety of IDPs, and their safe, voluntary, and dignified returns.

139. As hundreds of thousands of displaced South Sudanese women, men, and children languish in despair, the Commission notes that their prospects for returning to their homes remain miniscule. Many have neither houses nor plots of land to return to, almost no possessions left, no possibility of livelihood options, or to produce their own food once they return to their places of origin. The Special Reconstruction Fund and the establishment of its Board to facilitate returns for persons internally displaced has not been established by the Government pursuant to the R-ARCSS (Article 3.2), and though the Government committed to provide initial funding, this has not materialised.²³⁸

140. The Commission notes that while it is difficult to facilitate returns amidst restrictions on movement, in March and April 2020, 1,675 internally displaced persons were helped to depart from the protection of civilian site in Wau. No other protection of civilian site recorded any instance of assisted departures during the reporting period, however, though there were instances of spontaneous voluntary departures.²³⁹ Recent clashes as detailed above underscore widespread fears of increased violence countrywide, continuing to displace civilians, and depriving many from finding alternative safe spaces amidst the flooding and COVID-19 pandemic. Beyond public health concerns, the Commission continues to monitor the extent to which conditions are conducive for safe, voluntary, and dignified returns.

VIII. Transitional justice and accountability

“I have been observing the attacks by the Murle, and I knew that when I grow up, I would revenge on the attacks”.

—South Sudanese Dinka boy (November 2020)²⁴⁰

Truth-Seeking, National Healing, and Reconciliation

141. The R-TGoNU has to date not made public the outcome of partial national consultations on the establishment of the Commission for Truth, Reconciliation, and Healing (CTRH) that were conducted between May and June 2018 by the previous Government. It has also not provided a road map on the steps that will be taken to address the gaps and limitations of the initial consultation process or establish the CTRH.²⁴¹

142. The R-TGoNU has also failed to initiate any process or mechanism to achieve an inclusive and participatory process of national healing and reconciliation as envisaged in the R-ARCSS. Victims of past conflict-related atrocities and ongoing inter and intra-communal violence who spoke to the Commission emphasised the need for the restoration of peace within their communities and proposed that the

²³⁷ South Sudan Protection Cluster Monthly Update, Protection Cluster South Sudan, December 2020, available at <https://data.globalprotectioncluster.org/en/documents/details/262>.

²³⁸ So far, a concept note for the establishment of the Board has been developed and presented to the R-TGoNU as guidance for its formation. See <https://reliefweb.int/sites/reliefweb.int/files/resources/RJMEC-2nd-Qtr-2020-Report-Final.pdf>, para. 64.

²³⁹ Confidential meeting, 28 April 2020.

²⁴⁰ ERN TW302-M0010, para. 5.

²⁴¹ Additional details provided in the Commission’s Transitional Justice workshop report. See A/HRC/45/CRP.4, at Annex I.

South Sudan Government, international and regional actors, and non-governmental organisations should support and initiate dialogue and mediation between warring ethnic communities and political factions. On-going mediation and dialogue processes within and between warring ethnic communities, including through Peace Committees,²⁴² provide important and timely interventions. However, a much deeper analysis of the root causes, patterns and consequences of protracted conflict and ethnic-based localised violence in South Sudan, with broad participation of all affected communities and stakeholders, would most meaningfully be achieved through a national truth-seeking process as envisaged in the mandate of the CTRH.

143. The National Dialogue process initiated by President Kiir in December 2016 concluded its three-year mandate through a national conference convened between November and December 2020. The National Dialogue conducted hearings and consultations in 15 regions across South Sudan as well as neighbouring countries hosting South Sudanese refugees, to collect citizens' views on conflict resolution and related political, economic, and social concerns with the aim of forging national cohesion and sustainable peace. The outcomes and recommendations of the National Dialogue process include the need to address impunity for gross human rights violations and restructuring of the governance system, which could contribute to addressing historical grievances that have continuously fuelled conflict in South Sudan.

144. At the conclusion of the dialogue, President Kiir announced that the outcomes of the National Dialogue would be presented to the Constitution-making process envisaged by the R-ARCSS. One of the critical gaps in the National Dialogue Process was its inability to achieve a fully inclusive process – the SPLM-IO has remained suspicious of the Dialogue process and refused to engage with it at all levels. The fact that its outcomes will be subjected to further consideration in a potentially more inclusive constitution-making process presents an opportunity to remedy the lack of inclusive participation in the processes of the National Dialogue. Further, while calling for implementation of the healing and reconciliation agenda envisioned in the R-ARCSS, the National Dialogue Committee indicated that the majority of the citizens who engaged in the process remain sceptical of the ability of the R-TGoNU to lead South Sudan in achieving sustainable peace due to on-going political differences among the parties to the R-ARCSS.²⁴³ Moreover, some of the recommendations of the National Dialogue may be relevant to the mandates of the CTRH and the Compensation and Reparation Authority (CRA).

Criminal Accountability for Conflict-Related Violations

145. Since 2017, the TGoNU and R-TGoNU have failed to sign a Memorandum of Understanding (MoU) with the African Union (AU) to create the Hybrid Court for South Sudan (HCSS). In September 2020, the AU Office of Legal Affairs and AU Peace and Security Council urged the R-TGoNU to sign the MoU without further undue delay, and to put in place all necessary measures and resources to guarantee the “integrity and legitimacy of the Hybrid Court, as well as the transparency regarding its establishment.”²⁴⁴ The Commission notes and welcomes

²⁴² See ERN TW238-L0010. The Commission also learned that the Terekeka peace and reconciliation committee to resolve communal conflicts in Terekeka County of Central Equatoria State was set to begin grassroots-based consultations in December 2020 to promote harmony among communities torn apart by inter-communal conflicts.

²⁴³ See the National Dialogue, Rapporteur's Report – National Conference, available at <https://www.ssnationaldialogue.info/resource/rappartuers-statement-national-conference>; and Co-Chairs Statement – National Conference, available at <https://www.ssnationaldialogue.info/wp-content/uploads/Co-Chair's-Statement.pdf>.

²⁴⁴ AU Peace and Security Council, Communique of the 945th Meeting of the PSC held on 15th September 2020, on the Report of the Chairperson of the Commission on the Situation in the Republic of South Sudan, paras. 17 and 18, available at <http://www.peaceau.org/uploads/eng-psc-communique-945th-meeting-on-south-sudan-15-september-2020.pdf>. See also R-JMEC Report on the Status of Implementation of the Revitalised Agreement on the Resolution of

reports that on 29 January 2021, the Cabinet approved that the Ministry of Justice and Constitutional Affairs proceed with the process of establishing the Hybrid Court in line with the proposal submitted by the Ministry for the implementation of Chapter V of the R-ARCSS. The Commission hopes that this decision will now translate into expedited action by the Government, including engagement with the African Union and other entities, to ensure that the legislation for establishment of the Court and preparations for the other Chapter V mechanisms proceed as quickly as possible.²⁴⁵

146. In its engagements with various interlocutors, the Commission had heard concerns about a degree of apprehension within the R-TGoNU that establishing the HCSS could undermine the prevailing fragile peace.²⁴⁶ The Commission has consistently pointed to the necessity for a holistic approach which does not privilege any particular transitional justice mechanism, but which acknowledges the critical purpose that criminal accountability serves in preventing atrocity crimes and restoring civic trust and recommitment to the rule of law. Only a holistic implementation of the Chapter V processes in a mutually reinforcing manner can effectively “promote . . . truth, reconciliation and healing, [and] compensation and reparation for gross human rights violations in South Sudan.”²⁴⁷ Accordingly, the R-TGoNU should now sign the MoU with the African Union formally adopting the Statute of the Court. In the event of further delay, the Commission would reiterate its view that the AU should adopt a more purposive reading of the R-ARCSS and independently complete the process of establishing the Hybrid Court. In any event, the AU Commission should intensify preparatory work, including the establishment of an investigative mechanism that will be linked to prosecution to complement the collection and preservation of evidence mandate of the UN Commission of Human Rights in South Sudan, pending the completion of the processes for the establishment and full operation of the Hybrid Court.²⁴⁸

147. Meanwhile, the R-TGoNU is yet to implement several critical reforms required under the R-ARCSS, which would strengthen the domestic judicial system and provide increased opportunities for accountability for conflict-related human rights violations. These include establishment of an Ad-Hoc Judicial Reforms Committee to study and make recommendations on judicial reforms, and capacity building to the Judiciary.²⁴⁹ It is hoped that these too will be part of the urgent next steps.

148. During the mandate period, the SSPDF established an *ad hoc* District Court Martial in Yei (Central Equatoria State), which conducted trials against 26 SSPDF soldiers between July and September 2020, and sentenced them to prison terms of up to 14 years for offences committed against civilians mostly from Lasu, including rape, causing grievous bodily harm, and robbery. A similar Court Martial was set up in Bentiu between November and December 2020, to conduct trials in 16 cases involving 33 SSPDF officers. It is reported that seven cases involving the offences of murder, culpable homicide, and robbery were concluded and resulted in the acquittal of one suspect and conviction of seven accused persons for up to six

the Conflict in the Republic of South Sudan, for the period 1st July to 30th September 2020, para. 44.

²⁴⁵ See press statement by the Commission, “Renewed political commitment to initiate transitional justice in South Sudan must deliver for victims, UN experts note”, United Nations Human Rights Council, Office of the United Nations High Commissioner for Human Rights, 1 February 2020, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26704&LangID=E>.

²⁴⁶ Confidential meeting, 17 December 2020.

²⁴⁷ R-ARCSS, Art. 5.1.3.

²⁴⁸ See A/HRC/45/CRP.4, para. 100.

²⁴⁹ R-ARCSS, Art. 1.17.

year jail terms.²⁵⁰ Both the Yei and Bentiu military courts ordered compensation to be paid to affected victims or their families in the form of cattle or cash equivalent.²⁵¹

149. The Yei and Bentiu military trials, in addition to the *Terrain case*, are, so far, among the few instances where domestic processes have been deliberately set up to pursue individual criminal accountability against perpetrators of conflict-related violations and to provide remedies to affected victims. Other opportunities for accountability for conflict-related violations exist within mobile courts, the recently inaugurated Special Court for Gender-Based Violence and Juvenile Justice, customary courts, and special mixed courts involving formal and customary law judges.²⁵²

150. Civilians remain deeply weary of the war. They await meaningful reparations, and express fatigue from living insecure and uncertain lives. The District Court Martial may have led to the sentencing of a few perpetrators, but failure to receive compensation, acknowledgement of harms suffered, or the truth about the whereabouts of loved ones has left them without peace of mind. One elderly woman survivor who witnessed her daughters in law beaten and raped, and herself a survivor of rape, multiple robberies, and beatings told the Commission, “I am tired of all the abuse. I am old and no longer ashamed. I am just fed up.”²⁵³

151. In the absence of a properly functioning justice system, emerging domestic efforts aimed at accountability should be scaled up and supported through adequate technical and financial resources in order to progressively chip away at persisting impunity for atrocity crimes and rebuild a culture of accountability. Nonetheless, the Commission is concerned that such measures have so far been *ad hoc* and inconsistent, and far too limited to effectively deal with the widespread atrocities committed in South Sudan.

152. The Commission calls on the R-TGoNU to develop a broader strategy that will provide clear policy and operational guidance for a systematic, predictable, and coherent approach to investigations and prosecution of conflict-related violations in South Sudan. Such a strategy should include proposals for legal measures to address jurisdictional challenges resulting from the prosecution of military officers involved in committing violations against civilians in military instead of civilian courts, in contravention of the SPLA Act.²⁵⁴ The strategy should also include measures to ensure that accountability processes are independent and insulated from political interference, and not only skewed towards low ranking officers, but also include higher level commanders and individuals responsible for committing, ordering, or facilitating atrocity crimes. It should also provide clear linkages between domestic mechanisms, the HCSS, and other potential regional and international avenues for accountability.

153. In addition, more efforts are required to ensure that victims participating in any future military and other trials are afforded adequate legal support and witness protection prior to, during, and after the trials. The Commission interviewed several victims who experienced death threats, reprisals, and stigma from their communities and SSPDF military officers following their participation in the District Court Martial in Yei. In one case, the husband of a victim of rape who was one of the complainants in the trial, was shot, killed, and his body dragged into the bush by unidentified

²⁵⁰ David K. Deng, Transitional Justice Working Group (TJWG) South Sudan: Justice Landscape Assessment, p. 17.

²⁵¹ See ERN TW115-A0015; David K. Deng, Transitional Justice Working Group (TJWG) South Sudan: Justice Landscape Assessment, page 17; and R-JMEC Report on the Status of Implementation of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan, for the period 1st July to 30th September 2020, paras. 23-24.

²⁵² David K. Deng, Transitional Justice Working Group (TJWG) South Sudan: Justice Landscape Assessment.

²⁵³ ERN TW403-M0015.

²⁵⁴ SPLA Act, Sec. 37(4); TJWG Justice Landscape Assessment, at p. 7.

perpetrators while travelling on a country road on 29 September 2020. The fact that the man's belongings, in particular his motorbike, were left untouched led to the conclusion that the incident was likely a targeted assassination and not an ordinary robbery.²⁵⁵ The victims also expressed concerns over the delays in effecting the compensation of cattle that the District Court Martial in Yei awarded to them. Given that the District Court Martial was an *ad hoc* court, it could not grant self-executing compensation; as such, the victims must make separate applications for execution of the awarded compensation through the civil courts.²⁵⁶

154. More sustained and coordinated efforts towards justice and accountability for sexual and gender-based violence in particular are required. Some of these efforts should include coordination and communication with local civil society actors who are often first responders. Closer collaboration between all actors is recommended in order to make the most of the expertise and knowledge that exists but also to deliberately and consistently enhance the capacity of organisations who will take on the work with and within the special or mobile courts.²⁵⁷ *Ad hoc* courts such as the Yei District Court Martial are critical for ensuring that perpetrators are held to account and to pass a message to violators and survivors alike that crimes carry a punishment and will neither be tolerated nor excused.

155. The Commission calls upon the relevant authorities to support and acknowledge local initiatives to respond to sexual and gender-based violence. During the period under review, several initiatives by local authorities, activists, and ordinary citizens have led to shifts and progress in seeking justice and accountability for sexual violations.²⁵⁸ The Yei process came about as a result of local authorities sending communications to senior SSPDF structures. While in Juba, special note should be taken of local rights activists who rallied together to draw attention to increased sexual and gender-based violence during the COVID-19 lockdowns and beyond.

Reparation

156. The R-TGoNU has thus far paid little to no attention to the establishment of the Compensation and Reparation Authority (CRA). Further, a Special Fund for Reconstruction (SRF) and its Board (BSRF), which were required to be established one month after the institution of the R-TGoNU, are yet to be initiated. The SRF's programmes are anticipated to include provision of assistance and protection to IDPs, returnees and families affected by conflict.²⁵⁹ The R-ARCSS requires such assistance to include special consideration for conflict-affected persons in provision of public services, including access to health care and education.²⁶⁰ The Commission also established that the R-TGoNU has developed a National Plan of Action on Return, Relocation and Reintegration of Displaced Persons, which is yet to be implemented.²⁶¹

157. In the meantime, many of the victims that the Commission interviewed are in dire need of urgent reparation and assistance, as well as long term support to address the harm and consequences of the violations they have suffered. The Commission believes that an appropriate reparations programme properly designed and developed with the input of victims and experts could be one of the most meaningful, practical and appreciated measures to address past injustices given the severe underdevelopment of South Sudan and the extreme poverty of much of its population.

²⁵⁵ ERN TW115-A0015.

²⁵⁶ ERN TW404-M0010.

²⁵⁷ Confidential Meetings, August 2020.

²⁵⁸ *Ibid.*

²⁵⁹ R-ARCSS, Art. 3.2.1.

²⁶⁰ R-ARCSS, Art. 3.1.2.

²⁶¹ Consultations with R-JMEC; R-JMEC 3rd quarter report.

158. Many of the victims who spoke with the Commission have endured recurrent cycles of extreme violence, first during the armed conflict between 2013 and 2016, and presently through on-going intercommunal violence and hostilities between state and opposition and multiple armed forces. These victims are experiencing levels of trauma, harm and losses resulting from conflict-related violations that remain unaddressed, including killings, abductions and separation from family members and relatives; rape, sexual slavery and other forms of sexual violence; serious bodily injuries; destruction, burning and loss of property including their homes, cattle and farms; displacement; and loss of employment and sources of livelihood. With no end in sight to the on-going violence, many of the victims have been forced to remain in IDP camps, protection of civilian sites, and refugee camps for prolonged periods, with no source of livelihood. Some of the victims who had returned to their homes following cessation of the nationwide armed conflict have been displaced again due to localised intercommunal violence and have returned to protection of civilian sites and IDP camps.

159. Numerous victims in some of the IDP camps are facing significant hardships, including congestion, inadequate food, sanitation and portable water, sexual harassment, especially against women, and lack of access to affordable health care and education. This situation is likely to get worse as UNMISS progresses with its on-going plan of transitioning protection of civilian sites to IDP camps and withdrawing UN peacekeepers from the protection of civilian sites. IDP camps will be managed by the R-TGoNU, with the South Sudan National Police Service providing security. Victims are afraid to return to their homes because of lack of security as there is no indication of real peace and they are apprehensive that violence could erupt again at any moment. Others have no place to return to, with their land and homes destroyed or occupied by squatters.²⁶²

160. Some of the victims informed the Commission of their urgent need for medical attention, including physical and psychological health care to address the consequences of rape and gunshot wounds.²⁶³

161. Victims also informed the Commission that they would like to be reunified with family members who were separated from them during the on-going intercommunal violence, including through abductions and displacement.²⁶⁴ They also require urgent socio-economic assistance to support access to basic needs including food, shelter, health care and education;²⁶⁵ and restitution and compensation for stolen livestock, loss of property and killing of their family members and relatives.²⁶⁶ Further, victims recommended that the Government should initiate measures targeting the youth, such as access to education and entrepreneurial activities to enable them to build their livelihoods, as they are the ones who are mostly exploited to commit atrocities.²⁶⁷

162. Victims also asserted that individual criminal accountability against perpetrators, including those with command responsibility, is indispensable if South

²⁶² ERN TW239-L0015; ERN TW240-L0010; ERN TW241-L0015; ERN TW222-L0010; ERN TW226-L0015; ERN TW223-L0015; ERN TW243-L0015; ERN TW224-L0010; ERN TW106-A0010; ERN TW108-A0010; ERN TW109-A0015; ERN TW116-A0010; ERN TW119-A0015; ERN TW121-A0015; ERN TW123-A0015; ERN TW124-A0010; ERN TW125-A0015; ERN TW102-A0010; ERN TW101-A0005; ERN TW302-M0010; ERN TW303-M0015. See also Confidential meeting, 4 November 2020.

²⁶³ ERN TW208-L0010; ERN TW224-L0010; ERN TW243-L0015; ERN TW106-A0010.

²⁶⁴ ERN TW226-L0015; ERN TW223-L0015; ERN TW224-L0010; ERN TW243-L0015; ERN TW119-A0015; ERN TW124-A0010.

²⁶⁵ ERN TW215-L0015; ERN TW222-L0010; ERN TW115-A0015; ERN TW126-A0010; ERN TW117-A0015.

²⁶⁶ ERN TW234-L0010; ERN TW239-L0015; ERN TW221-L0015; ERN TW222-L0010; ERN TW115-A0015.

²⁶⁷ ERN TW303-M0015; ERN TW224-L0010.

Sudan is to achieve lasting peace.²⁶⁸ One of the victims stated: *“I would like to see the Government to held be responsible. The commanders and the soldiers should be held accountable for the atrocities they committed in Romich.”*²⁶⁹

163. Despite the on-going delays and challenges noted above, the Commission welcomes the recent steps taken by the Ministry of Justice and Constitutional Affairs (MoJCA) to provide a clear and holistic plan of action for implementation of transitional justice measures under Chapter V of the peace agreement. A proposal submitted by MoJCA seeking for the Cabinet’s formal authorisation of its mandate to oversee and facilitate establishment and implementation of the CTRH, HCSS and CRA in accordance with the R-ARCSS, was reviewed and approved by the Governance Cluster of the Cabinet, under First Vice President Riek Machar, and subsequently received Cabinet approval in January 2021. MoJCA also reported that it has initiated engagement with the AU to discuss the R-TGoNU’s proposals for revisions to the MoU for the establishment of the HCSS, including considerations on the seat of the Court, victims and witnesses’ protection, engagement with affected communities, and the anticipated legacy of the Court in South Sudan. In addition, with support from the UNDP, MoJCA has contracted a specialist to support it in preparing to conduct a fresh round of national consultations on the CTRH with broad participation of all key stakeholders and affected communities.²⁷⁰

164. Given the approval of the Cabinet, the Commission urges the MoJCA to expedite the preparatory work for the various transitional justice mechanisms, in order to produce fast, tangible and genuine results, that will give confidence to the people of South Sudan and victims, that the R-TGoNU is serious about dealing with the past. In addition to implementing the Chapter V mechanisms of the HCSS, CTRH and the CRA, the R-TGoNU must expedite the critical reforms in the justice and other sectors necessary to meaningfully address the structural drivers of conflict, provide redress for past violations, and create deterrence against future atrocities.

IX. Responsibility

165. In line with its mandate aimed at ending impunity and providing accountability, the Commission focused on determining the facts and identifying the individuals and entities bearing responsibility for violations and abuses of international human rights law and related crimes. It also sought to identify command structures, patterns of conduct, and indicators of control.

A. Individual Responsibility

166. Individual criminal responsibility may be incurred through several modes of participation including planning, ordering, instigating, committing, aiding, abetting, and superior or command responsibility. The Commission engaged with and gathered evidence on Government officials including cabinet ministers, senior military officials including SSPDF and SPLM-IO commanders, NAS officials and, in some instances, commanders of other armed groups and governors of states, in relation to whom there were reasonable grounds to believe that they had exercised command responsibility when violations and alleged crimes occurred. Instances when perpetrators have been prosecuted for conflict-related crimes have been rare and mainly through military tribunals. South Sudanese civil society, including religious leaders and victims consider that impunity for gross human rights violations

²⁶⁸ ERN TW208-L0010; ERN TW244-L0010, ERN TW201-L0005; ERN TW122-A0010; ERN TW125-A0015.

²⁶⁹ ERN TW244-L0010, para. 15.

²⁷⁰ Commission meeting with UNDP, 7 December 2020 and consultations with MoJCA, 8 January 2021.

and serious violations of international humanitarian law committed by all parties has become entrenched since 2013 and is a primary enabler of the on-going conflict.²⁷¹

167. During the period under review, the Commission identified the leaders of armed groups who bore responsibility for violations against civilians during incidents of the localised conflicts in Jonglei State. Similarly, the Commission established that the main parties to the conflict aided and abetted certain local militia groups by providing military support including high-grade military weapons. The Commission also identified a troubling trend of political, community, traditional religious (spiritual) leaders and military leaders working together with militias, and who share responsibility for the events that unfolded in Jonglei State. Local politicians and youth leaders were also involved in planning, preparing, and mobilising large numbers of fighters involving all age-groups.²⁷²

168. The Commission notes that the offensives were organised and systematically carried out across multiple fronts, with each led by particular “youth” leaders. These leaders planned operations and set goals, including attacks against civilians to displace them. The local religious (spiritual) leaders further motivated fighters to incite ethnic hatred and violence.²⁷³ Once endorsed by religious leaders, politicians secured military support for the operations from the SSPDF and SPLA-IO/RM.²⁷⁴ For instance, the SSPDF provided military support, delivered by helicopter to a political leader in the GPAA with instructions to defend the territory and repel the SPLA-IO through local militia groups.²⁷⁵ On the SPLA-IO side, two trucks full of ammunition that drove from Bor to Gumuruk on 3 July 2020 were commanded by an SPLA-IO Major General, who was additionally the commander of less formal Dinka and Lou Nuer militias in Gumuruk County.²⁷⁶

169. The Commission has not received any information from the Government of South Sudan setting out reasonable and necessary measures taken by them to investigate and identify those individuals and groups responsible as well as information of criminal or court martial investigations or prosecutions in relation to the above crimes. Although the Commission has noted that the President sent a committee to Pibor it has not received any concrete information on the outcome of the inquiry.²⁷⁷ The Commission is aware of proposals for customary justice institutions to investigate these incidents. However, while these can provide an important forum for dialogue, mediation, compensation and reparation, they are not suitable in and of themselves for adjudicating serious criminal cases, in particular the horrendous sexual violence committed against women and children in Jonglei State.

170. The Hybrid Court of South Sudan is essential for dealing with those individuals with command responsibility for serious international crimes and for establishing a culture of accountability in the country. Decades of conflict mean that South Sudan has had little experience with judicial processes.²⁷⁸ Law enforcement remains weak and ineffective and is itself without proper judicial oversight or accountability. Despite the scale and magnitude of the violations and abuses committed by State and non-State actors, only a handful of investigations and

²⁷¹ ERN 102958-102962. Confidential Meeting, 22 September 2020; Confidential Meeting, 11 June 2020; Confidential Meeting 5 June 2020.

²⁷² ERN TW303-M0015; ERN TW221-L0015; ERN TW222-L0010; ERN TW224-L0010.

²⁷³ Confidential Meetings, 4 November 2020; ERN TD412-M0060; ERN TW301-M0005; ERN TW302-M0010; ERN TW303-M0015.

²⁷⁴ Confidential Meetings, 4 November 2020.

²⁷⁵ ERN TD101-M0005; ERN TW303-M0015; ERN TW221-L0015; ERN TW222-L0010; ERN TW224-L0010.

²⁷⁶ ERN TD101-M0005; ERN TW301-M0005; ERN TW302-M0010; ERN TW303-M0015.

²⁷⁷ ERN TD413-M0065.

²⁷⁸ Confidential meeting, 11 November 2020; Confidential meeting, 8 October 2020; Confidential meeting 22 September 2020; Confidential meeting 11 June 2020; Confidential meeting, 5 June 2020.

prosecutions have been undertaken, resulting in near total impunity.²⁷⁹ Strengthening the criminal justice system including investigations to identify individuals responsible for gross human rights violations and abuses and serious crimes is key to ensuring broad accountability.

B. SSPDF, SPLA-IO (RM), and NAS

171. Both the SSPDF and SPLA-IO (RM) provided military support to multiple local groups involved in armed violence in Jonglei State and Greater Pibor Administrative Area in February and May 2020.²⁸⁰ This was motivated by political or economic interests and based on community and kinship. Multiple witnesses confirmed the planning that went into the offensive, including meetings of planners, recruitment of militia fighters in Pibor, resupplying of weapons and ammunition from Juba, delivered to Pibor by military aircraft.²⁸¹

172. Violations and crimes committed in Tonj East on 8 and 9 August 2020 were the result of conflict between the SSPDF Disarmament Force²⁸² and civilians.²⁸³ The Commission documented indiscriminate attacks by the SSPDF affecting civilians at a market in Romich.²⁸⁴ The Commission has reasonable grounds to believe that the Deputy Commander of the Disarmament Force based in Tonj was the SSPDF commander when Romich was attacked.²⁸⁵ The head of the SSPDF Military Intelligence in Rumbek equally, who is at the same time the Commander of the Disarmament Forces, knew of some of the crimes being committed.²⁸⁶ The Deputy Commander of the Disarmament Forces had the capacity to prevent the attack by the Disarmament Force but failed to take action.²⁸⁷

173. The Commission found no evidence that military command and control structures had broken down such that the SSPDF Division 10 Commander or his subordinate commanders would not have been exercising control over their forces.²⁸⁸ The Commission received no information about steps taken by the SSPDF commanders to prevent or stop the attacks on civilians or to punish those who perpetrated the crimes. The attacks lasted two days and there were many displaced people arriving in Tonj town, so information about the attacks on civilians would almost certainly have reached the commanders in Tonj, even if they did not order or witness them.²⁸⁹

174. The Commission therefore finds reasonable grounds to believe that at least these three SSPDF Commanders knew or had reason to know that subordinates under their control were committing or had committed human rights violations and crimes against civilians, yet failed to take reasonable and necessary measures to prevent or mitigate the violations or punish the perpetrators. The Commission has received no information on steps taken by the Government to criminally investigate and prosecute those responsible.

175. The Commission's evidence suggests that the SPLA (now SSPDF) used starvation of civilians as a method of warfare, by taking actions designed to deny or

²⁷⁹ Confidential meeting, 5 June 2020; Confidential meeting, 3 June 2020.

²⁸⁰ ERN TD101-M0005; ERN TD102-M0010; ERN TW301-M0005; ERN TW302-M0010; ERN TW303-M0015; ERN TW105-A0025; ERN TW103-A0015; ERN TW110-A0010.

²⁸¹ ERN TD101-M0005; ERN TD102-M0010; ERN TW303-M0015; ERN TW110-A0010.

²⁸² Comprising elements of the Tiger Battalion, NSS personal, and SSPDF Division 10 (also known as Division 11). ERN TW211-L0015.

²⁸³ ERN TW210-L0010.

²⁸⁴ Ibid.; ERN TW211-L0015.

²⁸⁵ ERN TW211-L0015.

²⁸⁶ Ibid.

²⁸⁷ Ibid.; ERN TW212-L0010; ERN TW213-L0015.

²⁸⁸ ERN TW212-L0010.

²⁸⁹ ERN TW213-L0015, para. 22; see also Death toll from Tonj East fighting rises to 148, Radio Tamazuj, 13 August 2020, available at <https://radiotamazuj.org/en/news/article/death-toll-from-tonj-east-fighting-rises-to-148>.

withhold food or objects indispensable for survival, in order to weaken the population. In June 2018, following the capture of areas in Western Bahr el Ghazal, the SPLA 5th Division commander denied all humanitarian access.²⁹⁰ The Commission determined that the SPLA's Division 5 objective was to deprive civilians and cause them to move away. The SPLA objective was initially achieved as numerous civilians from Mboro town fled again between August and September 2018.²⁹¹ The South Sudanese authorities have an obligation to investigate all allegations of the use of starvation as a method of warfare committed by their armed forces or opposition forces and to prosecute those responsible.

176. The SPLA Act of 2009 provides for holding commanders responsible for failing to prevent or punish crimes committed by subordinates under their control. The Commanders are empowered to convene courts martial to try disciplinary and criminal cases of persons under their command.²⁹² The Commission notes that the Government has not begun procedures that lead to the investigation and prosecution of individuals who bear criminal responsibility for the crimes committed by the forces involved in the above incidents.

177. Child abductions were carried out by parties to the conflict including NAS and SPLA-IO.²⁹³ The Commission noted the mass child abductions in Central Equatoria in 2020, many conducted by NAS in the first half of the year.²⁹⁴ During a standoff between the SSPDF and the SPLA-IO in August 2020 in Tonj, as a result of the detention by the SSPDF of an SPLA-IO Brigadier General, the SPLA abducted numerous civilians in retaliation, setting the safety and release of the General as a condition for their release.²⁹⁵

C. NSS

178. Although senior NSS officials were aware of prolonged detentions,²⁹⁶ often to stifle the detainees' freedom of expression and opinion,²⁹⁷ cases of arbitrary detention continued to be organised in contravention of the National Security Service Act.²⁹⁸ No steps appear to have been taken by senior officers to release detainees or bring them before a court in line with the provisions of the Act or other applicable law, or to ensure that their subordinates were prevented from or punished for violating the basic rights of detainees. On the contrary, detainees were often beaten and threatened.²⁹⁹

179. The Commission has found no evidence that the regular chain of command within the NSS had broken down. The Commission has reason to believe that the arbitrary arrests and detention were based on orders by senior NSS and Government officials.³⁰⁰

180. The Commission also found reasonable grounds to believe that senior NSS officials knew or had reason to know that subordinates under their control were committing or had committed human rights violations, particularly forced

²⁹⁰ ERN TD103-M0015; ERN 101799-101803.

²⁹¹ See A/HRC/45/CRP 3.

²⁹² SPLA Act (2009), Secs. 18, 34, and 36.

²⁹³ ERN TW117-A0015; ERN TD415-M0075.

²⁹⁴ ERN TD416-M0080.

²⁹⁵ ERN TD417-M0085; See <https://eyeradio.org/why-waus-incident-almost-brought-the-sspdf-and-spla-io-to-war>.

²⁹⁶ ERN TW202-L0010.

²⁹⁷ *Ibid.*

²⁹⁸ National Security Service Act (2014), Sec. 54(2).

²⁹⁹ ERN TW202-L0010.

³⁰⁰ *Ibid.*; ERN TW225-L0015.

disappearance, extra judicial executions, torture, and arbitrary detention, and these senior officials failed to take measures to prevent or punish them.³⁰¹

181. The Commission has engaged with the Government of South Sudan and is convinced that the Government is aware of the human rights violations committed by members of its own security services. Regrettably, the Commission has received no information on steps taken by the Government to investigate and prosecute those responsible for enforced disappearances and other human rights violations in any of the detention centres, or to provide compensation to victims. Investigations and prosecutions should be undertaken to determine criminal accountability for violations, including enforced disappearances.³⁰²

D. Government of the Republic of South Sudan

182. The Commission has documented the failure of the Government of South Sudan to conduct investigations and, where evidence was sufficient, prosecute perpetrators of serious violations of international law, including with regard to conflict-related sexual violence.³⁰³ A number of individuals that the Commission identified as bearing responsibility have been granted amnesty.³⁰⁴

183. In the context of intercommunal conflict, widespread conflict-related sexual violence is rife. The Government has a duty to prevent rape by its security agents and to take adequate measures to prevent, investigate and prosecute rape, even when committed by armed groups. The Commission noted that some rapes committed by SSPDF soldiers in December 2019 and January 2020 were prosecuted and perpetrators convicted by a Court Martial.³⁰⁵ During the mandate, the Commission documented extensive abduction and sexual violence by different non-state actors, there has nevertheless been little accountability.³⁰⁶

X. Risks and prevention of atrocity crimes

184. With more than 75 per cent of the country engulfed in brutal violence at the local level, South Sudan is descending into yet another phase of deadly conflict. Historical ethnic polarisation—itsself the legacy of past conflicts—continues to stoke today's political and resource competition. The result is targeted localised violence, aggravated by the proliferation of military grade arms in the hands of civilians and non-state armed groups and members of organised militias. Furthermore, the absence of functional state and governance structures at sub-national levels, a national climate of social, political and economic instability, together with entrenched impunity for serious violations represent a toxic mix with potential for further conflagration that will be difficult to reverse unless immediate, deliberate and concrete mitigating steps are taken by the Government and other responsible actors.³⁰⁷

Localised violence and armed conflict

³⁰¹ ERN 102126-102140; ERN TW231-L0015; ERN TW206-L0010; ERN TD418-M0090; ERN TW117-A0015; ERN TW209-L0015; ERN TW220-L0010; ERN TW116-A0010; ERN TW117-A0015; ERN TW303-M0015; ERN TW109-A0015; ERN TW107-A0015; ERN TW104-A0020; TW103-A0015.

³⁰² ERN TW225-L0015.

³⁰³ ERN TW121-A0015; ERN TW224-L0010; ERN TW223-L0015; ERN TW122-A0010; ERN TW105-A0025; ERN 102978-102962; ERN 102791-102796; ICRC, Customary International Humanitarian Law: Volume 1: Rules, Rule 158. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, at Principle 4.

³⁰⁴ Confidential dossiers on file with the Commission; S/RES/1820 (19 June 2008); S/RES/1325 (31 October 2000).

³⁰⁵ ERN TD419-M0100.

³⁰⁶ ERN TD420-M0105.

³⁰⁷ See Framework of Analysis for Atrocity Crimes: A Tool for Prevention, United Nations (2014).

185. For the second successive year, across several regions in the country, the Commission recorded a sustained intensification in attacks against the civilian population by armed groups and militias organised and mobilised along ethnic lines, often with the support of armed state and opposition forces. Between February 2020 and January 2021, the Commission reported intense and protracted armed fighting between ethnic groups in Jonglei State, Warrap State, and Greater Pibor Administrative Area. These incidents of violence generated a context where gross human rights violations and abuses were committed with a total disregard for human life. Armed attacks against civilians were lethal and highly destructive, resulting in massive killings, including of eight humanitarian workers in Jonglei and GPAA. Other violations and abuses included torture; sexual violence, forced displacement, arson, and the unnecessary destruction of civilian property including homes, boreholes, water treatment installations, crops, food storage warehouses, and properties of international and non-governmental organisations, looting, abductions, and enforced disappearances.³⁰⁸

186. In a clear escalation, acts that would historically be considered impermissible were witnessed during these attacks. These included the targeting and killing of pregnant women.³⁰⁹ Children, including infants, were abducted, and those who failed to go quietly were often brutally killed. In Jokreal, a 9-year old child was burnt alive inside a *tukul*. Women were abducted and subjected to sexual slavery and repeated and prolonged torture at the hands of the members of these armed groups. The Commission's findings in respect of the escalation of the conflict at the local level in the period since 2013, and the increase in serious human rights violations are also corroborated by UNMISS, which reported that intercommunal conflicts were the primary source of serious violations committed against thousands of civilians in eight out of the ten states of South Sudan, with much higher level of incidents recorded in 2020 compared to 2019.³¹⁰

187. The evidence obtained by the Commission points to a growing pattern of systematic and coordinated militarised attacks against the civilian population in the context of localised violence; circumstances that may, arguably, fulfil the criteria for certain atrocity crimes. The Commission established that each new wave of attacks against civilians recorded in Jonglei and the GPAA appeared to be more organised, systematic, and coordinated.³¹¹ Moreover, in several instances, fighters regrouped and organised repeat attacks within the same villages. Attacks also involved large groups of hundreds to tens of thousands of armed local fighters – for instance, the attacks in Pibor County between June and August 2020 involved up to 50,000 armed fighters. In most cases, these fighters were highly organised within specific “age-set” groups and arrived in both vehicles and on foot from different directions. Attacks were highly militarised, deployed using high grade and sophisticated arms and military weapons including AK-47 guns, rifles, PKMs, RPGs and other “new” firearms never seen before by the local communities. The sheer level of destruction left behind following attacks could only have been possible through the deployment of such large, organised, and armed militia groups. In Likuangle and Gumuruk villages, the attackers drove out civilian populations and captured their villages for one and three months, respectively.

188. The emerging patterns indicate that political elites, SSPDF and SPLA-IO forces offered arms, financial, military training, and operational support, as well as armed personnel to facilitate and sustain the attacks by armed local militias against communities that were targeted, often based on their ethnicities. Local politicians, youth leaders, and spiritual leaders also supported the mobilisation of fighters, including through incitement of ethnic hatred and violence. The Commission

³⁰⁸ A/HRC/46/53, paras. 32-46.

³⁰⁹ *Ibid.*, para. 70.

³¹⁰ UNMISS Human Rights Division, Quarterly Briefs on Violence Affecting Civilians, January – March 2020, April – June 2020, and July to September 2020.

³¹¹ A/HRC/46/53, para. 36.

established that arms were delivered by helicopter and by road, to support local militias in defending their territories and repulsing opponents.³¹² Victims reported to the Commission that they witnessed the presence of SSPDF and SPLA-IO forces among groups of local militia attackers. For instance, a Murle Colonel was killed, and AK-47 guns bearing markings of the South Sudan Police Service were retrieved during the attacks in Pieri Town (Jonglei State). Further, local militia received backing from whole communities that have bought into the ideology of violence, involving women preparing meals, and traditional and spiritual leaders conducting rituals.

189. At the same time, hostilities persisted between SSPDF, local militias, and NAS (a non-signatory to the R-ARCSS), resulting in attacks against civilians in Central Equatoria, in violation of international humanitarian law and the 2017 Cessation of Hostilities Agreement. Armed SSPDF and SPLA-IO officers and militia destroyed and looted property, and physically and sexually assaulted civilians during military operations against NAS. On the other hand, NAS fighters continued to abduct men, women, and children during attacks and forcibly conscripted them into their forces as fighters, or used them as porters, cooks, or sexually enslaved them as “wives”. Furthermore, a context of heightened insecurity prevailed in Central Equatoria and neighbouring regions, with armed soldiers engaging in road ambushes against civilians and humanitarian workers, and looting their vehicles, motorbikes, medicine, and communication equipment. Soldiers who had not received their food rations and remuneration also used violence to extort food and household items from civilians.³¹³ Such acts are crimes under national law, and can constitute war crimes and other serious crimes within the jurisdiction of the Hybrid Court for South Sudan.

Insecurity and humanitarian crisis

190. The on-going violence has resulted in dire insecurity and a humanitarian crisis in most parts of the country, creating an environment where there is an on-going risk of the commission of gross human rights violations and atrocity crimes. Of greatest concern is the further proliferation of arms in the hands of the militia and vigilante groups that have become a law unto themselves.

191. The prevailing situation is undoubtedly compounded by the lack of a functioning governance system or state authority and effective law enforcement mechanisms at the sub-national level to guarantee the protection of civilians from gross human rights violations and atrocity crimes. This is primarily due to the Government’s failure to implement state and local level governance, and the incapability of intervening to prevent and address the violence. The Transitional Security arrangements envisaged under the R-ARCSS have not been implemented, and consequently there is no clear structure for security sector governance. Security forces come under the purview of multiple government departments with unclear, or absent, civilian oversight. In the absence of state and local government authority, communities feel justified in taking up arms to defend themselves through militia and vigilante groups, or in collaboration with armed state and opposition forces.

192. Vicious ethnic-based attacks and counterattacks levelled against targeted communities destroyed whole villages through the deliberate torching and looting of homes, farms, and food storage, leading to displacement, hunger, and loss of livelihoods for hundreds of thousands of civilians. The influx of civilians displaced during localised violence adds to the already existing crisis in South Sudan, which has rendered more than 7.5 million people in need of humanitarian assistance.³¹⁴ Many of the affected victims were previously displaced during the 2013 conflict and as a result of natural disasters such as flooding and drought. The majority of those displaced are unable to return to their villages, because they fear being targeted in

³¹² Ibid., para. 37.

³¹³ Ibid., paras. 27-31.

³¹⁴ Ibid. para. 51.

repeat attacks. Furthermore, they neither have shelter nor sources of food to return to and lack the resources to rebuild their homes and livelihoods. For many women and girls, the violence also continues within IDP and refugee camps, where they are faced with threats of and actual sexual violence, including from military personnel.

Political and social instability

193. Despite the signing of the 2015 ARCSS and 2018 R-ARCSS by the warring parties and others, the South Sudanese people are yet to embark upon the recovery of peace, stability, and national cohesion that democratic governance promises. Instead, parties to the Agreement have sustained political and ethnic-based contestations, resulting in delays in the implementation of critical governance, economic, judicial and security sector reforms, and transitional justice measures required under the R-ARCSS to meaningfully address the root causes and drivers of conflict in South Sudan. Furthermore, over the past two years, the Government of South Sudan has failed to heed the call of regional bodies, such as the African Union and IGAD, for the timely implementation of key provisions of the R-ARCCS including establishment of the Transitional National Legislative Assembly and security sector reform. The African Union has cautioned against complacency, stressing that the cost of failure is unacceptable.

194. In South Sudan, historical and contemporary grievances which are linked to social, political, and economic marginalisation of certain groups and communities continue to foment polarisation. These grievances are being exploited to perpetuate violence along ethnic lines. The evidence documented by the Commission confirms that cattle raiding, which has existed historically as a socio-cultural practice, has mutated into a lethal tool increasingly deployed by political actors and civilian communities alike to build up social, political, economic, and territorial control, influence, and power.

195. Violence against targeted communities and revenge attacks have become the preferred mechanism for settling disputes within and between different ethnic groups, including over land rights, access to grazing land, and benefits accruing from oil and other natural resources, cattle, and other property ownership. In addition, there is resentment due to violations of socio-cultural practices and as a result of economic and political marginalisation. Notably, a series of incidents of inter-communal fighting in Warrap State were triggered by a case of elopement (see para. 117, above), resulting in protracted counterattacks and retaliation, which was followed by serious violations against civilian communities, including murders and displacement, which has been on-going since April 2020.

196. Localised conflict in South Sudan predominantly manifests in the targeting of rival ethnic communities. In this context, women and girls have been singled out not only because of their gender, but also because they belong to the ethnic group of the other. Thus, the conflict is disproportionately impacting on women and girls who have been exposed to the most brutal violations and atrocities. Women represent economic and reproductive wealth in South Sudan, as bridewealth is often exchanged for marriage. The targeting of women and girls and the gang rapes and sexual violence not only destroy women's bodies but also impact on the long-term value of women to their communities. There has been a commodification of women's and girl's bodies, as tools for economic leverage and an incentive for fighters and warring factions. During the mandate period, the Commission has identified a continuum of sexual and gender-based violence, including rape, gang rape, abduction, and sexual slavery, as well as forced marriage. Conflict-related sexual violence thrives in parallel within longstanding domestic traditional and cultural practices including child marriages, dowry, bride price related violations, and domestic violence.

197. The Commission has further established that in the absence of attractive alternative economic and livelihood opportunities for young South Sudanese men,

the incentives for joining militia groups, both in terms of payments from Government and from other, illicit, revenue streams derived therefrom, are significant.

198. Furthermore, the persistent disagreements between parties within the Government, their resistance to making concessions, and failure to genuinely move forward with implementation of the R-ARCSS, pose a significant threat to the fragile peace in South Sudan. The 2013 and 2016 conflicts clearly demonstrate that political differences at the capital in Juba invariably trigger violence at state and local levels, particularly between ethnic groups affiliated with various political actors, or as a means of settling political scores.

Impunity for human rights violations and atrocity crimes

199. The prevailing impunity for gross human rights violations and atrocity crimes fuels the use of violence as a political tool in South Sudan. To date, the Government of South Sudan has failed to put in place meaningful measures for the prevention of localised violence, which has been occurring systematically for more than two years. Various attempts have been made over the years by the Government and non-governmental bodies to reconcile warring communities. These initiatives have been short term—often interrupted by new waves of conflict—and top-down rather than community-driven. They have therefore proven to be unsustainable and ultimately unsuccessful. The Commission’s investigations demonstrate that localised conflicts in South Sudan are complex and have evolved from a long history to the brutal and lethal violence that is experienced across the country today. To address this damaging phenomenon effectively, it will be necessary to interrogate and address the root causes and drivers of localised violence. This is an undertaking to which the Commission for Truth Reconciliation and Healing can contribute.

200. Reliance on disarmament efforts alone is insufficient. Past Government-initiated disarmament processes have failed to bear lasting fruit, due to insufficient planning and input from communities: the rushed and top-down approach has lacked meaningful engagement with affected communities. For instance, a disarmament process launched in Tonj East County (Warrap State), rather than quelling the violence, itself triggered clashes between civilians and State armed forces, resulting in further violations within affected communities. The Commission established that forces tasked with conducting the disarmament exercise went on a rampage, killings scores of civilians, raping women and girls, and looting and destroying civilian property, including by slaughtering hundreds of cattle.³¹⁵ Armed community fighters and militias are, moreover, unwilling to relinquish the influence they have gained through the possession of weapons.

201. Judicial proceedings have only been initiated against perpetrators in a handful of cases. In most cases, violations and crimes resulting from localised conflict go unpunished, with affected communities resorting to revenge and retaliatory attacks rather than pursuing justice through formal courts or customary law. In a few cases, judicial interventions have led to further violence instead of deterrence, due to a lack understanding within affected communities on the functioning of formal justice systems, their preference for customary law compensation and reconciliation practices, and high levels of suspicion and mistrust against State institutions. For instance, two cases involving shooting and killing committed during attacks against civilians that were tried at the High Court in Warrap State resulted in further retaliatory attacks by members of affected communities as they expected to receive more cows in compensation,³¹⁶ and the death penalty instead of jail sentences for the accused person,³¹⁷ similar to customary law practices.

³¹⁵ Ibid., paras. 40-42.

³¹⁶ See ERN TW219-L0015, para. 10; ERN TW235-L0015, para. 7; and ERN TW216-L0010, paras. 5 and 8.

³¹⁷ See ERN TW219-L0015, para. 5; and ERN TW218-L00105, para. 5.

202. Prevailing impunity for gross human rights violations is compounded by the on-going suppression of dissent and advocacy by human rights defenders, civil society, and the media in South Sudan, which seriously undermines the rights to freedom of information and expression, and public agitation for government transparency and accountability. The Commission has recorded numerous incidents where the South Sudan state security actors have unlawfully detained, tortured, harassed, intimidated, disappeared, or murdered journalists and human rights defenders that they perceive to be critical of the Government. Furthermore, the continued exploitation of the criminal offence of defamation creates a chilling effect and results in self-censorship among members of civil society and the media.

203. The scale and repetition of armed violence at the localised level, the dramatic increase in serious violations, their gravity, and similarities in *modi operandi*, as well as patterns of conduct, and their link to political elites and national institutions all point to political crimes, implicating the State and those forces aligned to them. The lack of accountability for historical grievances and the general state of lawlessness fuel impunity for gross human rights violations, leaving deep-seated ethnic divisions and gender-based discrimination open to socio-political exploitation to sustain violence. Further, the proliferation of arms in the hands of a significant part of the civilian population and non-state groups that can easily be mobilised and exploited to fuel violence, and the absence of an effective formal security sector that can maintain a monopoly on the use of force, have central and determinative impacts regarding instability and insecurity in South Sudan. These interconnected factors create a conducive environment for, and have the potential to trigger and exacerbate, atrocity crimes in South Sudan.

204. The Commission strongly urges that the Government, with support from regional and international partners, must act swiftly to fully implement the R-ARCSS and establish vital governance and security institutions, to implement accountability and transitional justice mechanisms to ensure sustainable peace for South Sudan. Most critical is the establishment of state and local government authority and completion of the unification of necessary armed forces in order to restore law and order at the sub-state levels. Further, the Government should urgently implement transitional justice, national healing, and reconciliation measures, with the full participation of community-based structures, to understand and identify effective responses to the causes and drivers of on-going localised violence.

205. While there has been a greater focus on establishing the Hybrid Court set out in Chapter V of the R-ARCSS, that Chapter also envisages a holistic transitional justice approach in which the Commission for Truth, Reconciliation, and Healing will play a critical role in dealing with past atrocities and rebuilding social capital. A Truth Commission has the potential to deal with the structural underpinnings of decades of conflict, including the denial by the Government, the opposition, and other actors of their own complicity in continuing the conflict. Truth-telling contributes to atrocity prevention through the public accounting of the magnitude of the crimes committed, which is often unknown to those not directly affected, and can expose the underlying motives, means, and structures used in committing those crimes. Based on this accounting, recommendations for prevention can be formulated, in particular, measures for promoting reconciliation and transforming discriminatory structures.

206. The delay in setting up the Truth Commission is therefore a missed opportunity for the managing of diversity in South Sudan, in particular, ethnic differences. Through the processes of the Truth Commission, different communities would be able to learn about how diverse communities experienced violence and to confront their own denial about the suffering of the other. In short, truth-seeking would help to change entrenched mindsets and strengthen the desire for reform and ultimately reconciliation. In addition to enabling a better understanding of the structural nature and fault-lines that have driven the conflict in South Sudan, truth seeking through the CTRH would also provide a meaningful space for affected

communities to begin an honest dialogue about persisting grievances and differences, and to identify practical solutions for creating cohesion between and among different communities and for the restoration of the rule of law. However, a longer-term programme for community-based healing will be critical to progressively cultivate trust between communities and overcome long-held and deep-seated resentments.

207. Chapter V also commits the Government to establish a Compensation and Reparation Authority. Reparations are also deeply rooted in the culture and tradition of settling conflicts in South Sudan. In this context, it is critical to engage with South Sudanese civil society and obtain input on reparation and compensation measures appropriate for South Sudanese citizens bearing in mind the multiple serious violations including displacement, loss of breadwinners, loss of property and homes, cattle, and worldly goods due to the conflict and the consequent harm that has been suffered, including psychological trauma.

208. In addition, institutional reform and the guarantee of non-recurrence are integrally linked to prevention. In this regard, it is regrettable that security sector reform, as envisaged in Chapter II of the Peace Agreement, has also been delayed in South Sudan. Institutional reform should involve establishing governance structures at multiple levels, robust oversight mechanisms, and strengthening the capacities of national structures, including the legislature, the judiciary, criminal justice system, and the national human rights institution, as well as corruption oversight bodies, in order to uphold good governance, build a human rights culture, and establish the rule of law. A legitimate transitional justice process acknowledges past grievances and ensures accountability for serious international crimes. Prevention requires managing ethnic and religious diversity, promoting tolerance and respect for plurality, promoting a robust and diverse civil society, fostering an independent and pluralistic media sector, and strengthening its capacity to counteract hate speech.

209. The Government and the African Union Commission must now fast track the establishment of the Hybrid Court for South Sudan to provide a mechanism for the investigations and accountability of individuals responsible for atrocity crimes, including during the present transitional period. Steps should also be taken to strengthen national investigations and accountability capacities and efforts against all kinds of perpetrators of localised violence. In the immediate term and given the continuing risk of significant violence, however, the Government should consider establishing a special investigations and prosecution mechanism to pursue accountability against perpetrators, as a measure to deter further localised violence. In addition, sensitisation of community leaders and civilians to the concept of the rule of law and variances between formal and customary laws, is critical to cultivate respect and acceptance of judicial outcomes.

210. For the longer-term recovery, reconstruction efforts should be accelerated to enhance access to education and vocational training, especially in marginalised and rural areas, as a promising strategy to de-prioritise the cattle-based economy, and create other feasible, alternative sources of livelihood.³¹⁸ Constitutional and legal reforms should underpin these efforts, by incorporating human rights principles and informing a national strategy to manage diversity, including by remedying ethnic-based divisions, and any marginalisation, discrimination and inequalities experienced by different groups in South Sudan.

³¹⁸ See, further, UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide, Joint study on the contribution of transitional justice to the prevention of gross violations and abuses of human rights and serious violations of international humanitarian law, including genocide, war crimes, ethnic cleansing and crimes against humanity, and their recurrence, A/HRC/37/65 2018; and UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, A Comprehensive Framework Approach to Prevention, A/72/523, 2017.

XI. Conclusions

211. 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 organised militia groups during localised conflicts in Jonglei State, Greater Pibor Administrative Area, and Warrap State.

212. At the subnational level, localised conflicts, often with the participation of organised armed militias affiliated with the South Sudan People's Defence Forces (SSPDF) or the Sudan People's Liberation Army in Opposition (pro-Riek Machar) (SPLA-IO (RM)) were characterised 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 unnecessary destruction of civilian property, crops, and other means of livelihood.

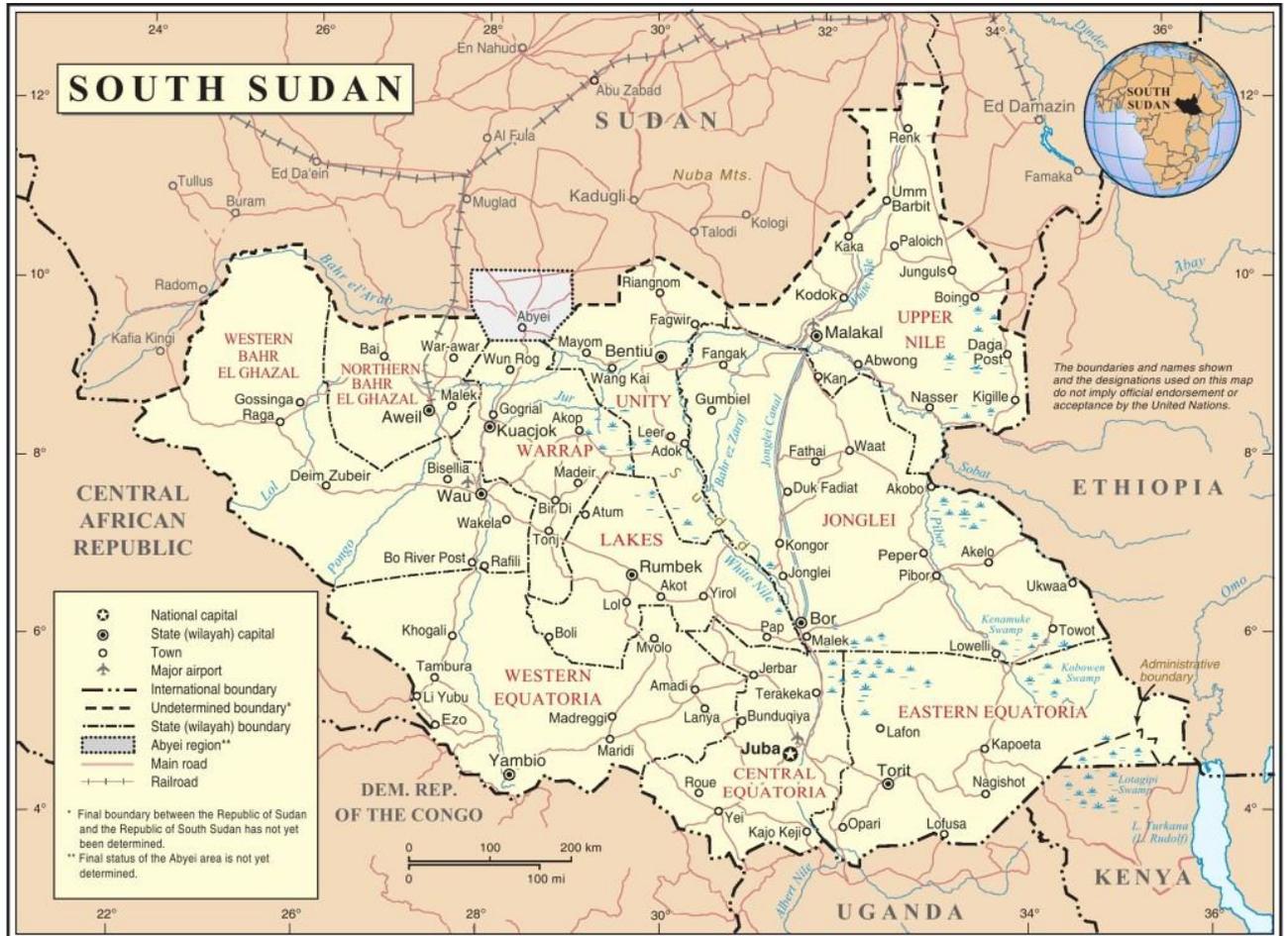
213. In Central Equatoria, Jonglei State, Greater Pibor Administrative Area, and Warrap State, incidents of sexual and gender-based violence, including conflict-related sexual violence in Central Equatoria, continued to be widespread and pervasive, including in the context of localised conflicts, and were characterised by a pattern of terror and subjugation. Violations documented by the Commission included rape and gang rape, sexual mutilation, forced marriage, abduction, sexualised torture, and psychological torture.

214. Arbitrary arrests and detentions, and other restrictions on freedom of expression, opinion and assembly, also continued to characterise daily life in South Sudan, in acts that violated the right to information and freedom of expression, as well as 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.

215. Localised 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.

Annex

Map of South Sudan



Map No. 4450 Rev.1 UNITED NATIONS
October 2011

Department of Field Support
Cartographic Section