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Human rights situations that require the Council's attention**Human rights violations and related economic crimes in the Republic of South Sudan^{*,**}****Conference room paper of the Commission on Human Rights in South Sudan***Summary*

Even prior to gaining independence in July 2011, human rights violations and related economic crimes in southern Sudan had a direct, negative impact on the capacity of the State to meet its core socio-economic obligations, such as healthcare, education, and the Sustainable Development Goals, with poor and extremely poor civilians including women and children disproportionately affected. As early as 2012, the nascent Republic of South Sudan had reportedly lost billions of US dollars in illicit financial flows. Since independence, and owing to the abject failure of national authorities to fulfil their human rights obligations, over 80 per cent of South Sudanese women, men, and children continue to be exposed to extreme and wholly unwarranted poverty, vulnerability, and suffering, as ordinary citizens bear the brunt of the most egregious embezzlement, plunder, and looting of their critical resources by unaccountable elites, aided by international accomplices. Illicitly diverted resources have also been used to fuel conflict and foment violence.

The foregoing report demonstrates that staggering amounts of money and other wealth have been illicitly siphoned from South Sudan's public coffers and resources. Over two years alone, the Commission uncovered that more than \$73 million USD in non-oil revenue remain unaccounted for. These economic crimes represent a fraction of an overall pattern of theft and have multiple adverse implications for the attainment of economic, social and cultural rights, as well as civil and political rights. The material gathered by the Commission – within the constraints of its resources – is necessarily emblematic of what is a larger and more pervasive crisis leading to the dire human rights situation in the country.

* Reproduced as received.

** The present conference room paper of the Commission on Human Rights in South Sudan is intended to be read in conjunction with the Commission's mandate reports submitted pursuant to Human Rights Council resolution 43/27 (A/HRC/43/56 and A/HRC/46/53).

Contents

	<i>Page</i>
I. Introduction	3
II. Mandate and methodology	7
III. The Revitalised Peace Agreement (R-ARCSS)	11
IV. Applicable law	14
V. Oil revenue	18
VI. Non-oil revenue.....	20
A. Domestic and international focus.....	20
B. Ministry of Finance and Economic Planning: “Al Cardinal” and Kur Ajing Ater payments	23
C. De La Rue PLC and international corporations	29
D. The National Revenue Authority (NRA).....	32
VII. Economic, social and cultural rights	39
VIII. Conclusions	40
IX. Recommendations	42

Annexes

Annex I Map of the Republic of South Sudan	47
Annex II Analysis of banking regulation	48
Annex III Oil consortia	51
Annex IV Harm to health and the environment	53

I. Introduction

1. Economic crimes have a direct, negative impact on the capacity of the State to meet the core socio-economic needs of citizens, such as healthcare, education, and other Sustainable Development Goals, with poor and extremely poor citizens including women and children disproportionately affected. Owing to the abject failure of national authorities to fulfil their obligations, South Sudanese women, men, and children today are exposed to extreme and wholly unwarranted poverty, vulnerability, and suffering. Citizens continue to pay the price for the most egregious embezzlement, plunder, and looting of their critical resources by unaccountable elites, aided by international accomplices. Illicitly diverted resources have also been used to fuel conflict and foment violence. The material gathered by the Commission, within the constraints of its resources, is necessarily emblematic of what is a larger and more pervasive crisis. The economic crimes detailed in this report have multiple adverse implications for the attainment of economic, social and cultural rights, as well as civil and political rights.

2. As early as 2012, the nascent Republic of South Sudan had reportedly lost billions of US dollars (USD) in illicit financial flows, as indeed was acknowledged by President Kiir's instructions to 75 ministers and other Government officials to return \$4 billion USD which he claimed Government officials had stolen since 2005, when Southern Sudan first gained relative autonomy. Others have indicated that the amounts are much higher.¹ There is no evidence that any of this money was ever recuperated. While these are significant amounts for any country, for South Sudan, this grand scale theft has been exceptionally devastating, considering that the nation continues to find itself near the very bottom of the Human Development Index, having ranked 185 out of 189 countries in 2020, or the fifth most challenging country in the world in which to live.² Furthermore, according to recent estimates, approximately 82 per cent of the South Sudanese population is considered to live in poverty,³ with economically vulnerable segments of society further expected to experience rises in poverty due to severe food insecurity,⁴ inflation, and the continued limited access to basic services.⁵ Moreover, life expectancy in South Sudan is among the lowest in the world, averaging 57.9 years.⁶

3. Acknowledging this enduring problem, in Chapter IV of the 2018 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), the parties sought to address the effective financial management of the economy and considerable natural resources of South Sudan (see Section III., below). In particular, Chapter IV provides a roadmap which constitutes a sound basis for better management of the nation's economy, resources, and finances; it introduces a series of provisions that, if implemented, would curb systemic grand corruption and regulate business dealings, including those between the Government and foreign conglomerates. The effective implementation of Chapter IV would also increase transparency, strengthen oversight and management of both oil and non-oil revenues, and reduce harm to the environment through better management,

¹ See, e.g., *South Sudan officials 'stole \$4bn'*, BBC NEWS, 5 June 2012, available at <http://www.bbc.com/news/world-africa-18326004>. In addition to President Kiir's statement, the Foreign, Commonwealth & Development Office of the United Kingdom has estimated that at least 6.8 billion USD in Government funds had been misappropriated since 2012. ERN D121460 - D121461.

² *Latest Human Development Index Ranking*, UNITED NATIONS DEVELOPMENT PROGRAMME, 2020, available at <http://hdr.undp.org/en/content/latest-human-development-index-ranking>.

³ *The World Bank in South Sudan*, WORLD BANK, 2 April 2021, available at <https://www.worldbank.org/en/country/southsudan/overview>.

⁴ For more on acute food insecurity in South Sudan, see generally the conference room paper of the Commission on Human Rights in South Sudan, "There is nothing left for us": starvation as a method of warfare in South Sudan, A/HRC/45/CRP.3.

⁵ South Sudan Briefing, WORLD BANK, 21 April 2020, available at <http://pubdocs.worldbank.org/en/713731492188171377/mpo-ssd.pdf>, at p. 283.

⁶ *Latest Human Development Index Ranking*, UNITED NATIONS DEVELOPMENT PROGRAMME, 2020, available at <http://hdr.undp.org/en/content/latest-human-development-index-ranking>.

including the requirement for environmental impact assessments, and the establishment of an Environmental Management Authority.⁷

4. Endowed with one of the largest petroleum reservoirs in sub-Saharan Africa, since 2005, South Sudan has benefited from vast sums of petroleum revenues which account for approximately 90 per cent of its overall fiscal revenue.⁸ One of the most oil-dependent countries in the world, oil in South Sudan accounts for almost all exports, and more than one-third of its gross domestic product (GDP).⁹ Despite this disproportionate reliance on oil revenues, South Sudan's system of oil revenue collection remains alarmingly informal and weakly regulated, lacking in independent oversight and transparency: invariably, this has provided considerable opportunity for corruption and the misappropriation of funds on a massive scale (see Sections III. and V., below). However, oil has also been a bane upon the lives of the people of South Sudan: by a combination of conflict and general mismanagement, since 2013, unmaintained oil pipelines have undergone severe corrosion, causing spillages and leaks that have polluted the soil, air, and water. This has impacted negatively on citizens' right to an adequate standard of living, in particular the right to health of local populations in Unity State and Ruweng Administrative Area (see paras. 82-85 and Annex IV, below).

5. The Commission has also investigated allegations of the misappropriation of non-oil revenues in South Sudan.¹⁰ Between December 2019 and February 2020, the Commission addressed 27 written requests for information to commercial banks in South Sudan, 14 to South Sudanese Government institutions or individuals, and 17 to foreign individuals, foreign companies, and intergovernmental institutions. The letters either sought background information on existing procedures or asked about specific situations, events, or transactions which suggested the perpetration of economic crimes and implicated politicians and senior Government officials.¹¹ Regrettably, only two banks replied, although in two cases South Sudanese Government institutions had assured the Commission that a response was being prepared and would be provided.¹²

6. Despite the lack of response, the Commission was able to uncover evidence that, since 2018, State officials and entities linked to the Government of South Sudan have embezzled and laundered at least tens of millions of USD through illicit financial flows, including monies diverted from the Ministry of Finance and Economic Planning (paras. 98-118, below) and the National Revenue Authority (paras. 131-164, below). As with oil revenues, these figures undoubtedly represent only the tip of the iceberg, and the cases that the Commission cites below must be viewed as merely illustrative of a much larger scale of grand corruption in the country implicating all levels and sectors of administration.¹³ Establishing the true figures and, addressing this corruption is a larger task and requires concerted national and international efforts, including political will, effective policies, strategies, and systems.¹⁴ At the domestic level, it also requires political will matched by consistent political leadership to begin to reverse the culture of pervasive corruption and to rebuild an inclusive and fair political system. The Commission also notes that incidences of corruption have been widely reported, and that some States have taken steps to sanction individuals and entities, and to

⁷ See, e.g., R-ARCSS, 4.10, 4.9.1, and 4.6.1.

⁸ *The World Bank in South Sudan*, WORLD BANK, 2 April 2021, available at <https://www.worldbank.org/en/country/southsudan/overview>.

⁹ *Ibid.*

¹⁰ See A/HRC/43/56, paras. 37-44.

¹¹ The Commission followed up by meeting bank managers in Juba and Nairobi in February and March 2020 for confidential discussions. The Commission also met with revenue authorities who confirmed that non-oil revenue collection in South Sudan was marked by severe irregularities.

¹² The Commission remained hopeful regarding a verbal offer made in May 2020 by the Ministry of Foreign Affairs of South Sudan to review the letters and encourage the Government recipients to respond, though no such responses were received at the time of writing (August 2021).

¹³ See, e.g., *South Sudan officials 'stole \$4bn'*, BBC NEWS, 5 June 2012, available at <http://www.bbc.com/news/world-africa-18326004>. In addition to President Kiir's own admission of \$4 billion USD missing from the public coffers, the Foreign, Commonwealth & Development Office of the United Kingdom has estimated that at least \$6.8 billion USD in Government funds had been misappropriated since 2012. ERN D121460 - D121461.

¹⁴ In 2020, Transparency International ranked South Sudan last (tied with Somalia) among 179 countries listed in its Corruption Perceptions Index. See <https://www.transparency.org/en/cpi/2020/index/ssd>.

seize proceeds of unexplained wealth associated with South Sudan. These too reflect a mere fraction of the violations.

7. Accordingly, this report examines three case studies of non-transparent contract payments, flawed procurement processes, and revenue use. Nearly every instance of corruption, including embezzlement, bribery, or the misappropriation of funds, involved politicians, government officials, international corporations, or multinational banks. In some instances, proceeds were used to purchase high-end real estate abroad shortly after an unlawful transaction.

8. Moreover, there are definitive links between economic crimes and other violations, as civilians who dare to speak out on such crimes and violations have been silenced, with their fundamental human rights violated, including their rights to freedom of opinion, expression, and assembly. In more drastic cases, journalists have been disappeared or even murdered by Government forces (see para. 44, below). The systematic surveillance and censorship carried out primarily by the National Security Service (NSS) continues to target human rights defenders, the publication of newspapers, the work of journalists, and freedom of the press more generally.¹⁵

9. Moreover, illicit gains from economic crimes continue to serve as a major driver of armed conflict in South Sudan and have provided elites with the resources to raise and sustain fighting forces or foment violence. South Sudan's brutal conflicts have been significantly enabled and even motivated by the opportunities to control and divert natural resources, including oil, as well as non-oil revenues.¹⁶ National authorities and elites have prioritised financing the military and security apparatuses over investment in public service, infrastructure, and livelihoods. As documented by the Commission, entrenched and systemic grand corruption infects nearly every sector of Government (A/HRC/43/56, para. 33). High ranking confidential sources in the judicial system have informed the Commission that high-level culprits are "untouchable".¹⁷ Impunity has compounded the damage wrought by economic crimes and violations, and severely weakened the functionality of the State. Impunity in South Sudan is therefore the greatest hindrance to the enjoyment of human rights, economic development, peace, and stability.

10. The foundations for this impunity and lack of accountability were laid well before the independence of South Sudan from Sudan on 9 July 2011.¹⁸ In 2009, President Kiir committed to ensuring that the Southern Sudan Anti-Corruption Commission would be granted the power to prosecute the officials it investigates; 12 years later, however, the Anti-Corruption Commission still lacks this power, and the enabling Act has not been reviewed.¹⁹

11. Since gaining independence, political elites in South Sudan and those in their networks have further instrumentalised and stoked ethnic divisions to engage in a vicious

¹⁵ See, e.g., A/HRC/43/56, at para. 72.

¹⁶ For example, beginning in April in 2018, the desire for the Government to take control of the oil industry manifested in the Sudan People's Liberation Army (SPLA) offensive to drive the Sudan People's Liberation Army in Opposition (SPLA-IO) loyal to Riek Machar out of its strongholds in southern Unity state. The aim of the offensive was to gain control of the road running south from Bentiu to Adok port, an area including the Thar Jath oilfield in Block 5A. Ensuring that Block 5A and other blocks became operational was specifically referred to in the Khartoum Declaration in June 2018 as one of the aims of the permanent ceasefire. The offensive, however, resulted in serious human rights violations including killings and the forced displacement of the population. As previously noted by the Commission, human rights have become a casualty in oil-producing areas of the country, where the armed conflict has continued, coupled with the increased militarisation and securitisation of the oil industry by Government forces. The NSS, in particular, has been expanding its involvement in the oil sector, including through its control over the State-owned Nilepet oil company. Nilepet operations have been characterised by a lack of transparency and independent oversight. Furthermore, oil revenues, and income from other natural resources such as illegal teak logging, have continued to fund the war, enabling its continuation and the resulting human rights violations. See, e.g., A/HRC/40/69, paras. 60-61.

¹⁷ Confidential Meeting 3 June 2020; see also D120899 - D120910.

¹⁸ See "Ten years after gaining independence, civilians in South Sudan still longing for sustainable peace, national cohesion, and accountability - UN experts note", Commission on Human Rights in South Sudan, 9 July 2021, available at <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=27292&LangID=E>.

¹⁹ SPLA top generals asked by anti-corruption to declare their assets, SUDAN TRIBUNE, 27 February 2012, available at <https://sudantribune.com/spip.php?article41727>; see also R-ARCSS, 4.4.1.1.

power and profit scramble that continues to define South Sudan's social, economic, political, and human rights challenges.²⁰ Corruption is pervasive and those implicated represent all echelons of the State apparatus, including ministers, governors, senior military officials, as well as businesspeople. With respect to prospective individual responsibility for acts that may amount to economic and related crimes, the Commission has identified 20 individuals so far, whom it has reasonable grounds to believe have engaged in the commission of such acts, including ministers, governors, military governors, full generals, lieutenant generals, major generals, businesspersons, and others.²¹

12. The military-security apparatus and, as previously noted by the Commission, the National Security Service (NSS) continue to be intimately linked to South Sudan's oil sector (A/HRC/40/69, para. 126). These links have resulted in a highly militarised and securitised oil industry in South Sudan, with the NSS having steadily expanded its involvement in both oil production and management over the past seven years, including through its blatant control over the State-owned oil company Nilepet (see Annex III, below).²² Between 2014 and September 2020, the Director General of the Internal Security Bureau of the NSS, Akol Koor Kuc, held a "secret seat" on Nilepet's board, and was highly influential in deciding how the company and its resources were deployed.²³ As Nilepet owns shares in all three of South Sudan's active joint venture oil projects (see Annex III, below), control over it has conferred influence in the oil sector more broadly.²⁴

13. The egregious plunder, looting, militarisation, and securitisation of critical resources has meant that the Government of South Sudan has not fulfilled its human rights obligations to its citizens, and the concomitant failure to secure socio-economic development has meant that South Sudanese women, men, and children continue to be exposed to extreme vulnerability, poverty, and suffering. Not only does South Sudan perpetually remain in violent conflict, but its civilian population continues to bear the brunt of the multifaceted impact of violence and suffers the loss of significant resources which could and should be used for their economic, social and cultural rights.

14. In light of these challenges, the Government of South Sudan adopted laws and legislation reaffirming its commitment to address economic crimes that inhibit its ability to fulfil its human rights obligations to its citizens, including the Transitional Constitution of South Sudan (2011), by establishing an Anti-Corruption Commission (2006), and adopting the Investigation Committees Act (2006). The Revitalised Peace Agreement (R-ARCSS) of September 2018, moreover, provides a roadmap for the challenging task of rebuilding South Sudan and reversing its deep crisis and culture of impunity, including by ensuring accountability and reparation for the violations and abuses that have characterised South Sudan's recent conflicts. The provisions specified in Chapter IV of the R-ARCSS demonstrate that the parties to the Agreement recognised and understood the extent to which corruption, lack of financial and budgetary transparency, weak legislation among state institutions, and environmental harm have together served to hinder sustainable peace in South Sudan.²⁵ Since establishing the Unity Government in February 2020, however, hardly any of the provisions of Chapter IV had been implemented at the time of writing (August 2021).²⁶ The Commission therefore sought to review and assess the impacts of the continuing

²⁰ See, e.g., A/HRC/43/56, para. 61.

²¹ Confidential file.

²² See A/HRC/40/69, para. 126.

²³ D121773 - D121885, p. 85.

²⁴ See, e.g., *Capture on the Nile*, GLOBAL WITNESS, April 2018, at 7, available at https://www.globalwitness.org/documents/19358/Capture_on_the_Nile_Global_Witness.pdf; see also A/HRC/40/CRP.1, para. 669.

²⁵ Moreover, the current mandate of the Commission on Human Rights in South Sudan expressly "[u]rges the Revitalized Transitional Government of National Unity to address the previous and current findings of the Commission . . . which include economic crimes, such as tax evasion, money laundering and bribery".²⁵ The Commission notes that the investigation and reporting of economic crimes serve as a vital aspect of its mandate, particularly with respect to addressing implementation of the R-ARCSS, as well as pervasive violations of economic, social and cultural rights (see Section VII., below); to achieve criminal accountability for perpetrators of economic crimes and related violations; and to realise the transitional justice agenda enshrined in the Revitalised Peace Agreement. See R-ARCSS, at Chapter V.

²⁶ See Section III., below.

gaps in the legal and policy architecture and oversight processes. It has also sought to establish the extent of losses of both oil and non-oil revenues in order to determine the degree to which critical sectors relevant to economic, social and cultural rights, were deprived of essential budget allocations.

15. Whatever the motivations for acts of corruption—and they are diverse—these crimes are often opportunistic: they are aggravated by impunity enabled by the weaknesses and inadequacies, including underfunding, of enforcement mechanisms. Where national leaders and authorities are unwilling to tackle corruption, often because they themselves are deeply corrupt, the Government is neither likely to invest political capital and funds, nor enforce laws or support institutions necessary to address these underlying issues that continue to engender and promote economic crimes and related violations in South Sudan. Countrywide, the systems of corruption associated with influential political, security, and military leaders are deeply entrenched: contrary to the Transitional Constitution (2011), business and politics remain closely linked in South Sudan.²⁷ As one witness commented to the Commission, “Get any company from the registrar, and you will see the names of Government officials.”²⁸ Certain powerholders regularly meddle in three sectors simultaneously: business, politics, and the war economy.

16. In July 2017, the United Nations Human Rights Council adopted a resolution recognising the impact of corruption on the enjoyment of human rights, noting specifically the negative role of corruption in the “impairment of the ability of Governments to fulfil all their human rights obligations and to realize, within the maximum available resources, the Sustainable Development Goals”.²⁹ Unless economic crimes in South Sudan are addressed comprehensively, and resources are used to meet the economic, social and cultural rights of its population, the Commission notes with concern that South Sudan will not be in a position to attain the Sustainable Development Goals,³⁰ and that prospects for attaining sustainable peace, moreover, will continue to diminish.

17. In line with the Transitional Constitution,³¹ the Commission believes that South Sudan’s natural riches, including both oil and other natural resources, when managed in an accountable way and in accordance with the country’s relatively strong legal instruments that prescribe equity and transparency in the distribution of revenues, could redress some of the legacy of past wrongs and lay the foundation for more inclusive political and economic processes that can contribute towards achieving social justice.³² Conversely, a failure to manage South Sudan’s resources in the best interests of its citizens, might entrench a culture of economic and financial impunity, in which those with access to state resources (whether oil or non-oil) at all levels consider themselves entitled to appropriate those resources to their own ends, without regard for the needs and entitlements of citizens. Reversing such a culture will require political leadership and investment in systems of equitable economic management, governance, and accountability, in which there are real consequences for acts of corruption. It will also require a high degree of transparency and vibrant anti-corruption activity to be nurtured and sustained.

²⁷ Art. 121(2).

²⁸ Confidential meeting, Juba, 2020.

²⁹ A/HRC/RES/35/25 (2017).

³⁰ The 17 Sustainable Development Goals (SDGs) were adopted by the United Nations in 2015 as a universal call to action to end poverty, protect the planet, and ensure that by 2030 all people enjoy peace and prosperity. They are to: (1) Eliminate Poverty; (2) Erase Hunger; (3) Establish Good Health and Well-Being; (4) Provide Quality Education; (5) Enforce Gender Equality; (6) Improve Clean Water and Sanitation; (7) Grow Affordable and Clean Energy; (8) Create Decent Work and Economic Growth; (9) Increase Industry, Innovation, and Infrastructure; (10); Reduce Inequality; (11) Mobilize Sustainable Cities and Communities; (12) Influence Responsible Consumption and Production; (13) Organize Climate Action; (14) Develop Life Below Water; (15) Advance Life On Land; (16) Guarantee Peace, Justice, and Strong Institutions; and (17) Build Partnerships for the Goals. See, e.g., <https://www.undp.org/sustainable-development-goals>.

³¹ Transitional Constitution (2011) (as amended), Art. 172(1).

³² A/HRC/40/CRP.1, at para. 631.

II. Mandate and methodology

Mandate

18. 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 in 2017 (A/HRC/34/63).

19. 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. The present report is particularly focused on recommendations to prevent a further deterioration of the human rights situation. The Commission's report on corruption and embezzlement in South Sudan draws a direct link to the inadequate resources available to the public authorities to fulfil their obligations to provide for the enjoyment of economic, social and cultural rights.

20. 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 Revitalised Peace Agreement, including the hybrid court for South Sudan, to be established in cooperation with the African Union.³³

21. 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), 43/27 (2020), and 46/23 (2021). The current members of the Commission, appointed by the President of the Council, are Yasmin Sooka (Chair), Andrew Clapham, and Barney Afako.

22. The Commission was supported by a secretariat based in Juba. It conducted missions to several locations within South Sudan, including Central Equatoria and Unity States, Ruweng Administrative Area, Kampala (Uganda), and Nairobi (Kenya). The Commission met with a range of victims, witnesses, government officials, members of civil society, and other key stakeholders.

23. The Commission interviewed over 40 witnesses and examined 110 confidential records pertaining to corruption, embezzlement, and misappropriation, as well as environmental harm. All of the evidence collected is preserved in the Commission's confidential database and archives.

24. Additionally, in August 2019, the Commission held a high-level private hearing with at least 35 national and international witnesses who detailed the large-scale levels of corruption in South Sudan.

25. 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.

26. The Commission submits the present report to the Human Rights Council pursuant to Council resolution 46/23 (2021). In the report, the Commission focuses primarily on establishing the facts and circumstances of incidents occurring between 2016 and 2020.

Methodology

27. The Commission, with the support of the United Nations Office of the High Commissioner for Human Rights, hired an Economic Crimes Advisor to complement the

³³ 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.

team and to investigate allegations of economic crimes, a critical element of the Commission's mandate on accountability in South Sudan, also relevant to other jurisdictions.

28. With respect to these jurisdictions, the Commission sought in part to determine the facts and provide a series of targeted recommendations which should be relied upon by the African Union and regional institutions, as well as the international community more broadly. South Sudan has signed but not yet joined the African Union Convention on Preventing and Combating Corruption (AUCPCC). States party to the Convention can nevertheless exercise criminal jurisdiction over acts of corruption and related offences when the offence is committed on their territories. Neighbouring States party to the AUCPCC include Sudan, Ethiopia, Kenya, and Uganda.³⁴

29. Moreover, the African Union Advisory Board on Corruption was adopted in 2009 to ensure the proper implementation of the Convention. In addition, relevant Heads of State in Africa gathered in Addis Ababa (Ethiopia) in 2017 to commemorate the adoption of the AU Convention, and chose to designate 11 July as African Anti-Corruption Day.

30. Similarly, a 2015 report of the African Union Commission/United Nations Economic Commission for Africa (AUC/ECA) High Level Panel on Illicit Financial Flows from Africa, chaired by former South African President Thabo Mbeki ("Mbeki Panel"), found that illicit commercial activities accounted for 65 per cent of illicit financial flows from Africa, and criminal activities and corruption for 30 and 5 per cent, respectively. The Mbeki report estimated losses in Africa to exceed \$50 billion USD per year due to illicit financial flows, and indicated that such losses were facilitated in part by the existence of tax havens and secrecy jurisdictions that facilitate the existence and operation of disguised corporations, anonymous trust accounts, and fake charitable foundations. The Commission's investigations confirm that these outflows are primarily facilitated either by deliberate collusion or negligence of national actors including politicians and senior government officials.

31. In addition to signing the AUCPCC, South Sudan has acceded to the African Charter on Democracy, Elections and Governance. South Sudan has also signed but not yet ratified the African Charter on Values and Principles of Public Service and Administration; it has not signed or ratified the African Charter on Values and Principles of Decentralisation, Local Governance and Local Development. These instruments are relevant as part of the normative architecture for addressing governance and corruption issues in Africa.

32. In the East African Region, the East African Community has prepared a Draft Protocol on Preventing and Combatting Corruption, as well as a Draft Protocol on Good Governance. As cited below, South Sudan has signalled its commitment to seeking membership of the Financial Action Task Force (FAFT) and the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG).

33. The Commission notes that the investigation of economic crimes is complex and poses distinct challenges. Economic crimes are conducted in private and very purposely hidden from view. Those with information regarding economic crimes are often themselves implicated. Banking client confidentiality restrictions and increasing levels of data privacy legislation therefore restricted the amount of information which could be provided in certain cases. Financial information is often obtained by international law enforcement agencies via Suspicious Transaction Reporting and the use of court orders, which compel financial institutions to provide material. Both sources of information were, however, unavailable to the Commission.

Standard of proof or evidentiary threshold

34. The Commission was satisfied that there are "reasonable grounds to believe" that an incident or pattern of conduct had occurred only when it had obtained a reliable body of information, consistent with other material, upon which a reasonable and ordinarily prudent person would believe that the incident or pattern of conduct had occurred. While this standard

³⁴ *List of Countries which have Signed, Ratified/Acceded to the African Union Convention on Preventing and Combating Corruption*, 18 June 2020, available at <https://au.int/sites/default/files/treaties/36382-sl-AFRICAN%20UNION%20CONVENTION%20ON%20PREVENTING%20AND%20COMBATIN%20CORRUPTION.pdf>.

of proof is lower than the standard required in criminal proceedings to achieve a conviction, it is sufficiently high to justify further investigations into the incident or pattern of conduct. The findings may also constitute *prima facie* grounds to initiate a possible prosecution. The findings appearing in this report are therefore based on this “reasonable grounds to believe” standard of proof.

35. Individual cases and incidents reflected in this report are accordingly based on at least one credible direct source of information, which was independently corroborated by at least one or more credible source(s) of information.

36. Where the report describes patterns of conduct, these are based on several credible direct sources of information, which are consistent with, and corroborated by, the overall body of credible information collected. There were a few instances where this standard of proof could not be met, though the Commission still considered it appropriate to reflect the incident or pattern, identifying the underlying sources, and noting the requirement for further investigations.

37. The Commission considered the following to be sources of direct information:

- Interviews of witnesses with direct knowledge of the financial processes, transactions or contracts relating to institutions of the Government of the Republic of South Sudan;
- Publicly available financial documents including laws, Republic Decrees, policies, directives, and press releases of the Government of the Republic of South Sudan;
- Official letters, contracts, payment instructions of the Government of the Republic of South Sudan as well as internal documents, provided that they were received from a credible and reliable source and their authenticity could be confirmed;
- Official Government lists and underlying information regarding financial sanctions designations;
- Registers of companies, filing of company information, and beneficial ownership maintained by foreign Governments;
- Registers of property ownership maintained by foreign Governments; and
- Visits and observations of the Commission’s investigators to institutions of the Government of the Republic of South Sudan.

38. The Commission relied on the following types of information for the purposes of corroborating information from direct sources and providing the overall context to violations:

- Confidential interviews of witnesses who received the information directly from a person known to them, and where the Commission assessed the source to be credible and reliable and the information to be valid;
- Witness testimony and analysis contained in publications or in submissions by the United Nations, research institutions, and human rights organisations, where the Commission assessed the source to be credible and reliable and the information to be valid; and
- Descriptions of patterns of conduct contained in public financial reports, submissions, books, documentaries, press releases, and similar materials, where the Commission assessed the source to be credible and reliable and the information to be valid.

39. The reliability and credibility of each source was carefully assessed by the Commission and triangulated. These assessments took into account, amongst other considerations, the following:

- The witness’ political and personal interests and potential biases;
- The witness’ capacity to correctly recall events, considering their age, trauma, and how far back the events occurred;
- The position of the witness in relation to the subject of the information;

- Where and how the witness obtained the information; and
- The reasons for which the witness provided the information.

40. The Commission also assessed every piece of information by considering, amongst other factors, its relevance to the inquiry, its internal consistency and coherence, its logic, and its consistency with and corroboration by other information.

41. Assessments of the reliability and credibility of the source were separated from assessments of the validity of the information. The Commission did not assume that a witness, judged to be a credible and reliable source, would necessarily provide fully accurate and valid information.

42. Direct reference to specific testimony in the report does not indicate that such testimony is the sole basis of judgement by the Commission in relation to the issues under analysis. Where these direct references and citations are found in the report, it is to be understood that the Commission decided to introduce them for the purpose of providing examples or an illustration of broader issues regarding financial regulation within South Sudan.

Witness protection concerns

43. The Commissioners and members of the secretariat conducted numerous meetings and obtained witness statements from those with knowledge of economic crimes including financial processes within South Sudan. Many individuals expressed concerns regarding their security, should they be identified as a source of information.

44. Throughout the conflict, civil society activists, human rights defenders, humanitarian actors, journalists, and even United Nations staff members have been subjected to threats, intimidation, harassment, detention and, in some instances, killed by Governmental actors and members of armed groups particularly when their work related to the investigation of economic crimes. Across South Sudan, at least ten journalists have been killed since 2014.³⁵ Notwithstanding such an environment, many witnesses showed enormous courage by reaching out and contributing to the work of the Commission.

45. In line with existing United Nations policy on information sensitivity, classification, and handling, information provided by witnesses and other confidential material collected were classified as strictly confidential.³⁶ Details which could potentially reveal the identity of victims or witnesses such as names, dates, and places have been omitted in some instances in order to ensure the safety and security of victims, sources, witnesses, and their families.

46. 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, as the secretariat exercised caution in communicating with sources both inside and outside of the country. The Commission thanks those individuals who shared their experiences, and at all times remained guided by the principle of “do no harm”.

III. The Revitalised Peace Agreement (R-ARCSS)

47. At the outset, Chapter IV of the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) notes that political leaders and stakeholders are to ensure that the Revitalised Government is transparent and accountable, with laws, institutions, policies, and procedures fully functional for sustainable development.

³⁵ *Murdered with complete impunity, South Sudan*, REPORTERS WITHOUT BORDERS, available at <https://rsf.org/en/south-sudan>.

³⁶ The United Nations policy with regards to archiving and classification of documents can be found at ST/SGB/2007/6.

48. Political leaders and relevant stakeholders have similarly committed to fighting against corruption.³⁷ Though the R-ARCSS does not define the term corruption, both “corruption” and “corrupt practices” are defined in the Southern Sudan Anti-Corruption Commission Act (2009).³⁸ Any members of either the Revitalised Transitional Government of National Unity (R-TGoNU) or state-level governments who have engaged in, or even condoned corrupt practices, are to be held accountable and subsequently barred from holding public office.³⁹

49. Also regarding the Anti-Corruption Commission, the R-ARCSS committed the Revitalised Government to review the Anti-Corruption Commission Act (2009) by 22 July 2020, or within five months after the Transitional Period, which at the time of writing (August 2021) has not been done.⁴⁰ The R-TGoNU is further required to promote the independence of the Anti-Corruption Commission and empower it from political interference,⁴¹ as well as to harmonise the role of the Anti-Corruption Commission with the Ministry of Justice and Constitutional Affairs/Director of Public Prosecution and the Police, in order to combat corruption.⁴²

50. Similarly, the R-TGoNU in compliance with provisions of the R-ARCSS, had agreed to develop a code of ethics and integrity for public officials.⁴³ Signatories also agreed to establish a high-level, competent, and effective oversight mechanism to control revenue collection, budgeting, revenue allocation, and expenditure. This oversight mechanism may solicit advice regarding economic governance from both the regional and broader international community.⁴⁴ Despite the formation of the R-TGoNU in February 2020, neither has a code of ethics and integrity been developed, nor has an oversight mechanism yet been established.

51. Since the onset of the conflict in December 2013, the Commission has documented numerous instances whereby members of civil society, human rights defenders, journalists and others who have spoken out against, or reported on, corruption in South Sudan, have been systematically silenced, detained, or subjected to enforced disappearance. Notably, and in stark contrast to the status quo, the R-ARCSS requires the R-TGoNU 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.⁴⁵

³⁷ R-ARCSS, 4.1.1-2.

³⁸ See the Southern Sudan Anti-Corruption Commission Act (2009) at Chapter 1, Section 5, which states: “‘Corrupt practices’ means soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse of a public institution/authority or office to achieve private advantage or benefit to the person or others; ‘Corruption’ means a conduct comprising an offence under section 89 through 102 and sections 105 through 108 of the Penal code, 2008 and includes conduct comprising a conspiracy or attempt to commit or engage in an activity that would constitute a corrupt conduct under those sections.

³⁹ R-ARCSS, 4.1.2. “‘Public Office’ means an office in the service of the government of Southern Sudan and includes service in the offices of President, Vice President, Minister, State Governor, Undersecretary, Member of the Legislative Assembly, Magistrate, Judge, Justice, offices in the armed forces, the police forces, wildlife service, fire bridge, a public corporation or on the Board thereof; a local authority, any commission or committee established by the government of Southern Sudan”. See *Ibid.*

⁴⁰ R-ARCSS, 4.4.1.1. While the Rule of Law unit within the United Nations Mission in South Sudan (UNMISS) has provided concerted technical support to the Anti-Corruption Commission in order to review the Act and harmonise its contents with other existing laws, it appears that such support has not yet been reviewed by the Anti-Corruption Commission, nor have any amendments been presented to the Parliament (which is not currently in session).

⁴¹ R-ARCSS, 4.4.1.2.

⁴² R-ARCSS, 4.4.1.3.

⁴³ R-ARCSS, 4.1.3. “‘Public Official means: (a) any member of Southern Sudan and State government including the President, Vice President, Minister, Assembly Member, Governor, State Minister, and County Commissioner; (b) Judge of the Judiciary; (c) persons employed or engaged in any capacity, including unpaid, part-time or temporary employment in government institutions as defined or who are under the control and supervision of an employer who is a government institution as defined in this section whether or not they are called employees”. *Ibid.*

⁴⁴ R-ARCSS, 4.1.4.

⁴⁵ R-ARCSS, 4.4.1.5.

52. The R-ARCSS also stipulates that South Sudan's wealth, including assets derived from both oil and non-oil revenues, are to be shared equitably among the different levels of Government, including at state level in order to reflect the devolution of powers and resources, as well as the decentralisation of decision-making regarding development, service delivery, and governance.⁴⁶ As noted above, the economy of South Sudan benefits from one of the largest petroleum reservoirs in sub-Saharan Africa, the revenues of which often account for up to 90 per cent of its overall fiscal revenue. In addition, during the 2019/20 fiscal year, the Government collected some \$191 million USD in non-oil revenue, amounting to approximately 13.6 per cent of overall gross revenue collected.⁴⁷ While the R-TGoNU has also agreed to undertake an immediate and medium-term economic and financial management reform programme,⁴⁸ at the time of writing (August 2021), no such reform programme has been undertaken.

53. Concerning institutional reforms and the Bank of South Sudan or the "Central Bank",⁴⁹ the R-TGoNU had committed to, within three months of the beginning of the Transitional Period (by 22 May 2020), review legislation governing the Bank with a view to restructuring, including, but not limited to, the leadership, composition, powers, functions, and operations.⁵⁰ Within four months of the beginning of the Transitional Period, President Kiir was to appoint a Governor for the Bank of South Sudan. On 2 November 2020, President Kiir named Dier Tong Ngor as the new Central Bank Governor, replacing Jamal Wani Abdalla who had been appointed in January.⁵¹ It remains unclear whether and to what extent President Kiir consulted with First Vice President Machar or the other four Vice Presidents during the process, as the R-ARCSS requires.⁵²

54. With respect to the Ministry of Finance and Economic Planning (paras. 98-118, below), the R-ARCSS stipulates that, within nine months of its signing, parties to the Agreement had to agree to review and implement the Strategic Economic Development Roadmap (national development plan) to accelerate progress in achieving a sustainable and resilient national economy. The Ministry of Finance and Economic Planning is also required to ensure that all public financial and budgetary commitments entered into by the Government are transparent, and in accordance with both domestic and internationally accepted norms and practices for the management of public finances, including the Public Financial Management and Accountability Act (2011) of South Sudan.⁵³ The R-ARCSS also notes that the Government should have, by 22 July 2020, acceded to regional and international treaties including the African Convention on Preventing and Combating Corruption (AUCPCC) and the UN Convention Against Corruption (UNCAC), and coordinate with their respective implementation mechanisms and other institutions to recover and return misappropriated funds and assets.⁵⁴ While South Sudan is a State party to the UNCAC, it has yet to ratify the AUCPCC.⁵⁵

55. Regarding harm to health and the environment (see Annex IV, below), the R-TGoNU is required to develop comprehensive policies and legal and institutional frameworks for the preservation, conservation, and sustainable use of the environment.⁵⁶ Upon establishment of the R-TGoNU on 22 February 2020 and going forward, the feasibility study of any project

⁴⁶ R-ARCSS, 4.1.5-6.

⁴⁷ See, e.g., S/2020/1141, Interim report of the Panel of Experts on South Sudan submitted pursuant to resolution 2521 (2020), 25 November 2020 (internal citations omitted).

⁴⁸ R-ARCSS, 4.1.7.

⁴⁹ The Bank of South Sudan is headquartered in Juba, and was established by Parliament in July 2011 via The Bank of South Sudan Act. It serves as the central bank of the South Sudan, and is fully owned by the Government. See <https://www.bankofsouthsudan.org/about-us>.

⁵⁰ R-ARCSS, 4.2.1.1.

⁵¹ See *S.Sudan replaces central bank governor for second time this year*, REUTERS, 2 November 2020, available at <https://www.reuters.com/article/ozabs-uk-southsudan-cenbank-idAFKBN27J0RN-OZABS>.

⁵² R-ARCSS, 4.2.3.

⁵³ R-ARCSS, 4.3.1.2-3.

⁵⁴ R-ARCSS, 4.4.1.6.

⁵⁵ *List of Countries which have Signed, Ratified/Acceded to the African Union Convention on Preventing and Combating Corruption*, 18 June 2020, available at <https://au.int/sites/default/files/treaties/36382-sl-AFRICAN%20UNION%20CONVENTION%20ON%20PREVENTING%20AND%20COMBATIN%20CORRUPTION.pdf>.

⁵⁶ R-ARCSS, 4.9.1.

must include an environmental impact certificate from the Ministry of Environment and Forestry.⁵⁷ The R-TGoNU has also committed to establishing an Environmental Management Authority (EMA) immediately upon the commencement of the Transitional Period.⁵⁸ Despite repeated attempts to ascertain the status of the EMA, the Commission was unable to determine whether or not such a body has been established.

56. The R-ARCSS further lays out in considerable detail provisions regarding resource management in the oil/petroleum sector. The R-ARCSS explicitly notes that positions of employment in the oil sector have to date, not been based on competence, but have rather been largely based on ethnic, political, and regional considerations.⁵⁹ The R-ARCSS also calls for the R-TGoNU to review and vet current employment in the oil sector, and to take corrective measures against all contracts awarded to service companies operating in the oil fields.⁶⁰

IV. Applicable law

57. Economic crimes refer to a broad category of activities involving money, finances, or assets, the purpose of which is to unlawfully obtain a profit or advantage for the perpetrators or cause loss to others.⁶¹ This section outlines the legal analysis covering economic, social, and cultural harm impacting the enjoyment of human rights, as well as other consequences occasioned by economic crimes such as corruption, in South Sudan. The analysis sets out the legal basis and legitimate interest by the people of South Sudan to have these crimes prevented and investigated, with those responsible being held criminally accountable and punished – not only to advance their social and economic conditions, but also to ensure that South Sudan fulfils its international obligations concerning economic and social rights, including under the African Charter on Human and Peoples’ Rights.

58. The content and scope of South Sudan’s human rights obligations are found in customary international human rights law, the different international and regional treaties South Sudan is bound by, and in the various national laws it has adopted. South Sudan became a party to the African Charter on Human and Peoples’ Rights on 19 May 2016, which entered into force for South Sudan on 19 August 2016. The Charter states that “All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it”.⁶²

59. The Charter further imposes an obligation on States parties to guarantee and respect social and economic rights including the right to work⁶³, education⁶⁴, health,⁶⁵ and economic, social, and cultural development.⁶⁶ With regard to the right to health, the African Commission on Human and Peoples’ Rights has noted that Article 16 of the Charter guarantees the right to enjoy the best attainable state of physical and mental health, and that States parties should take the necessary measures to protect the health of their people.⁶⁷ The Guidelines on the interpretation of social and economic rights in the African Charter also require States parties to take immediate steps in accordance with their national measurable plans of action, including through the allocation of adequate resources, and to ensure the full realisation of social and economic rights of their people.⁶⁸

⁵⁷ R-ARCSS, 4.9.2.

⁵⁸ R-ARCSS, 4.6.1.

⁵⁹ R-ARCSS, 4.8.1.4.

⁶⁰ R-ARCSS, 4.8.1.5.

⁶¹ UK Economic Crime Plan 2019-2022, available at <https://www.gov.uk/government/publications/economic-crime-plan-2019-to-2022/economic-crime-plan-2019-to-2022-accessible-version>.

⁶² Art. 21(1).

⁶³ Art. 15.

⁶⁴ Art. 17.

⁶⁵ Art. 16.

⁶⁶ Art. 22.

⁶⁷ Communications Nos. 25/89, 47/90, 56/91, 100/93 (1996), 9th Activity Report, para. 47.

⁶⁸ Principles and Guidelines on the Interpretation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples’ Rights. Adopted at the 48th Session, November 2010.

60. In 2013, the African Commission further called upon its Working Group on Economic, Social and Cultural Rights in Africa to undertake an in-depth study on the impact on human rights in Africa of illicit capital flight.⁶⁹ It further acknowledged that corruption drains states and spurs economic crises, which inevitably magnifies hunger and violations of human rights. The African Commission has also adopted a Declaration calling upon AU Member States to fulfil their social and economic obligations and address corruption and the misuse of public financial resources.⁷⁰

61. In a complaint brought against Zaire, the African Commission noted that the failure of the Government to provide basic services such as safe drinking water and electricity and the shortage of medicine constitutes a violation of the right to health.⁷¹ In another complaint against the Gambia, the African Commission explained that States parties to the African Charter have to take “concrete and targeted steps”, while taking full advantage of their available resources, to “ensure” that the right to health is fully realised in all aspects without discrimination of any kind.⁷² The African Commission’s jurisprudence has consistently underlined the fact that human rights, including social and economic rights are indivisible, interdependent, and interrelated with other human rights. While States have an obligation to take necessary steps to guarantee and deliver the “best attainable living standards”, however, they can only do so if they can judiciously manage and allocate resources entrusted to them to attain better living standards for their citizens guaranteed under both international and national instruments.

62. Sub-regional courts have also reaffirmed the nexus between corruption and human rights guaranteed by the African Charter. In a complaint against Nigeria, the Economic Community of West African States (ECOWAS) Court of Justice stated that corruption in the education sector has a “negative impact” on the human right to quality education, as guaranteed by Article 17 of the African Charter, if efforts are not made to prosecute corrupt officials and recover stolen funds.⁷³

63. Moreover, in a case addressing “corruption and unlawful conduct involving state institutions, state property and public money,” the Constitutional Court of South Africa held that:

“Corruption and maladministration are inconsistent with the rule of law and the fundamental values of the Constitution and as such they undermine the constitutional commitment to human dignity, the achievement of equality and the advancement of human rights and freedoms. They are the antithesis of the open, accountable, democratic government required by the Constitution. If allowed to go unchecked and unpunished they pose a serious threat to” the democratic state of South Africa.⁷⁴

64. As a State party, South Sudan is also bound by the UN Convention against Corruption (UNCAC). The UNCAC states in its preamble that States parties are concerned “about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States”. The UNCAC further addresses the cross-border nature of corruption with provisions on international cooperation and on the return of the proceeds of corruption.

65. States party to the UNCAC are expected to cooperate in criminal matters and consider assisting one another in both the investigation of and proceedings in civil and administrative

⁶⁹ Resolution 236/2013 on illicit flight of capital from Africa adopted during the 53rd Ordinary Session, April 2013.

⁷⁰ Pretoria Declaration on Economic, Social and Cultural Rights in Africa (adopted by the African Commission at its 36th Session) December 2004.

⁷¹ Free Legal Assistance Group, Lawyers’ Committee for Human Rights, Union Interfricaine des Droits de l’Homme, Les Témoins de Jehovah vs Zaire Communications Nos. 25/89, 47/90, 56/91, 100/93 (1996), 9th Activity Report. This decision was taken at the 18th Ordinary Session, Praia, Cape Verde, October 1995).

⁷² *Purohit and Moore vs The Gambia* (Communication No. 241/2001, (2003), 16th Activity Report, Annex VII).

⁷³ *The Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) v President of the Federal Republic of Nigeria and Another*, ECW/CCJ/APP/12/07, 30 November 2010.

⁷⁴ *South African Association of Personal Injury Lawyers v Health and Others*, 28 November 2000, (CCT 27/00) 2000] ZACC 22, para. 4.

matters relating to corruption. Chapter 2 of the UNCAC requires States parties to adopt a series of preventive measures, ranging from the establishment of an anti-corruption body to the enactment of codes of conduct for public officials, the reorganisation of public procurement, and the establishment of regulatory and supervisory regimes to deter and detect money laundering. Chapter 3 requires parties to institute strong measures to investigate and punish acts of corruption, including: bribery of national and foreign public officials and officials of international organisations,⁷⁵ embezzlement, misappropriation or diversion of public property,⁷⁶ trading in influence,⁷⁷ illicit enrichment,⁷⁸ bribery in the private sector,⁷⁹ money laundering,⁸⁰ concealment,⁸¹ and obstruction of justice.⁸² Under the Convention, States parties are obliged to cooperate and assist each other in cross-border criminal matters related to corruption offences covered by the UNCAC.⁸³

66. The return of proceeds from corruption to the country of origin is one of the core objectives of the UNCAC. States parties are required to cooperate to facilitate tracing, freezing, forfeiting, and returning funds and other property obtained through corrupt activities. Confiscated properties may be returned to the State party, previous legitimate owners, or victims of crime.⁸⁴ On the question of international cooperation, the UNCAC encourages States to consider providing bilateral or multilateral technical assistance, including training, on topics such as investigative methods, strategic anti-corruption policies, preparation of mutual legal assistance requests, public financial management, and witness and victim protection methods.⁸⁵ In its 2018 and 2019 Activity Reports, the United Nations Office on Drugs and Crime (UNODC) indicated that South Sudan is one of the few countries in the region that has benefited from activities of the organisation including training to strengthen whistle-blower protection and public procurement systems as part of technical assistance and exchange mandated by the Convention.⁸⁶

67. As a State party to the UNCAC, South Sudan can avail itself of the opportunities under the Convention to seek regional and international cooperation with other states in implementing its UNCAC obligations, especially on cross-border criminal investigations of corruption, return of the proceeds of corruption, and asset recovery.

68. As noted above, the UN Human Rights Council adopted a resolution in 2017 recognising the impact of corruption on the enjoyment of human rights, specifically noting the negative role of corruption in the “impairment of the ability of Governments to fulfil all their human rights obligations and to realize, within the maximum available resources, the Sustainable Development Goals.”⁸⁷ The Council has also adopted several resolutions since 2011, including on the negative impact of the non-repatriation of illicit funds to the countries of origin on the enjoyment of human rights. The resolutions, among other aims, encourage Member States to cooperate to recover the proceeds of corruption, in particular embezzled public funds, stolen, and unaccounted-for assets, including those found in safe havens.⁸⁸ This recognition undergirds the primary obligation of States to use available resources to enhance the social and economic development of their people.

⁷⁵ Arts. 15 and 16.

⁷⁶ Art. 17.

⁷⁷ Art. 18.

⁷⁸ Art. 20.

⁷⁹ Art. 21.

⁸⁰ Art. 23.

⁸¹ Art. 24.

⁸² Art. 25.

⁸³ Art. 46.

⁸⁴ Art. 57.

⁸⁵ Art. 60.

⁸⁶ *Eighth session of the Conference of the States Parties to the United Nations Convention against Corruption*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, available at <https://www.unodc.org/unodc/en/corruption/COSP/session8.html>.

⁸⁷ A/HRC/RES/35/25, July 2017.

⁸⁸ A/HRC/RES/40/4.

69. South Sudan has also signed but not yet ratified the African Union Convention on Preventing and Combating Corruption (AUCPCC),⁸⁹ which has as its objective to “[p]romote socio-economic development by removing obstacles to the enjoyment of economic, social and cultural rights . . .”.⁹⁰ Article 5 of the AUCPCC requires States parties to establish and strengthen institutions to investigate and punish acts of corruption. Some acts of corruption prohibited under the Convention include, *inter alia*: the diversion by a public official or any other person, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any property belonging to the State or its agencies, to an independent agency, or to an individual, that such official has received by virtue of his or her position,⁹¹ illicit enrichment,⁹² and the use or concealment of proceeds derived from such acts. In addition, the Convention covers laundering the proceeds of corruption,⁹³ and requires States parties to undertake a number of commitments, including to “require all or designated public officials to declare their assets at the time of assumption of office during and after their term of office in the public service.”⁹⁴

70. Although South Sudan is not yet a party to the AUCPCC, a State party can exercise criminal jurisdiction over acts of corruption and related offences when the offence is committed on its territory. A State party can also exercise criminal jurisdiction over an offence committed outside of its territory in any of the following circumstances: where the offence is committed by one of its nationals; by a non-national who resides, or is present, in its territory; and, where the State considers that the relevant offence affects or damages its vital interests.⁹⁵ As stated above, neighbouring States party to the AUCPCC include Sudan, Ethiopia, Kenya, and Uganda.⁹⁶

71. At the national level, South Sudan has adopted laws and legislation reaffirming its commitment to addressing acts of corruption that inhibit its ability to fulfil its human rights obligations to its citizens. The Transitional Constitution of South Sudan recognises *inter alia* the right to education,⁹⁷ the right to healthcare,⁹⁸ and the right to housing.⁹⁹ Article 9(2) provides that “the rights and freedoms of individuals and groups enshrined in this Bill shall be respected, upheld and promoted by all organs and agencies of government and all persons.” Article 144 establishes an Anti-Corruption Commission whose functions include: protection of public property; investigation of corruption involving public property; and combating administrative malpractices in public institutions.

72. Section 25 of the Southern Sudan Anti-Corruption Commission Act (2009) imposes an obligation on the Anti-Corruption Commission, if it has reasonable suspicion that a corruption offence has been committed, to form an inquiry/investigation Committee to investigate such cases. The Act further requires any executive or legislative constitutional office holder or senior civil servant with knowledge of a corrupt practice to report the same to the authorities, and, in failing to do so, the individual may be convicted of an offence.¹⁰⁰ Similarly, one of the functions of the South Sudan Audit Chamber is to verify contracts and

⁸⁹ *List of Countries which have Signed, Ratified/Acceded to the African Union Convention on Preventing and Combating Corruption*, 18 June 2020, available at <https://au.int/sites/default/files/treaties/36382-sl-AFRICAN%20UNION%20CONVENTION%20ON%20PREVENTING%20AND%20COMBATIN G%20CORRUPTION.pdf>.

⁹⁰ Art. 2(4).

⁹¹ Art 4(1)(d).

⁹² Illicit enrichment.

⁹³ Art. 6.

⁹⁴ Art. 7(1).

⁹⁵ Art. 13.

⁹⁶ *List of Countries which have Signed, Ratified/Acceded to the African Union Convention on Preventing and Combating Corruption*, 18 June 2020, available at <https://au.int/sites/default/files/treaties/36382-sl-AFRICAN%20UNION%20CONVENTION%20ON%20PREVENTING%20AND%20COMBATIN G%20CORRUPTION.pdf>.

⁹⁷ Art. 29.

⁹⁸ Art. 31.

⁹⁹ Art. 34.

¹⁰⁰ Section 34, Anti-Corruption Act.

loan agreements and grants entered into by the Government or any entity subject to audit, for the purpose of confirming their compatibility with laws and regulations.¹⁰¹

73. Further, the Investigation Committees Act empowers the President or a Minister of Government to “issue an order for establishment of a Committee to investigate into any matter of public interest.”¹⁰² South Sudan has also enacted laws to address money laundering and counterterrorism financing.¹⁰³ The objective of these laws is to establish measures and institutions responsible for the prevention and control of money laundering and financing of terrorism in South Sudan.¹⁰⁴ Similarly, the Public Financial Management and Accountability Act¹⁰⁵ provides for the establishment of procedures to control the management of public finances of the Government, to ensure accountability in the use of public resources. The law requires prior approval by the Ministry of Finance before any payment is made for the contract between the Government and any other entity, as well as verification by the accounting officer for the work done.

V. Oil revenues

74. South Sudan is among the most oil-dependent countries in the world, and since the Comprehensive Peace Agreement of 2005, its economy has benefitted from vast sums of petroleum proceeds that have accounted for the overwhelming majority of exports and, most recently, 90 per cent of the estimated resources available for the nation’s entire fiscal year budget.¹⁰⁶ As a commodity, oil has been used to guarantee Government loans and to generate the foreign currency needed to import even the bare necessities required to sustain the population.¹⁰⁷ The availability of vast oil reserves has encouraged profligate borrowing at high commercial rates, thus straddling the country with debt, which impacts on its future capacity to deliver core services. In March 2019, the International Monetary Fund (IMF) criticised the Government’s practice of contracting expensive and non-transparent oil advances. While there are indications that the practice has been ended under the Revitalised Government, the debt accrued continues to impair the capacity of the Government to meet the many needs of its citizens. As previously documented by the Commission, however, significant amounts of accrued oil revenues have also been stolen by political elites rather than reinvested in the country and its citizenry, as stipulated in relevant laws (A/HRC/43/56, para. 35).

75. In its conference room paper presented to the Human Rights Council and published in February 2019, the Commission detailed the three main consortia of companies operating and managing oil production in South Sudan (A/HRC/40/CRP.1, para. 643). All are led by Chinese, Indian, or Malaysian majority shareholders, in partnership with the South Sudanese national State company Nilepet that owns a minority share. These joint ventures were all established in 2012, shortly after the independence of South Sudan, and include: (i) the Dar Petroleum Operating Company (DPOC); (ii) the Greater Pioneer Operating Company (GPOC); and (iii) the Sudd Petroleum Operation Company (SPOC). Descriptions of the consortia and details regarding which oil blocks (locations) they are exploring are described in Annex III, below.

76. In March 2018, the United States Department of Commerce announced that it had listed all three of South Sudan’s above-mentioned joint ventures, as well as Nilepet and several of its subsidiaries, and the Ministries of Petroleum and Mining, on its “Entity List” – which represents a compilation of companies or actors whose activities are contravening US security or foreign policy. The basis for the US Department of Commerce’s decision to list these companies was that they were “contributing to the ongoing crisis in South Sudan because they are a source of substantial revenue that, through public corruption, is used to

¹⁰¹ Section 7(c)(k), South Sudan Audit Chamber Act.

¹⁰² Section 5(1), Investigation Committees Act 2006.

¹⁰³ Anti-Money Laundering and Counter Terrorism Financing Act 2012.

¹⁰⁴ Section 3 of the Act.

¹⁰⁵ The Public Financial Management and Accountability Act 2011.

¹⁰⁶ *The World Bank in South Sudan*, WORLD BANK, 2 April 2021, available at <https://www.worldbank.org/en/country/southsudan/overview>.

¹⁰⁷ *Is oil money fuelling war in South Sudan? Oil minister Ezekiel Lol Gatkuoth discusses allegations of corruption and the role of oil in South Sudan’s future*, AL JAZEERA, 6 April 2019.

fund the purchase of weapons and other material that undermine the peace, security, and stability of South Sudan rather than support the welfare of the South Sudanese people” (A/HRC/40/CRP.1, para. 655) – in effect contributing to the on-going conflict and the deterioration of the human rights situation.¹⁰⁸

77. Indeed, irrespective of its status as one of the largest producers and exporters of oil in sub-Saharan Africa and a rentier state, South Sudan suffers from an informal unregulated system of oil revenue collection that lacks independent oversight and transparency, thus providing opportunities for the misappropriation of these funds.¹⁰⁹ For example, although Government shares in oil companies are public equity, and despite the size and significance of the oil industry, the financial records of oil companies are shrouded in secrecy.¹¹⁰ Contrary to the Petroleum Revenue Management Act (2013), figures regarding finances derived from oil revenues have never been disclosed publicly by the Central Bank, not even to the legislature or other Government agencies.¹¹¹

78. Moreover, while both South Sudanese law and the Revitalised Peace Agreement stipulate that all oil revenues are to be paid into a single oil revenue account,¹¹² the Commission received credible information indicating that such transfers have been made diverted unlawfully into at least two revenue accounts, including Stanbic Bank in Nairobi (Kenya) and the Bank of South Sudan.¹¹³ At present, the majority of South Sudan’s oil revenues are reportedly paid into Government accounts located outside of South Sudan, contrary to provisions of the R-ARCSS.¹¹⁴ Additional oil revenues also appear, at times, to have been paid into separate commercial accounts controlled directly by Nilepet.¹¹⁵

79. Further, according to the Transitional Constitution (2011) and Petroleum Revenue Management Act (2013), the Government of South Sudan is required to allocate 2 per cent and 3 per cent of its net petroleum revenues to oil-producing states and communities, respectively. The Commission has documented how requisite payments were either not made since 2011 or done so in increments far below those required by the Transitional Constitution and Petroleum Revenue Management Act, notwithstanding that most residents in these oil-producing states continue to subsist in dire circumstances, suffering from a lack of food, housing, potable water, and education. More concerning, even where modest payments have been made to the states, they have not been dispersed or utilised to improve socio-economic programmes at the community-level.¹¹⁶

80. Following the formation of the Transitional Government of National Unity in February 2020, the Commission continues to monitor whether Article 4(14)(2) of the R-ARCSS – which includes a comprehensive commitment to auditing all transactions undertaken by the Unity Government – is being effectively implemented. Article 4(14)(3) of the R-ARCSS also mandates audits of past debts, arrears, and prepayments. South Sudanese law also calls for the regular audit of key Government institutions, including Nilepet. Additionally, Article 4(8)(1) of the R-ARCSS requires an audit of the entire petroleum sector

¹⁰⁸ 15 South Sudanese Entities Added to the Entity List, Bureau of Industry and Security, US Department of Commerce.

¹⁰⁹ ERN 103986 - 103990.

¹¹⁰ The Commission was unable to retrieve documents from oil companies about their finances despite numerous requests for meetings.

¹¹¹ ERN 103991 - 103995, para. 20. The Commission notes that this violates section 77(e) of the Petroleum Act (2012), which states that the “Ministry shall publish . . . all key oil sector production, revenue, and expenditure data.” Section 78 further requires that “(1) Licensees, contractors, and sub-contractors shall annually disclose information on all payments and deemed payments to the Government and Government agencies, monetary or in kind in connection with petroleum activities, in accordance with applicable law. (2) All disclosures under this Section shall be reported to an independent administrative body and shall be published and verified in accordance with the principles of the EITI and prescribed in the regulations.” Additionally, section 78(3) specifically precludes confidentiality clauses preventing the disclosure of this information.

¹¹² R-ARCSS, Arts. 4(8)(1)(10), 4(10)(1), and 4(1)(8)(2).

¹¹³ D120911- D120911.

¹¹⁴ Article 4(8)(1)1. The Article also calls for the full implementation of the 2012 Petroleum Revenue Management Act within three months of the Transitional Period. In Article 6(2), this act states that “Any petroleum revenue due to the Government shall be paid into the Petroleum Revenue Account for subsequent transfers in accordance with provisions in this Bill.”

¹¹⁵ See, e.g., Glencore’s response to the Global Witness in February 2018, available at

<https://www.documentcloud.org/documents/4402373-Glencore-Statement-to-Global-Witness-14-2-18.html>.

¹¹⁶ ERN 103991 - 103995, paras. 19-20; ERN 103977 - 103980, paras. 8-9; ERN 103996 - 104000, para. 11; Confidential documents.

within six months of the Transitional Period, including “all oil revenues due to the National Government and their allocation in the budget since 2011”.

81. Specifically, the Commission has continued to monitor ten oil companies that may be receiving an unrecorded percentage of crude oil, selling it, and delivering the money in cash to certain Government officials in South Sudan. Investigations are on-going.¹¹⁷

Harm to health and the environment

82. The Commission notes with grave concern the environmental harm wreaked by oil companies operating in oil-rich Unity State and Ruweng Administrative Area (see Annex IV, below). Owing to the conflict and their consequent lack of use, unmaintained oil pipelines have suffered severe corrosion since 2013, which has in turn caused spillage and leaks, and has had a direct impact on the right to an adequate standard of living including the right to health of local populations.

83. For example, in 2018, GPOC resumed oil operations without cleaning unmaintained and clogged pipelines, which led to their bursting (see Annex IV, paras. 2-3, below). Subsequent oil spills contaminated underlying soil and water in the Sudd swamp – formed by the White Nile’s Bahr al-Jabal section and one of the world’s largest swamps which is linked to the Nile River – and severely impacted the health, including the reproductive health, of the local population.¹¹⁸

84. The Commission also documented preventable diseases, and devastating birth defects, some of which can be attributed directly to the toxicological and teratogenic effects of heavy metals in the polluted water and soil through crude oil contamination in Pariang (Ruweng Administrative Area). The Commission’s comprehensive findings on the harm caused by unaccountable oil consortia are detailed in Annex IV, below.

85. In April 2020, a human rights organisation filed a lawsuit on behalf of the Government of South Sudan against the Minister of Justice of South Sudan before the East African Court of Justice. The applicant cited at least six oil spills due to leakages of pipelines, weak ruptures on the pipelines, exploration, and pollution of the environment which occurred in Unity State and Ruweng Administrative Area between September 2019 and March 2020. According to the applicant, crude oil waste in Upper Nile State is poorly disposed of in different ponds, which flood during the rainy season causing the effluent to enter the environment. The relevant explorations are being conducted by the two consortia (GPOC and DPOC), in which the respondent as the Republic of South Sudan is a shareholder.

86. Additionally in May 2021, the Auditor General published a report on the accounts of the two and three per cent shares of the net oil revenue owed to the oil-producing states and communities in Unity State, Upper Nile State, and Ruweng Administrative Area, for the period of 2011 to 2020.¹¹⁹ The report revealed a series of irregularities in the revenue management, resulting in the loss of more than USD 50 million. According to the report, between 2014 and 2020, more than USD 25 million meant to be allocated to the oil-producing areas was deposited into accounts opened by the Ministry of Finance and the Bank of South Sudan. The report indicates that the Ministry of Finance paid over USD 31 million to the Office of the President, to itself, and to several unauthorised private persons and institutions. The Auditor General noted that the Ministry of Finance failed to explain why these funds were distributed to individuals and unauthorised institutions.¹²⁰ Following the report from the Auditor General, it is deeply concerning that the South Sudan Anti-Corruption Commission has not yet indicated that it will conduct an investigation.¹²¹

¹¹⁷ ERN 103966 - 103976.

¹¹⁸ See, e.g., *South Sudan in Focus*, VOICE OF AMERICA, 27 June 2020, available at <https://www.voanews.com/africa/south-sudan-focus/south-sudans-ruweng-community-demands-compensation-oil-spills>.

¹¹⁹ D121886 - D121908 p. 13.

¹²⁰ ERN D121909 - D121919 paras. 7-9

¹²¹ ERN D121920 - D121940, p. 10.

VI. Non-oil revenue

A. Domestic and international focus

87. In addition to the lack of transparency surrounding oil revenues and the detrimental impact of environmental harm caused by oil consortia, allegations of the misappropriation of non-oil revenues in South Sudan have both been supported by the statements made by President Salva Kiir (see para. 1, above), and further by findings made by domestic bodies within South Sudan, including by the National Audit Chamber. For the purposes of this report, non-oil revenues are defined as those comprising all revenue types not covered by oil resources, including personal income tax, business profit tax, passport or licence fees, and customs duties for imported goods. The largest portion of non-oil revenue collections are believed to derive from taxation and customs duties.¹²² During the 2019/20 fiscal year, the Government collected some \$191 million USD in non-oil revenue, amounting to approximately 13.6 per cent of the overall collected gross revenue.¹²³

88. One of the major challenges underpinning the misappropriation of non-oil revenues relates to poor procurement procedures. For example, as far back as 2007 and 2008, the Auditor General's Report on Financial Statements for these years are published on the National Audit Chamber website. Both of these reports detailed poor procurement procedures in southern Sudan prior to its independence in 2011, including for goods procured without signed contracts, payments made without supporting documents, single source procurements, and a lack of records to ensure that goods which were paid for had actually been delivered.¹²⁴ Moreover, in report released in June 2011, the Auditor General described incidents of Government procurement where no contract had been signed.¹²⁵

89. In other cases, the Commission was informed that members of the Government have signed "ghost contracts" which only exist on paper, but where no trade or transactions actually took place.¹²⁶ The Commission notes that a common way for Government officials to misappropriate funds is through the use of contracts which appear genuine, but which contain inflated prices for goods – with the excess in the form of "kickbacks" being transferred back to the Government officials. Conversely, a similar method with which to misappropriate State funds is through cash transactions in which goods are exchanged for cash and where no contract is actually signed.

90. The Commission sought to review more recent reports of the National Audit Chamber to analyse whether procurement practices had improved since 2011, after the independence of South Sudan. While the Auditor General is obliged to present his reports to the R-TGoNU, and though more recent reports of the Auditor General have been submitted to Parliament, the Auditor General has not been summoned by Parliament to present the reports. Without such presentation, the reports are not in the public domain and have therefore not been released.¹²⁷ The Commission is concerned that avoiding presentation may be a deliberate tactic by the R-TGoNU to prevent open discussion on the finances, though it remains hopeful that these reports will still be presented to the Parliament. In August 2021, the Transitional National Legislative Assembly was formally inaugurated, and there is now no procedural impediment to the discussion of the Auditor General's report.

91. The African Development Bank's recent assessment of the Government's procurement procedures is included in a March 2017 report on Non-Oil Revenue

¹²² Confidential meetings with banks in Juba on 24 and 25 February 2020; See D120867 - D120867, D120864 - D120864; D120862 - D120863; D120860 - D120861; D120858- D120859.

¹²³ See, e.g., S/2020/1141, Interim report of the Panel of Experts on South Sudan submitted pursuant to resolution 2521 (2020), 25 November 2020 (internal citations omitted).

¹²⁴ *Report of the Auditor General on the Financial Statements of The Government of Southern Sudan for the Financial Year Ended 31st December 2007* and *Report of the Auditor General on the Financial Statements of The Government of Southern Sudan for the Financial Year Ended 31st December 2008*, available at <http://www.audit-chamber-ss.org>.

¹²⁵ *Report of the Auditor General on the Financial Statements of The Government of Southern Sudan for the Financial Year Ended 31st December 2006*, available at <http://www.audit-chamber-ss.org>.

¹²⁶ Confidential Meeting, 4 March 2020.

¹²⁷ "A Response to The Sentry Report on 'The Taking of South Sudan: The Tycoons, Brokers, and Multinational Corporations Complicit in Hijacking the World's Newest State'", Office of the President, 7 November 2019; see also confidential meeting, 28 February 2020.

Mobilisation and Accountability in South Sudan (NORMA-SS), which is devastating in its criticism of government processes. Among other things, the report states that “[t]he expenditure side is mired in long-drawn processes characterized by loose procurement systems, IFMIS [Integrated Financial Management Information System]¹²⁸ in-built controls that are not being utilized or bypassed, parallel manual systems, idle core modules (like budgeting and bank reconciliation), accumulation of arrears and inability to close end-year annual accounts.”¹²⁹

92. In November 2019, the Office of the President also made a rare public appraisal of the on-going and systematic corruption,¹³⁰ in which it quoted a 2010 document of the National Audit Chamber:

“Most of the Ministries keep no records. Essential basic documentation would require cash books, expenditure analysis books, treasury books and period bank reconciliations. There were no internal auditors across the entire government system. In many instances, there was no segregation of the duties of authorization, custody, recording and execution. One official was allowed to perform several of these functions singlehandedly. Worse still, the frequency and magnitude of financial mismanagement suggests collusion.”¹³¹

The Commission notes with concern that the activity described by the National Audit Chamber is consistent with trade-based money laundering.¹³²

93. The focus on South Sudanese individuals, officials, and companies operating in country that have engaged in acts which amount to economic crimes has not been limited to the domestic sphere. For example, the United Nations Security Council, the United States Office of Foreign Assets Control, and the European Union all have active financial sanctions programmes in relation to South Sudan. Individuals and entities (companies) can be designated and subject to asset freezes and travel bans, if they are deemed to undermine peace, security, and stability in South Sudan, participate in the commission of human rights abuses, and obstruct international peacekeeping. The purpose of financial sanctions designations is to withhold access to assets and restrict access to the financial system.

94. In addition, the United States Office of Foreign Assets Control and the United Kingdom also administer sanctions programmes, which seek to target those deemed responsible for human rights abuses and global corruption. In the context of South Sudan, on 11 October 2019, the United States Office of Foreign Assets Control imposed sanctions upon a number of individuals and companies in relation to “corrupt dealings with Government officials and sanctions evasion.” These individuals and companies are as follows:

Individuals

- Ashraf Seed Ahmed Al-Cardinal
- Kur Ajjing Ater

Companies

¹²⁸ The Integrated Financial Management Information System (IFMIS) is an integrated Public Financial Management system being implemented by Federal Government of Ethiopia (FGE) through the Ministry of Finance and Economic cooperation to improve Public Financial Management System and Property Administration; enhance greater accountability, timely financial and property information and transparency across Federal Ministries, Agencies, Regions, City administration, Zones and Woredas. It is an initiative of Expenditure Management Control Program (EMCP) of Public Financial Management reforms. It is also believed to increase efficiency and reduce back-office costs with standardised processes for shared services. See <http://www.mofed.gov.et/ifmis>.

¹²⁹ AFDB Non-Oil Revenue Mobilisation and Accountability in South Sudan (NORMA-SS) report dated March 2017: https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/South_Sudan_-_Approved_Non-Oil_Revenue_Mobilisation_ORMA_PAR.pdf.

¹³⁰ “A Response to The Sentry Report on ‘The Taking of South Sudan: The Tycoons, Brokers, and Multinational Corporations Complicit in Hijacking the World’s Newest State’”, Office of the President, 7 November 2019.

¹³¹ Trade based money laundering is defined by the Financial Action Task Force (FATF) “as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimise their illicit origins.” See also, “A Response to The Sentry Report on ‘The Taking of South Sudan: The Tycoons, Brokers, and Multinational Corporations Complicit in Hijacking the World’s Newest State’”, Office of the President, 7 November 2019.

¹³² Financial Action Task Force Trade Based Money Laundering 2006, available at <http://www.fatf-gafi.org/media/fatf/documents/reports/Trade%20Based%20Money%20Laundering.pdf>.

- Lou Trading and Investment Company Limited
- Alcardinal General Trading Limited
- Alcardinal General Trading LLC
- Al Cardinal Investments Co. LTD
- Alcardinal Petroleum Company Limited
- Niletel

95. The US Department of the Treasury’s Office of Foreign Assets Control press release, dated 11 October 2019, described the reasons for the designation of “Al Cardinal” and Kur Ajing Ater (see Sub-section B., below):¹³³

“Al-Cardinal is being designated for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.”

and

“Ajing is being designated for having materially assisted, sponsored, or provided financial, material, technological support for, or goods or services to or in support of, an entity that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.”

96. The Commission has investigated these allegations and has prepared confidential dossiers related to both “Al Cardinal” and Kur Ajing Ater, in order to determine the extent to which both individuals have been complicit in the corruption and misappropriation of State assets, and the illicit siphoning of funds from the public coffers.

97. The Commission underscores that its investigations were premised on the fact that any misappropriation of State funds diverts vital resources meant for South Sudanese women, men, and children, and leads to violations of their economic, social and cultural rights, as detailed in Section VII., below. The Commission’s mandate includes monitoring the human rights situation in the country and also extends to supporting transitional justice processes, which, among other aims, should promote an accountable Government in South Sudan.

B. Ministry of Finance and Economic Planning: “Al Cardinal” and Kur Ajing Ater Payments

98. Over the past 13 years, allegations of corruption related to Sudanese businessman Ashraf Seed Ahmed Al-Cardinal, also known as Ashraf Seed Ahmed Hussein, or “Al Cardinal,” have been widely reported in the media.¹³⁴ Already in 2007, Al Cardinal was allegedly linked to acts of corruption involving the Government procurement of vehicles.¹³⁵ Though the Commission has been unable to determine whether or not Al Cardinal was ever arrested in relation to these accusations, the allegations should, in and of themselves, serve as a red flag for the Government in dealing with Al Cardinal and companies related to him

¹³³ *Treasury Sanctions Businessmen in South Sudan for Corrupt Dealings with Government Officials and Sanctions Evasion*, U.S. DEPARTMENT OF THE TREASURY, 11 October 2019, available at <https://home.treasury.gov/news/press-releases/sm790>.

¹³⁴ For example, the Organized Crime and Corruption Reporting Project (OCCRP) published an article on 2 December 2019 makes reference to a number of contracts which appear to have been awarded to companies linked to Ashraf Seed Ahmed Hussein and Kur Ajing Ater, both of whom have since been sanctioned. See, *As South Sudan Seeks Funds for Peace, a Billion Dollar Spending Spree*, available at <https://www.occrp.org/en/investigations/as-south-sudan-seeks-funds-for-peace-a-billion-dollar-spending-spree>.

¹³⁵ This situation was reported on by The Sentry in their report of October 2019, entitled *Al Cardinal South Sudan’s Original Oligarch*, which cites an article dated 26 March 2007 published by Sudan Tribune. See, https://cdn.thesentry.org/wp-content/uploads/2019/10/AlCardinal_TheSentry_October2019-final.pdf.

for future procurement. In addition to allegations concerning the payment of bribes in order to maintain an influence over the oil market, the Commission received credible information indicating that companies under the auspices of businessman and tycoon Kur Ajing Ater have also been the leading source of income for financing military activities.¹³⁶

99. In December 2019, the Commission formally requested the Ministry of Finance and Economic Planning to provide it with information related to transactions between the Government of South Sudan and Al Cardinal and Kur Ajing Ater, as well as with the six companies sanctioned by the US Department of the Treasury's Office of Foreign Assets Control on 11 October 2019. The latter request sought copies of any contracts made between the Ministry of Finance and Economic Planning and the six companies, and confirmation as to whether goods were supplied, and payment made. At the time of writing (August 2021), the Commission has not received any response to its formal request. The Commission notes that this information should be easily available to the Ministry of Finance and Economic Planning, pursuant to the Public Financial Management Act (2011).¹³⁷

100. Nevertheless, despite the lack of response, the Commission conducted its own enquiries seeking to identify payments made to companies of which Al Cardinal and Kur Ajing Ater were respective shareholders. Several potential witnesses approached by the Commission were reluctant to speak freely regarding potential payments made by the Government due to fear of reprisals. This – coupled with banking customer secrecy restrictions – made it extremely difficult to obtain confirmations of payments. At all times, the Commission remained guided by the principle of “do no harm”.

101. Despite these challenges, the Commission was able to identify four payments made by the Ministry of Finance and Economic Planning between January 2016 and May 2018 which were for the benefit of, and companies related to, Ashraf Seed Ahmed Hussein, or “Al Cardinal.” These four payments are listed in the table below.¹³⁸

Date	Remitter	Remitting Bank	Beneficiary	Beneficiary Bank	Value
25 January 2016	Ministry of Finance & Economic Planning	Unknown	AlCardinal General Trading	Unknown	\$8,999,861.73
25 January 2016	Ministry of Finance & Economic Planning	Unknown	Green For Logistics Services LLC	Commercial Bank International, Dubai.	\$10,999,861.00
15 March 2016	Bank of South Sudan	Stanbic Bank	Green For Logistics Services LLC	Commercial Bank International, Dubai.	\$18,999,957.00
2 May 2018	Ministry of Finance & Economic Planning	Stanbic Bank	Al Cardinal Investment LLC	Commercial Bank International, Dubai	\$29,999,970.00

Table 1.

102. The total value of these payments amounts to a substantial \$68,999,649.73. It is worth highlighting that the payments identified were all made prior to the financial sanctions designation of companies related to Ashraf Seed Ahmed Al-Cardinal by the US Department of the Treasury's Office of Foreign Assets Control. The Commission has reasonable grounds

¹³⁶ ERN 103966 - 103976.

¹³⁷ Section 30 of the Public Financial Management Act (2011) states that, prior to payment being made, “the Accounting Officer of the Spending Agency or any other officer authorized by the Accounting Officer certifies: (a) That the work has been performed, the goods supplied or the service Rendered and or price charged in according with the provisions of the contract, or, if not specified by the contract, is reasonable; or, (b) Where payment is to be made before the completion of the work, delivery of the goods or rendering of the service that the payment is in accordance with the contract and payment guarantee or the appropriate security has been given in the name of the Government to secure due performance of the contracts.”

¹³⁸ ERN D120869 - D120894.

to believe that further payments may have taken place, and the Commission's investigations are on-going.

103. Of the three companies listed in the table above, both Al Cardinal Investment LLC and Green For Logistics Services LLC are believed to be companies registered in Dubai with the major shareholders being Mohammad Albedwawi and Ashraf Seed Ahmed Hussein (see Table 1., above).¹³⁹ The third company, Al Cardinal General Trading, was registered in the United Kingdom, the details of which are publicly available via the United Kingdom's Companies House.¹⁴⁰ Since 2014, however, the United Kingdom Companies House records indicate that Al Cardinal General Trading Limited has filed "Accounts for a Dormant Company",¹⁴¹ and therefore may not even be operational in any meaningful sense.

104. The Commission's extensive research regarding the three companies listed in the table above revealed that there is a paucity of information regarding the companies and no company websites, which is unusual for companies ostensibly undertaking transactions in the amounts shown (millions of USD), including transactions worth almost \$39 million USD in a period of less than two months. Between December 2019 and February 2020, the Commission also made formal requests for information to the three companies, as well as Stanbic Bank and Commercial Bank International, in order to seek more information regarding the transactions. At the time of writing (August 2021), no responses to the Commission's formal requests have been received.

105. The Approved Budget of the Government of South Sudan for the Financial Year 2018/2019 is published on the Ministry of Finance and Economic Planning website, and the Commission welcomes all efforts by the Government of South Sudan to increase financial transparency by publishing approved budgets. An extract of the Approved Budget for the Financial Year 2018/2019 showing total spending in SSP for the financial year is shown below:¹⁴²

	Wages and Salaries	Use of Goods and Services	Capital Expenditure	Transfers and Grants	Interest, grants, loans & donat.	Grand Total
Total Spending	23,342,794,148	12,800,809,397	8,712,707,739	14,527,312,976	21,067,494,128	80,451,118,389

106. The total budget for the "Use of Goods and Services" and "Capital Expenditure" is SSP 21,513,517,136. The Approved Budget for the Financial Year 2018/2019 also provides details of the official exchange rate for SSP to USD for the budget period.¹⁴³

2018/19 Resource Envelope (in millions of SSP)			
	2017/2018 Approved Budget	Jul - Dec 2017 Outturns	2018/2019 Estimate Envelope
Indicative Exchange Rate (SSP/\$)	155	120.97	155.00

107. Using the official exchange rate of 155 SSP per 1 USD, the payment dated 2 May 2018 from the Ministry of Finance and Economic Planning for the benefit of Al Cardinal Investment LLC (\$29,999,970 USD) equates to SSP 4,649,995,350. As a percentage, the payment to Al Cardinal represents a staggering 21.6 per cent of the total budget for the "Use of Goods and Services" and "Capital Expenditure" for the entire fiscal year 2018/2019.

¹³⁹ *Ibid.*

¹⁴⁰ UK companies House. <https://beta.companieshouse.gov.uk/company/08227698/filing-history>

¹⁴¹ *See, e.g.*, an extract of the accounts filed dated 30 September 2016, available at UK companies House, *available at* <https://beta.companieshouse.gov.uk/company/08227698/filing-history>.

¹⁴² http://www.mofep-grss.org/wp-content/uploads/2018/11/Budget-Inner_480-pages.pdf.

¹⁴³ *Ibid.*

108. Based on the above, the Commission undertook further enquires to identify assets held by those suspected of being involved in the misappropriation of Government funds. The United Kingdom Land Registry provides a public register of property ownership. Enquiries show that a central London penthouse flat was purchased by Ashraf S.A. Hussein in August 2018 for the value of £11,000,000 GBP. This purchase was made approximately three months after Al Cardinal Investment LLC received a \$29,999,970 USD payment from the Government of South Sudan’s Ministry of Finance and Economic Planning.

REGISTER EXTRACT

Title Number	: [REDACTED]
Address of Property	: Flat [REDACTED] London (SW6)
Price Stated	: £11,000,000
Registered Owner(s)	: ASHRAF S.A. HUSSEIN of Flat [REDACTED] London SW6
Lender(s)	: None

109. The register extract¹⁴⁴ shows that Ashraf Seed Ahmed Hussein (“Al-Cardinal”) owns at least six properties in the United Kingdom. The combined purchase price of these properties is more than £21,000,000 GBP. All properties are in London, and, while the exact addresses are on file with the Commission, they have been redacted from this report.

110. The Commission further notes that there has been significant investigative reporting relating to corruption and bribery regarding Government contracts being issued to companies related to Ashraf Seed Ahmed Hussein, carried out by the UN Panel of Experts and The Sentry organisation. An extract from a report of October 2019 by The Sentry, entitled “Al Cardinal South Sudan’s Original Oligarch” sets out the following:¹⁴⁵



111. The Sentry’s report notes that this property was purchased eight months after “Al Cardinal” was awarded a Government contract. Further extracts of the United Kingdom Land Registry showing property ownership of Ashraf Seed Ahmed Hussein are shown below.¹⁴⁶

¹⁴⁴ ERN D120895 - D120898.

¹⁴⁵ *Al Cardinal South Sudan’s Original Oligarch*, THE SENTRY, October 2019, available at https://cdn.thesentry.org/wp-content/uploads/2019/10/AlCardinal_TheSentry_October2019-final.pdf

¹⁴⁶ ERN D121462 - D121464 and D121465 - D121467.

REGISTER EXTRACT

Title Number	: BGL [REDACTED]
Address of Property	: Flat [REDACTED] London (W14 [REDACTED])
Price Stated	: £2,676,500
Registered Owner(s)	: ALI ASHRAF SEEDAHMED HUSSEIN and [REDACTED] [REDACTED] and care of Portner and Jaskel LLP (reference DB/NC/2790/1), 7-10 Chandos Street, London W1G 9DQ.
Lender(s)	: None

REGISTER EXTRACT

Title Number	: BGL [REDACTED]
Address of Property	: Flat [REDACTED] London (W14 [REDACTED])
Price Stated	: £1,650,500
Registered Owner(s)	: ALI ASHRAF SEEDAHMED HUSSEIN [REDACTED] [REDACTED] and care of Portner and Jaskel LLP (Reference DB/NC/27960/1), 7-10 Chandos Street, London W1G 9DQ.
Lender(s)	: None

112. The above two properties in London W14 are located within the same building, and both were purchased in May 2014. It is worth noting that they are held jointly with another individual. Though the name of the individual is known to the Commission, it has been redacted from this report.

113. The Commission sent a request for information to Portner and Jaskel LLP listed in the register, now known as Portner, regarding the source of funds used to make these two purchases. At the time of writing (August 2021), no response to that specific inquiry has been received.

REGISTER EXTRACT

Title Number	: BGL [REDACTED]
Address of Property	: 5 [REDACTED] London (SW6 [REDACTED])
Price Stated	: £2,370,000
Registered Owner(s)	: ASHRAF SEEDAHMED HUSSAIN ALI [REDACTED]
Lender(s)	: None

REGISTER EXTRACT

Title Number	: BGL [REDACTED]
Address of Property	: 13 [REDACTED] London (SW6 [REDACTED])
Price Stated	: £2,230,000
Registered Owner(s)	: ASHRAF SEEDAHMED HUSSAIN ALI of [REDACTED]
Lender(s)	: None

114. Similarly, the above two properties in London SW6 are properties located within the same building, and both were purchased in July 2015.¹⁴⁷ Of the six properties detailed above, five were purchased as new build homes from the companies St George West London Ltd and St Edward Homes Ltd. The total value of homes sold to Ashraf Seed Ahmed Hussein by the Berkeley Group companies is £19,927,000 GBP.

115. The Commission notes a series of suspicious factors in the four payments identified between the Ministry of Finance and Economic Planning and companies Al Cardinal General Trading, Green For Logistics Services LLC, and Al Cardinal Investment LLC (see Table 1, above).

116. Firstly, two payments totalling almost \$20,000,000 USD were made on the same day (25 January 2016) to different companies which have the same ultimate beneficial owner. Secondly, these three companies do not appear to have any internet presence which would suggest active trading. One of the companies, Al Cardinal General Trading Limited, appears to have been dormant at the time of receiving almost \$9,000,000 USD. Thirdly, as mentioned above, the payment dated 2 May 2018 for the benefit of Al Cardinal Investment LLC (\$29,999,970 USD) represents 21.6 per cent of South Sudan's total budget for the "Use of Goods and Services" and "Capital Expenditure" for the entire year. Moreover, on two occasions, the awarding of a contract or Government payment was shortly followed by the purchase of an upscale property in London.

117. As mentioned, witnesses interviewed by the Commission have confirmed the prevalent use of "ghost contracts" to misappropriate and launder Government funds. The designation of Ashraf Seed Ahmed Hussein and associated companies by the United States Department for the Treasury in relation to "bribery, kickbacks and procurement fraud with

¹⁴⁷ ERN D121468 - D121470 and D121471 - D121473.

senior government officials,” and the lack of response by the Government to requests for information together provide reasonable grounds to believe that these four payments, in full or part, each represented the misappropriation of Government funds. The Commission further notes with concern that the activity described above is consistent with trade-based money laundering.¹⁴⁸

118. Under its new Global Anti-Corruption sanctions regime, on 26 April 2021, the United Kingdom sanctioned 22 individuals, including “Al Cardinal”, by imposing asset freezes and travel bans against them for their alleged involvement in serious international corruption. “Al Cardinal” was sanctioned “for his involvement in the misappropriation of significant amounts of state assets in one of the poorest countries in the world”. The UK further noted that “[t]his diversion of resources in collusion with South Sudanese elites has contributed to ongoing instability and conflict”.¹⁴⁹

C. De La Rue PLC and international corporations

119. The Commission moreover notes with grave concern the role played by rapacious international corporations in acts of corruption and bribery in South Sudan. On 23 July 2019, for example, the United Kingdom Serious Fraud Office announced the opening of an investigation regarding the De La Rue Group of companies and associated persons concerning their activity in South Sudan.¹⁵⁰ De La Rue manufactures paper and security printed products, including banknotes, passports, and tax stamps. The investigation is believed to relate to a contract to design and print banknotes which was awarded to De La Rue PLC by the Government of South Sudan. In its Interim Results Report dated 22 November 2011, De La Rue declared that it had designed and sought to implement a countrywide currency solution for South Sudan.¹⁵¹

120. On 16 June 2020, the UK Serious Fraud Office announced that it had “concluded that this case did not meet the relevant test for prosecution,” meaning “there was no realistic prospect of conviction and public interest in bringing a case.”¹⁵² Despite the announcement, the Commission notes with concern the suspected corruption regarding this contract, which has been widely reported in the media. For example, the photographs below appear to show two deposits into a Kenyan Equity Bank account held in the name of a man called Emmanuel Makuach Ayuel, which were remitted by De La Rue International Limited in 2016.¹⁵³ The Commission’s research identified a match for Emmanuel Makuach Ayuel as a “consultant at Bank of South Sudan.”¹⁵⁴

¹⁴⁸ Financial Action Task Force Trade Based Money Laundering 2006, *available at* <http://www.fatf-gafi.org/media/fatf/documents/reports/Trade%20Based%20Money%20Laundering.pdf>.

¹⁴⁹ <https://www.gov.uk/government/news/uk-sanctions-22-individuals-involved-in-serious-international-corruption>.

¹⁵⁰ <https://www.sfo.gov.uk/2019/07/23/de-la-rue-plc>.

¹⁵¹ <https://www.delarue.com/hubfs/Investors%20Report/presentation-reports/2011/Half%20Year%20Results%20201112%20Presentation.pdf>

¹⁵² <https://www.bnnbloomberg.ca/u-k-drops-bribery-probe-into-de-la-rue-banknotes-for-south-sudan-1.1451084>

¹⁵³ <https://www.africaintelligence.com/ion/business-circles/2017/04/07/will-sfo-also-investigate-de-la-rue-international,108229348-art>.

¹⁵⁴ ERN D121770 - D121772.

Particulars	CCY	Debit Amt.	Credit Amt.
FRONTIER DE LA RUE INTL LTD	USD		253,166.87
COMM ON INWD REM	USD	6.65	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	5,000.00	
Cash Withdrawal Charge	USD	1.05	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	5,000.00	
Cash Withdrawal Charge	USD	1.05	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	5,000.00	
Cash Withdrawal Charge	USD	1.05	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	25,000.00	
Cash Withdrawal Charge	USD	1.05	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	5,000.00	
Cash Withdrawal Charge	USD	1.05	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	5,000.00	
Cash Withdrawal Charge	USD	1.05	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	10,000.00	
Cash Withdrawal Charge	USD	1.05	

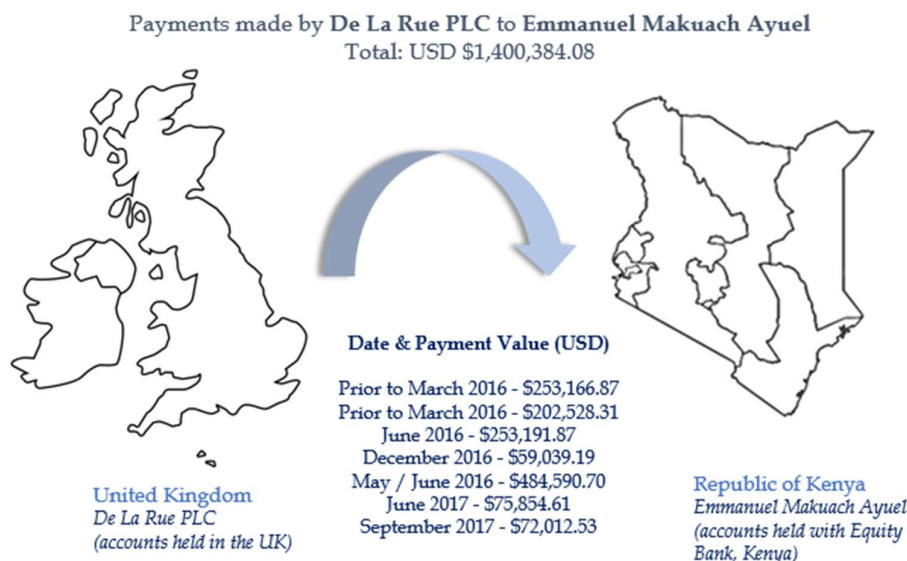
Particulars	CCY	Debit Amt.	Credit Amt.
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	10,000.00	
Cash Withdrawal Charge	USD	1.10	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	5,000.00	
Cash Withdrawal Charge	USD	1.17	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	3,000.00	
Cash Withdrawal Charge	USD	1.17	
FRONTIER DE LA RUE INTL LTD	USD		202,528.31
COMM ON INWD REM	USD	6.93	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	19,090.00	
Cash Withdrawal Charge	USD	1.09	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	30,000.00	
Cash Withdrawal Charge	USD	1.09	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	90,000.00	
Cash Withdrawal Charge	USD	1.09	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	30,000.00	
Cash Withdrawal Charge	USD	1.09	
Cash Withdrawal from LAVINGTON SUPREME CENTRE	USD	10,000.00	
Cash Withdrawal Charge	USD	1.09	

121. The foregoing transactions value \$253,166.87 USD and \$202,528.31 USD, respectively. The Commission was unable to obtain access to the actual account statements of Emmanuel Makuach Ayuel. Following the deposit of \$253,166.87 USD, the next nine transactions were cash withdrawals to the total value of \$70,000 USD.

122. After the deposit of \$202,528.31 USD, of the next six transactions, three were cash withdrawals to the value of \$70,090 USD, one was a transfer to the value of \$90,000 USD, and two are cash deposits to the value of \$50,000 USD. All of the cash transactions were made in Lavington (Kenya), an affluent residential neighbourhood in the north-west of the Kenyan capital Nairobi.

123. Further enquiries were made by the Commission which identified additional payments made by De La Rue PLC to Emmanuel Makuach Ayuel. All known payments between the parties are shown below:¹⁵⁵

¹⁵⁵ ERN D120869 - D120894.



124. In order to determine the precise nature and extent to which these payments were transacted, the Commission made a number of formal requests for information, including to De La Rue on 7 February and 5 March 2020, to the South Sudanese Ministry of Finance and Economic Planning and the Bank of South Sudan on 7 February 2020, to Equity Bank on 7 February 2020, and to Emmanuel Makuach Ayuel himself on both 7 February and 5 March 2020. Equity Bank subsequently engaged with the Commission and stated that it was considering the request for information. The Commission also reached out to Emmanuel Makuach Ayuel and suggested a meeting to discuss the allegations, but the offer was not accepted. The other addressees did not reply to the Commission.

125. The total value of the contract between De La Rue PLC and the Government of South Sudan is estimated to be \$144,000,000 USD.¹⁵⁶ The total value of the payments made by De La Rue PLC to Emmanuel Makuach Ayuel is \$1,400,384.08 USD. Therefore, approximately 1 per cent of the estimated value of the contract was paid to Emmanuel Makuach Ayuel.

126. In the investigation of possible economic crimes, the use of agents or consultants is generally considered to be suggestive of possible bribery and corruption when no legitimate business reason can be identified for why a multinational corporation should deal with a government through an agent, rather than directly. If these payments represented legitimate business transactions, they would have been expected to have been made into a business account – rather than into a personal account. Moreover, as Emmanuel Makuach Ayuel is apparently a consultant with the Bank of South Sudan, it would be expected that the Bank of South Sudan itself make remuneration payments, rather than a third party.

127. After receiving the deposits from De La Rue, the withdrawal of funds in cash payments raises additional suspicions. Cash payments circumvent the audit trail on how these funds were further used. Notwithstanding the closure of the investigations by the UK SFO, the Commission has reasonable grounds to believe that the payment of \$1,400,384.08 USD made by De La Rue PLC to Emmanuel Makuach Ayuel may represent a kickback or bribe payment for onward transfer to a South Sudanese Government official responsible for awarding the contract.

128. The USD \$1,400,384.08 paid to Emmanuel Makuach Ayuel is not believed to have contributed to De La Rue PLC's cost of design, printing, nor the delivery of South Sudanese bank notes. Therefore, this amount is deemed to be an unnecessary cost to the project, likely

¹⁵⁶ ERN D120869 - D120894.

to have been factored into the quote provided by De La Rue PLC to the Government of South Sudan.

129. At the time of these remittances and following cash withdrawals, cash may have been used to misappropriate Government funds. This could be due to the lack of audit trail and the ease of depositing or transferring cash into assets without raising significant suspicions.

130. The Bank of South Sudan is to be commended in its implementation of Circular DSR/SD/1/2017 – Customer Due Diligence and Guidelines on Know Your Customer (KYC) for Banks (dated 11 April 2017). Following the issuance of this circular, the Bank of South Sudan expects a report from a commercial bank each time it processes a cash transaction within South Sudan to the value of over \$10,000. This requirement is likely to have contributed to increased reporting of financial crime or misappropriation involving cash.

D. The National Revenue Authority (NRA)

131. In order to facilitate the collection of non-oil revenue across South Sudan, the National Revenue Authority (NRA) was established by the National Revenue Authority Act (2016).¹⁵⁷ Significant funding and assistance in establishing the NRA was provided to the Government of South Sudan by the African Development Bank (AfDB).¹⁵⁸ Pursuant to Chapter IV of the R-ARCSS, the NRA became primarily responsible for the collection and administration of non-oil revenue,¹⁵⁹ which had previously been collected by the Ministry of Finance.

132. Section 40 of the NRA Act sets out the rules on how revenue collected by the NRA is to be disbursed. The budget of the NRA is set by the National Legislature. In the first two years of its operations, the NRA was allowed to retain up to 2 per cent of funds collected for internal capacity building. This figure was to be reduced to 1 per cent for the following three years. Section 40 of the Act further stipulates that the remaining revenue collected is to be remitted to the Consolidated Fund held with the Bank of South Sudan.

133. Chapter 10 of the NRA Act states that accounts and records of NRA financial affairs are to be kept and audited annually by the Auditor General. Chapter 11 relates to integrity, establishes an ‘Office of Internal Audit’, and provides the function to review procedures and analyse accounts of the NRA.

134. In order to assess the effectiveness of NRA revenue collection, the Commission sent a formal request for information to the NRA which sought:

- (i) the monthly revenue collections for the calendar year 2018, separated by revenue type;
- (ii) the monthly revenue collections for the calendar year 2019, separated by revenue type; and
- (iii) the monthly transfers of revenue into the NRA operations account and the consolidated fund.

The revenue collections for 2018 and 2019 were requested to try and assess whether or not the establishment of the NRA had been effective in increasing revenue collection. Although the NRA became operational in collecting revenues in 2019 (see para. 141, below), the Commission has reasonable grounds to believe that the NRA would also have access to the 2018 revenue figures.¹⁶⁰

135. The Commission requested the figures of monthly transfers of revenue to determine how much revenue was being remitted in accordance with the NRA Act and to enable

¹⁵⁷ The Act sets out the functions, composition, revenue collection, audit, and reporting of the NRA. The NRA’s purpose is set out in section 3 of the Act and includes, “Taking over the responsibilities and assets of the directorates of customs and taxation and non-tax collecting agencies.” (section 3(3)). The mandate of the NRA is defined in the Act to include, “Assessing, collecting, remitting and accounting for revenues due to the national government.” (section 6(2)(a)).

¹⁵⁸ AfDB Non-Oil Revenue Mobilisation and Accountability in South Sudan (NORMA-SS) report dated March 2017, available at https://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/South_Sudan_-_Approved_Non-Oil_Revenue_Mobilisation_ORMA_PAR.pdf.

¹⁵⁹ Revitalised Agreement, Arts. 4.10.1.4-5.

¹⁶⁰ Section 3(3) of the National Revenue Act (2016) states the NRA is “Taking over the responsibilities and assets of the directorates of customs and taxation and non-tax collecting agencies.”

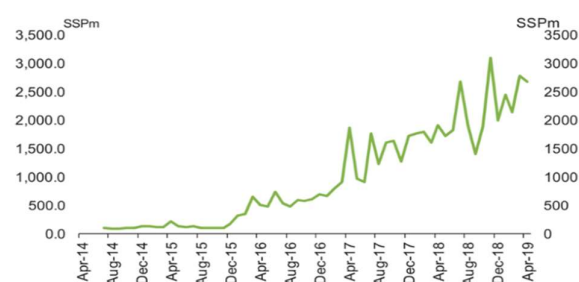
analysis as to whether the Government of South Sudan produces sufficient revenue to meet the needs of its citizens in terms of essential public services and economic, social and cultural rights (see Section VII., below). At the time of writing (August 2021), the Commission has not received a response from the NRA.

136. On 9 July 2020, during his speech marking the ninth anniversary of South Sudan's independence, President Salva Kiir admitted that non-oil revenues were not being fully remitted into the single block account of the National Revenue Authority. In fact, and as noted by President Kiir, when collected and managed appropriately, non-oil revenue should be able to meet the Government's expenditures.¹⁶¹

137. The Ministry of Finance and Economic Planning publishes on its website a large selection of financial documents, and the Ministry is to be commended for making this financial information accessible. The 2019/2020 Approved Budget Book, dated 19 December 2019, includes a section titled "Government Revenue". Within the foreword, the Minister of Finance and Economic Planning, Salvatore Garang Mabiordit, states: "Tax revenue has shown a substantial improvement estimated at SSP 29.852 billion due to the reform policy action implemented by the Government through the establishment of National Revenue Authority."

138. Also included within the 2019/2020 Approved Budget Book, the "Government Revenue" section contains the table below which indicates the level of non-oil revenue collected by the Government of South Sudan from August 2014 to April 2019.¹⁶²

Figure 4: Size and composition of monthly non-oil revenues in SSPM in 2018/2019



Source: NRA Monthly tax revenue collection

139. Although the exact figures of non-oil revenue are not known, the information provided within the budgets appears to show that collection has increased since the establishment of the NRA. The Government of South Sudan, the NRA, and the AfDB are to be commended for developing the NRA and obtaining the increase.

140. In late 2018, the NRA commenced a tender process which invited banks to apply for authority to collect revenues on behalf of the NRA. Revenues were to be collected by the banks, held temporarily, and remitted to the NRA in accordance with the National Revenue Authority Act (2016) upon instruction of the NRA. The banks which were selected to collect on behalf of the NRA were (in alphabetical order):¹⁶³

- Buffalo Commercial Bank
- Co-operative Bank of South Sudan
- Ecobank
- Equity Bank
- Ivory Bank
- Kenya Commercial Bank
- Kush Bank
- Mountain Trade and Development Bank

¹⁶¹ July 9th: President Kiir's speech marking the 9th anniversary of South Sudan's independence, PAANLUEL WEL MEDIA, 8 July 2020, available at <https://paanluelwel.com/2020/07/08/july-9th-president-kiirs-speech-marking-the-9th-anniversary-of-south-sudans-independence>.

¹⁶² <http://www.mofep-grss.org/wp-content/uploads/2019/12/FY-2019-2020-Approved-Budget-Book.pdf>.

¹⁶³ Confidential meetings with banks in Juba on 24 and 25 February 2020; See D120867 - D120867; D120864 - D120864; D120862 - D120863; D120860 - D120861; D120858 - D120859.

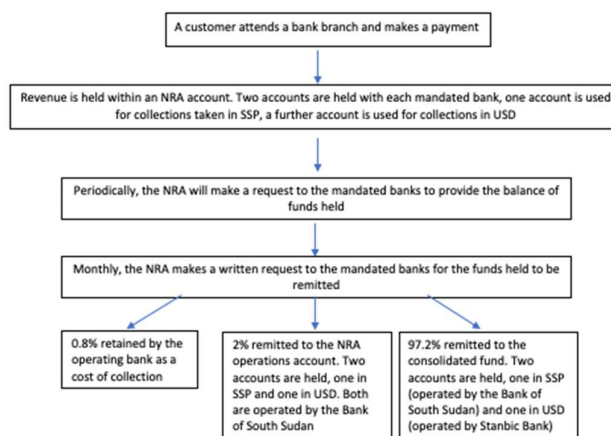
- Nile Commercial Bank
- Stanbic Bank

141. Since the NRA became operational in 2019, it took responsibility for non-oil revenue collection which includes personal income tax, business profit tax, passport or licence fees, and customs duties for imported goods. The largest collections are believed to derive from taxation and customs duties.¹⁶⁴

142. Taxation revenues are largely collected at bank branches in Juba. The process is as follows: a business owner will make a self-certification of taxation due, with the most common payments being for business profit tax and personal income tax. The tax will then be collected by the bank, and the payment is assigned to the Tax Identification Number of the business, which allows reconciliation with the Department for Taxation. The individual is then provided with a receipt of payment. The individual can use this receipt as proof to the NRA and other bodies that taxes have been paid.¹⁶⁵

143. With regards to customs collections, incoming goods are declared at a border, at which point a clearance agent will assess the incoming goods and liaise with a customs official to make a calculation of the duty owed. The system is manual, and the importer is provided with a handwritten invoice. The importer then goes to a bank branch, located at the border, and makes his/her payment. The bank operator authorises the receipt which is declared to the customs official and the goods are released.¹⁶⁶

144. Between December 2019 and February 2020, the Commission visited a number of banks in Juba to understand the revenue collection process, and learned that the NRA system is designed so that revenue is collected and remitted in the following way:¹⁶⁷



145. By order of Republican Decree number 21/2018, Mr. Olympio Attipoe was appointed as the Commissioner General of the NRA on 6 February 2018.¹⁶⁸ As a Ghanaian national, Mr. Attipoe's appointment was the outcome of an agreement between the African Development Bank and the Government of South Sudan, as the Bank was providing technical support and sought to ensure that the Commissioner General be independent. Upon commencement of NRA operations, Commissioner General Attipoe – in a remarkable effort to be completely transparent and accountable – provided publicly for the first time the levels

¹⁶⁴ Confidential meetings with banks in Juba on 24 and February 2020; See D120867 - D120867; D120864 - D120864; D120862 - D120863; D120860 - D120861; D120858 - D120859.

¹⁶⁵ Confidential meetings with banks in Juba on 24 February 2020, 25 February 2020, and 27 February 2020; See D120867 - D120867; D120864 - D120864; D120862 - D120863; D120860 - D120861; D120858 - D120859.

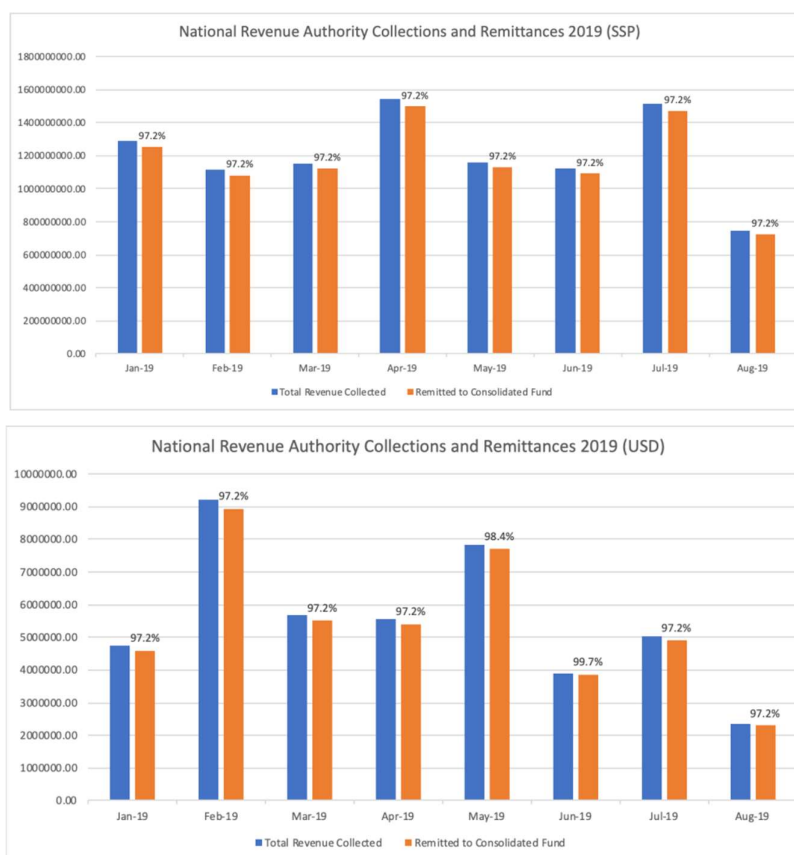
¹⁶⁶ Meetings with banks in Juba on 24 February 2020, 25 February 2020, and 27 February 2020; See D120867 - D120867; D120864 - D120864; D120862 - D120863; D120860 - D120861; D120858 - D120859.

¹⁶⁷ Meetings with banks in Juba on 24 February 2020, 25 February 2020, and 27 February 2020; See D120867 - D120867; D120864 - D120864; D120862 - D120863; D120860 - D120861; D120858 - D120859.

¹⁶⁸ Republican Decree number 21/2018.

of revenue collected and remitted by his office. The Commission commends this action as a demonstration of transparency and accountability.

146. The two tables below show revenue collected and remitted in South Sudanese Pounds (SSP) and US Dollars (USD), respectively.



It is worth noting that the figures for August 2019 in both tables only contain data from 1 to 15 August.

147. These remittances show a consistent level of transfer to the consolidated fund of 97.2 per cent or above. The statistics include a 0.8 per cent commission retained by the revenue-collecting banks. Collection efforts were stymied on 23 August 2019, however, when the Minister of Finance and Economic Planning, Salvatore Garang Mabiordit, dismissed the Commissioner General and the Board of Directors of the National Revenue Authority based on multiple allegations that both parties have denied.¹⁶⁹ Mr. Olympio Attipoe was replaced by the current Acting Commissioner, General Erjok Bullen Geu.

148. Upon removal of the former Commissioner General, the collection and remittance figures stopped being made public. The Commission notes with concern that this move is contrary to the Government's commitment to transparency and accountability.¹⁷⁰ The Commission further notes that revenue collection figures are a matter of public interest as their publication promotes transparency and accountability which may encourage citizens to self-declare taxes if it can be seen that funds are being used for the benefit of the people.

149. An investigation committee was established regarding the conduct of Mr. Olympio Attipoe. While under investigation, he was restricted from leaving South Sudan. The Commission expresses its concern regarding the arbitrary denial of his freedom of movement and the delay in the investigation. Mr. Olympio Attipoe's situation is further troubling given that he is a foreign national.

¹⁶⁹ Ministerial order RSS/MoF&P/MO/3/08/19 and documents on file with the Commission.

¹⁷⁰ Access to Information Act 2013, section 3.

150. In accordance with section 21 of the Investigation Committees Act (2006), which provides for public access to information, the Commission made a formal request to the Committee to provide it with the investigative material regarding the removal of the former Commissioner General Olympio Attipoe. At the time of writing (August 2021), no response has been received. In a process facilitated by the African Development Bank, in October 2020, South Sudan appointed Tanzanian national Dr. Patrick Mugoya, a former deputy commissioner of the Tanzania Revenue Authority, as the new Commissioner General. The Commission hopes that the new Commissioner General will be facilitated in his work and allowed to carry out his critical duties without interference.¹⁷¹

151. With regards to the NRA collection and remittance process described above, the operating banks receive periodic letters from the NRA instructing transfers of revenue to be made to the NRA operations account (2 per cent) and the Consolidated Fund (97.2 per cent), while the banks retain 0.8 per cent as their commission.

152. Documents published in the media appear to show NRA written requests for transfers that are in clear violation of the NRA Act, including how transfers from the non-oil revenue block account at Stanbic Bank (in Kenya) were not in compliance with the NRA Act. At least one of the requests is believed to be addressed to Nile Commercial Bank. Extracts of the reported documents are shown below:¹⁷²

Nile Commercial Bank
Juba – South Sudan

Subject: Authorization of Transfer of Revenue to the Central Bank.

The Office of the Acting Commissioner General presents its compliments and would like to authorize the transfer of the revenues received on behalf of the Government for the month of September 2019 to the Bank of South Sudan on or before 14 October 2019.

Revenue Analysis Table

Currency	Total Revenue Collected	Net To NRA Operations Account	0.8% Bank Charges	Total Remittance to Central Bank
SSP	454,272,512.0	191,928,819.90	3,634,180.1	258,709,512.040

Please, deduct the 0.8% bank charges per the table above.

Remit **SSP 191,928,819.90** into the National Revenue Authority Operations Account as follow:

- 1- Bank Name: Bank of South Sudan, Account Name: National Revenue Authority, Account Number: 00269122219214, Currency: SSP.

Kindly transfer the total remaining amount of **SSP 258,709,512.040** into the government bank account detailed as follow:

- 1- Bank Name: Bank of South Sudan, Account Name: Ministry of Finance and planning – Block A/C. Account No.: 00269112001002, Currency: SSP.

Kindly furnish me with the transfer report within three days from the date of transfer and very transfer must have description showing that money has been transferred from NRA Block Account.

Please accept the assurance of my highest regards,

Hon. Erjok Büßen Geu
Acting Commissioner General



¹⁷¹ Tanzanian national appointed head of South Sudan Revenue Authority, THE CITIZEN, 7 October 2020, available at <https://www.thecitizen.co.tz/tanzania/news/tanzanian-national-appointed-head-of-south-sudan-revenue-authority-2717506>.

¹⁷² Acting NRA boss makes suspicious bank transfers, EYE RADIO, 22 November 2019, available at <https://eyeradio.org/acting-nra-boss-makes-suspicious-bank-transfers>.

Subject: Authorization of Transfer of Revenue to the Central Bank.

The Office of the Commissioner General presents its compliments and would like to authorize the transfer of the revenues received into the National Revenue Authority Block Account Number: **0200000172935 USD** on behalf of the Government for the month of September 2019 to the Bank of South Sudan on or before 14 October 2019.

Revenue Analysis Table

Currency	Total Revenue Collected	Net to NRA Operations Account	0.8% Bank Charges	Total Remittance to Central Bank
USD	\$1,654,475.00	\$1,386,701.98	\$13,235.80	\$254,537.22

Please, deduct 0.8% bank charges per the table above.

Remit **USD 1,386,701.98** into the National Revenue Authority Operations Account as Follow:

- 1- Bank Name: Bank of South Sudan, Account Name: National Revenue Authority, Account Number: 00269212218157, Currency: USD.

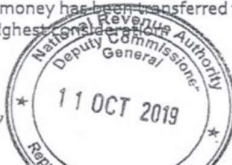
Kindly transfer the remaining total amount of **USD 254,537.22** into the government bank account detailed as follow:

- 1- Bank Name: Stanbic Bank – Nairobi, Kenya, Account Name: Bank of South Sudan Account No.:0100000296613 Currency: USD

Kindly furnish me with the transfer report within three days from the date of transfer and very transfer must have description showing that money has been transferred from NRA Block Account.

Please accept the assurance of my highest consideration.

Hon. Erjok Bullen Geu
Acting Commissioner General
National Revenue Authority



Subject: Authorization of Transfer of Revenue to the Central Bank.

The Office of the Commissioner General presents its compliments and would like to authorize the transfer of the revenues received into the National Revenue Authority Block Account Number: **0200000172935 USD** on behalf of the Government for the month of October 2019 to the Bank of South Sudan on or before 8th November 2019.

Revenue Analysis Table

Currency	Total Revenue Collected	Net to NRA Operations Account	0.8% Bank Charges	Total Remittance to Central Bank
USD	\$2,429,792.40	\$1,582,742.18	\$19,438.34	\$779,016.03

Please, deduct 0.8% bank charges per the table above.

Remit **USD 1,582,742.18** into the National Revenue Authority Operations Account as Follow:

- 1- Bank Name: Bank of South Sudan, Account Name: National Revenue Authority, Account Number: 00269212218157, Currency: USD.

Kindly transfer the remaining total amount of **USD 779,016.03** into the government bank account detailed as follow:

- 1- Bank Name: Stanbic Bank – Nairobi, Kenya, Account Name: Bank of South Sudan Account No.:0100000296613 Currency: USD

Kindly furnish me with the transfer report within three days from the date of transfer and very transfer must have description showing that money has been transferred from NRA Block Account.

Please accept the assurance of my highest consideration.

Hon. Erjok Bullen Geu
Acting Commissioner General
National Revenue Authority



153. On 23 November 2019, the NRA issued a press release providing an explanation regarding these transfers. The release can be summarised as follows:¹⁷³

- The transactions are genuine and legal;
- The NRA is improving revenue collection in comparison with recent months;
- The Acting Commissioner has increased the frequency of remittances to the Bank of South Sudan;

¹⁷³ ERN D120854 - D120855.

- The Ministry of Finance and Economic Planning owed a payment of USD 3,754,358 to Zawadi Service South Sudan Ltd. The payments relates to a 2014 contract to build an NRA office at Nimule, the main border crossing between Uganda and South Sudan;
- The Minister of Finance requested that this sum be paid from the NRA operations account in three instalments of USD 1,000,000 in September, October and November 2019; and
- These payments were assented to by the former Commissioner General prior to his removal.

154. Revenue for September 2019 causes concern as the amount transferred to the NRA operations account is significantly more than the 2 per cent allowed by the National Revenue Authority Act (2016). As the NRA press release states that the transactions are genuine and legal, the Commission presumes that the transfers have taken place. The table below highlights the “lost revenue” that was not transferred to the consolidated fund as required by the NRA Act.

Month	Total Revenue Collected	Required Amount of Revenue Transfer (97.2%)	Actual Amount of Revenue Transfer	Lost Revenue
September 2019 (SSP)	454,272,512.00	441,552,881.66	258,709,512.04	182,843,369.62
September 2019 (USD)	1,654,475.00	1,608,149.70	254,537.22	1,353,612.48
October 2019 (USD)	2,429,792.40	2,361,758.21	779,016.03	1,582,742.18

155. Based on the above table, the total figure of revenue that was lost from the consolidated fund from these three transactions amounts to SSP 182,843,369.62 and USD 2,936,354.66. Therefore, and as noted above, the NRA written requests for transfers were in clear violation of the NRA Act (2016) and led to substantial losses from the consolidated fund.

156. The Commission met with officials from a number of banks in South Sudan and is deeply concerned at the information that other banks have also received instructions from the NRA that appear to be in violation of the NRA Act.

157. The Commission made enquiries in an attempt to identify the company Zawadi Service South Sudan Ltd. While no company webpage could be found, the Ugandan Registration Services Bureau shows a record for the following company:¹⁷⁴

80020000430447	24-08-2017	ZAWADI SERVICES (S. SUDAN) LIMITED	248	Foreign company
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158. This company matches the name of the company referred to in the NRA press release. It is worth noting that Zawadi Services (S. Sudan) Limited was registered as a foreign company with the Ugandan Registration Services Bureau on 24 August 2017. The press release states that the contract regarding the office building was made in 2014. At the time of writing (August 2021), enquiries to ascertain the composition of Zawadi Services (S. Sudan) Limited and contractual obligations between the company and the Government of South Sudan are on-going.

159. The NRA Act is clear regarding the maximum of 2 per cent of revenue collection which can be retained by the NRA.¹⁷⁵ The transfers referred to above show SSP 182,843,369.62 and USD \$2,936,354.66 that were lost from the consolidated fund. The Commission notes that this loss is merely an emblematic example of the broader pattern of economic crimes and related violations in South Sudan. While the Commission was unable to confirm whether these funds are still retained by the NRA or if they have been spent, the NRA Act is unambiguous that that these funds should have been remitted to the consolidated fund to form funds for budget expenditure.

160. At the end of 2019, the NRA completed a review of the banks which were mandated to collect revenue on behalf of the NRA. An extract of an NRA letter dated 29 January 2020 and titled “Selected Commercial Banks to Continue with the collection on Non – Oil revenue on behalf of NRA” is shown below.¹⁷⁶

¹⁷⁴ See Uganda Registration Services Bureau, available at <https://ursb.go.ug>.

¹⁷⁵ Section 40(1)(b).

¹⁷⁶ ERN D120868 - D120868.

In this regard the office of acting commissioner General is hereby informing all the commercial banks that the evaluation of the revenue collection through the banks was done and here the list of the selected banks to continue collecting the revenue on behalf of the Government of the Republic of South Sudan is as follows.

- 1 - Buffalo Commercial Bank
- 2 - Kenya Commercial Bank (KCB)
- 3 - Equity Bank
- 4 - ECO Bank
- 5 - Co-Operative Bank
- 6 - Ivory Bank
- 7 - Nile Commercial Bank

161. In order to further document the process of non-oil revenue collection, in March 2020 the Commission's investigators visited the Directorate of Nationality, Passports and Immigration in Juba, which is a functional department of the Ministry of Interior. Enquiries were made with staff who explained that the Cooperative Bank had previously been resident at the Directorate of Nationality, Passports and Immigration with a bank counter to collect passport fees and similar charges. Some months earlier, however, the Cooperative Bank had been removed and revenue was now being collected by the Ministry itself and remitted into a Ministry of Finance Account.

162. The direct revenue collection system at the Directorate of Nationality, Passports and Immigration appears not to be compliant and consistent with other forms of revenue collection, which are usually collected by approved banks.

163. Moreover, the Commission's investigators observed that manual systems were being used at the Directorate, as opposed to an electronic system. The manual system operated may not be as effective and efficient given the cash payments as compared to the electronic systems used for the collection of taxes where payments are deposited at approved banks and electronic receipts are issued. The system operated at the Directorate may also have the potential for "leakages" of revenue collected. Witnesses have supported this opinion and stated that revenue collection where manual systems are used, such as customs duties collection, are subject to potential losses through corruption which will reduce the funds available to Government budgets.

164. The Commission notes a recent development by the NRA to introduce a new type of financial form that will be difficult to forge and reduce the opportunity for falsification and fraud. The Commission welcomes the introduction of measures that will improve NRA processes and increase revenue collection.

VII. Economic, social and cultural rights

165. Over the course of its six mandates, the Commission has documented how economic, social and cultural rights in South Sudan are often violated either directly and deliberately, such as in the context of the right to food (see A/HRC/45/CRP.3), or by omission including in instances where housing, land, and property rights have not been protected by the State, ultimately depriving South Sudanese from access to much needed resources necessary to their well-being. The spectrum of economic, social and cultural rights which the Government of South Sudan has failed to respect, protect, and fulfil include: the right to an adequate standard of living, including the rights to food and to be free from hunger, to adequate housing, water and sanitation, and clothing; healthcare; education; and housing, land, and property.¹⁷⁷ Indeed, the perpetration of related economic crimes has served to affect negatively the economic and social rights that South Sudan is obligated to uphold as a matter of international law.

166. Moreover, as demonstrated above, resources collected in both the oil and non-oil sectors are being systematically diverted into private hands, and contribute to fuelling the on-

¹⁷⁷ See, e.g., A/HRC/40/CRP.1; A/HRC/43/56; and A/HRC/45/CRP.3.

going conflict. In the process, both Government forces and armed opposition groups continue to stymie any realistic possibility of achieving the United Nations 17 Sustainable Development Goals by the year 2030.

167. The progressive realisation of economic, social and cultural rights requires a sustained commitment to the allocation of public resources. Through egregious acts of embezzlement, misappropriation, and the laundering of public funds, however, Government officials in South Sudan have crippled the capacity of the State to address its obligations to respect, protect, and fulfil these rights. For example, the Commission has gathered evidence on the embezzlement of funds and assets directly earmarked for healthcare in South Sudan.¹⁷⁸

168. Moreover, a hallmark of the conflict since 2016 has been the increasing securitisation of the State security apparatus, which has further had a detrimental impact on civil and political rights. As State security institutions have engendered a heightened climate of fear among communities and civil society, individuals continue to be deprived of their fundamental freedoms including the freedoms of opinion, expression, and assembly which has impacted on human rights defenders, the publication of newspapers, the work of journalists, and freedom of the press more generally. In the context of economic crimes, the Government of South Sudan has intimidated and harassed journalists seeking to expose corrupt Government officials through arrest, detention, and in some instances physical violence.¹⁷⁹

169. The Commission notes that the impact of many economic crimes as described in this report including corruption, embezzlement, the misappropriation of State funds, and trade-based money laundering directly jeopardise the enjoyment of fundamental rights. Staggering resource and fiscal mismanagement, including the excessive use of tax exemptions and waivers, have also deprived the Government of critical resources. Monies lost through corruption, embezzlement, misappropriation, and money laundering directly translate into a detriment to citizens arising from the unavailability of those resources for the provision of basic sustenance, shelter, and education.

170. The most recent Social Progress Index report¹⁸⁰ looks at the well-being of a society rather than its GDP, measuring basic physical needs for life such as food and shelter, essential services including health and education, as well as access to fundamental freedoms. South Sudan ranked on the bottom of the global list. To a large extent, this designation endures as a direct consequence of the way in which South Sudan's elites have mismanaged vital economic resources, including both oil and non-oil revenues.¹⁸¹

VIII. Conclusions

171. Unchecked, economic crimes and related human rights violations become entrenched in the body politic of the country and also the governance culture, exacting a heavy toll on society, the national economy, undermining trust and confidence in the notion that governments should act to fulfil the core rights of all citizens. Political and financial corruption, patronage networks and the failure by anti-corruption and public enforcement institutions all result in only a few individuals or groups benefit from the nation's resources to the exclusion of others, and engender deep grievances that undermine national cohesion fuelling ethnic conflict (A/HRC/45/CRP.4). In South Sudan's case, such crimes have funded and facilitated unaccountable patronage systems, and the proliferation of weapons, and have thus directly fuelled armed violence

¹⁷⁸ ERN 103548 - 103554; Confidential interviews, November 2019 and January 2020.

¹⁷⁹ ERN 101530 - 101541.

¹⁸⁰ The Social Progress Imperative is a global non-profit based in Washington, D.C., (USA) which produces the Social Progress Index; it is a new way to measure the real quality of life, independent of economic indicators. The Social Progress Index is designed to complement, rather than replace, economic measures such as GDP.

¹⁸¹ Moreover, according to the World Bank, South Sudan "remains among the poorest countries in the world". Four out of five South Sudanese live below the international poverty line of \$1.90 USD per day, with "hyperinflation, high debt burden, distortions in the foreign exchange rate market, challenges in budget execution, as well as sub-national conflict" exacerbating the situation. See <https://www.worldbank.org/en/news/press-release/2020/04/02/south-sudan-economic-analysis-shows-growth-promise-amid-fragility>. South Sudan is also ranked third of 178 countries, behind only Yemen and Somalia, in the Fund for Peace's 2020 Fragile States Index. See *2020 Fragile States Index*, FUND FOR PEACE, 13 May 2020, available at <https://fragilestatesindex.org/data>.

at the national and local levels together with attendant human rights violations and atrocity crimes. Economic crimes have thus created a malignant and destructive political culture that South Sudan's political leadership has failed to date to address despite the provisions of the Revitalised Peace Agreement. This heightens the need for the full implementation of both Chapters IV and V of the Revitalised Peace Agreement, as the holistic transitional justice framework provided for in Chapter V provides essential elements for restoring trust in revitalised governance and accountability systems, and for the promotion of social cohesion among divided and disaffected South Sudanese communities.

172. In addition to the Revitalised Peace Agreement, South Sudan has a significant number of laws and regulations designed to manage public finances and reduce the possibility of corruption and the misappropriation of Government funds. The challenge therefore is neither a policy nor legal gap but rather the absence of political will to address the extensive and widespread corruption amongst Government institutions at all levels.

173. The Commission has reasonable grounds to believe that a significant proportion of oil revenue continues to be diverted and stolen. In violation of both South Sudanese law and Chapter IV of the Revitalised Peace Agreement, not all of the revenues derived from oil are being paid into the single oil revenue account as is required. As oil is, by far, the most significant resource in South Sudan, this deprives the Government of revenues and capacity to fulfil its socio-economic obligations towards its citizens. Moreover, the requisite 2 per cent and 3 per cent of the net petroleum revenues have not been allocated to oil producing states and communities, fuelling the conflict at state and local levels, respectively, and further depriving citizens of the resources and opportunities necessary to improve the quality of their lives.

174. The Commission notes that any economy that is highly dependent on a single commodity (oil) is necessarily vulnerable to the fluctuations of the price of oil, which can adversely affect the capacity of the State to provide services and development. This enhances the need for prudent management of the economy, including its diversification, in order to shield the country from shocks. Rather than spurring prudence, oil revenues in South Sudan appear to have exacerbated profligacy and corruption.

175. Regarding non-oil revenue, the Commission also has reasonable grounds to believe that the payments identified in the three case studies in this report alone amount to a total value of more than \$73,000,000 US dollars and a significant misappropriation of Government funds. The Commission recognises and reiterates that this loss is merely an emblematic example of a broader pattern of economic crimes in South Sudan. Moreover, the Commission is not alone in its concerns about the scale of corruption in South Sudan; what it describes is the mere tip of the iceberg. Indeed, the Government's own assessment of the cost of corruption is "billions of dollars in just under a decade".¹⁸²

176. Entrenched acts of corruption, including the illicit trading and trafficking of goods, have triggered the rapid depreciation of the South Sudanese pound against the US dollar, drastically increasing the exchange rate on the parallel market and leading to price hikes for basic commodities. The Commission notes with grave concern that this level of corruption, if left unchecked, will continue to have a serious impact on citizens' and partners' levels of trust in the Government of South Sudan, as well as on the Government's ability to deliver on its international human rights obligations to provide the most basic socio-economic services to its citizens.

177. While the Commission welcomes the Government's statements that corruption will not be tolerated, the rhetoric has not been matched by action, and it appears that little political will exists to take concrete steps towards achieving this objective. Consequently, impunity in the country in respect of economic crimes and related violations has deepened. Between December 2019 and February 2020, for example, formal requests for information were sent by the Commission to Government

¹⁸² Republic of South Sudan A Response to The Sentry Report on "The Taking of South Sudan: The Tycoons, Brokers and Multinational Corporations Complicit in Hijacking the World's Newest State", The Office of the President, 7 November 2019.

institutions including to the Ministry of Finance and Economic Planning, National Revenue Authority, and Bank of South Sudan, all of which went unanswered. In addition, many witnesses interviewed by the Commission expressed the view that they were reluctant to speak openly about corruption for fear of losing their jobs or suffering other reprisals from the Government.

178. International banks including those in neighbouring countries that engage in correspondent banking relationships with South Sudanese banks have been some of the main conduits for illicit financial flows and have benefitted companies related to the now sanctioned Ashraf Seed Ahmed Hussein (“Al Cardinal”) and Kur Ajing Ater. In line with the commitments of States parties under the African Union Convention on Preventing and Combating Corruption, these financial institutions should consider submitting suspicious transaction reports describing any identified transactions.

179. The Commission takes the view that if the Government is serious about preventing financial mismanagement and misappropriation by officials and third parties, effective “watchdog” bodies are necessary. The Commission notes that while several institutions in South Sudan are mandated to tackle corruption, such as the National Audit Chamber and the Anti-Corruption Commission, these bodies lack the independence, funding, and access necessary to carry out their functions.

180. Furthermore, the Commission notes that the involvement of Government officials in private business is in contravention of Article 121 of the Constitution. Government officials involving themselves in private business while holding Government positions will continue to lead to significant conflicts of interest and a culture of profiteering from their official positions.

181. In addition, based on the evidence collected (see Annex IV, below), and through its continued exploration and production of oil in Upper Nile and Unity States and Ruweng Administrative Area, there are reasonable grounds to believe that the Government of South Sudan has committed acts and is responsible for omissions amounting to serious violations of human rights law under the Bill of Rights enshrined in the Transitional Constitution of the Republic of South Sudan, the African Charter on Human and Peoples’ Rights, and the Convention on the Elimination of All Forms of Discrimination Against Women, including violations of the rights to life, dignity, integrity, liberty and security of persons, as well as violations of the rights of children to life, survival and development, well-being and health, and to liberty and security of person.

IX. Recommendations

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

(a) Take immediate steps to implement the outstanding provisions of Chapter IV of the R-ARCSS, in particular those outlined in Section III, above. The Government should also nurture and sustain a culture of accountability and probity in the management of the economy, and of public finances at all levels and in all sectors of public administration. This should include strengthening and supporting the institutions and officials mandated with oversight responsibilities; and holding those implicated in economic crimes criminally accountable; ensuring that the funds stolen are repatriated;

(b) Realign spending priorities and commit resources towards fulfilling its citizens’ immediate needs, by prioritising and fulfilling the economic, social and cultural rights of all South Sudanese women, men, and children;

(c) Cease immediately the practice of sending to banks instructions to freeze, transfer funds, or close accounts without providing the underlying reason for doing so in order to minimise the risk of abuse of power and limit the potential that such instructions can be used to coerce or punish arbitrarily members of civil society who report incidents of corruption or other human rights violations;

(d) Work with other Member States, in particular neighbouring States and those in the region, the United States, and the United Kingdom, to recover and

repatriate proceeds from corrupt activities, including properties purchased in neighbouring and other States, and funds held in foreign accounts, and seek assistance to investigate and prosecute the individuals responsible for the relevant crimes;

(e) Complete the process of joining the African Union Convention on Preventing and Combating Corruption by ratifying the treaty;

(f) Cease immediately the practice of sending to banks instructions to freeze, transfer funds, or close accounts without providing the underlying reason for doing so in order to minimise the risk of abuse of power and limit the potential that such instructions can be used to coerce or punish arbitrarily members of civil society who report incidents of corruption or other human rights violations;

(g) Make public a comprehensive strategy to address the causes and pernicious effects of oil pollution;

(h) Make full reparation in the form of restitution, compensation, and satisfaction to all affected communities including in Upper Nile and Unity States and Ruweng Administrative Area, for injuries and harm caused by oil exploration due to leakages of pipelines, weak ruptures on the pipelines, and environmental pollution; ensure the rights of affected communities to safe drinking water and adequate healthcare; and work closely with Member States including those affiliated with the Dar Petroleum Operating Company (DPOC), Greater Pioneer Operating Company (GPOC), and Sudd Petroleum Operating Company (SPOC) to develop, implement, and make public a comprehensive strategy to address the causes and pernicious effects of oil pollution;

In relation to the National Revenue Authority (NRA)

(i) Publish the collection and remittance figures for the period of January 2019 to present, to provide transparency and demonstrate to the tax paying public that revenues are correctly remitted to the consolidated fund for Government expenditure as there does not appear to be any legal basis for withholding the collection figures;

(j) The bank accounts to which 97.2 per cent of revenue should be remitted are held with the Bank of South Sudan for the South Sudanese Pounds (SSP) account but held with Stanbic Bank in Nairobi (Kenya) for United States Dollars (USD) revenues. The National Revenue Authority Act (section 40(2)(a)) states that revenues must be remitted to the consolidated account held at the Bank of South Sudan. The Office of Internal Audit within the NRA should therefore conduct a review to identify why this USD account is not held in accordance with the National Revenue Authority Act (2016);

(k) Ensure that any payment transfer requests that appear to be contrary to the National Revenue Authority Act 2016 are investigated. A thorough investigation is likewise required to assess all transfer requests made by the NRA to mandated banks as well as the subsequent payments following from those requests. If payments are found to exceed the stipulated 2 per cent, a thorough, external, independent audit of the NRA operations account (both USD and SSP) should be undertaken to assess what has happened to the excess funds. The Commission recommends that an investigation should be commenced by either the National Audit Chamber, in accordance with section 14 of the National Audit Chamber Act 2011, or by forming an investigation committee in accordance with section 5 of the Investigation Committees Act 2006;

(l) Conduct a review by the NRA Office of Internal Audit of all non-oil revenue sources and identify where collections are being made by the Ministry or Department directly without the use of mandated banks. In order to reduce the opportunity for misappropriation, it is recommended that the NRA move towards a consistent method of collection across all revenue sources with the use of mandated banks for collection;

In relation to the Ministry of Finance and Economic Planning

(m) Information and documentation collected by the Commission indicates that significant sums have been paid to companies owned by Ashraf Seed Ahmed

Hussein (“Al Cardinal”). The Commission recommends that a complete and transparent investigation takes place which assesses all contracts and payments that have been made to companies linked to Al Cardinal and to Kur Ajing Ater. If criminal conduct is identified, criminal proceedings and the recovery of misappropriated assets should be initiated. The Government is also encouraged to engage with bodies such as the Stolen Asset Recovery Initiative (a programme administered by the World Bank and the United Nations Office on Drugs and Crime) to assist in the development of investigation and recovery strategies. In order to promote transparency, at the end of proceedings, the findings of the investigation should be made public;

(n) Notwithstanding the closure of the United Kingdom’s investigation, there are reasonable grounds to believe that the contract awarded to De La Rue regarding currency printing involved bribery and corruption. The Commission recommends that the Government of South Sudan task the Anti-Corruption Commission to investigate the awarding of the currency printing contract. If applicable, consideration should be given to undertaking a domestic criminal prosecution and seeking the recovery of any bribe payments;

In relation to the National Audit Chamber

(o) The National Audit Chamber website currently lists the Annual Reports for the years 2005 to 2008. The Commission understands that later Annual Reports have been completed and submitted to Parliament. The Commission recommends that as soon as practicable the Auditor General is invited to present the reports to Parliament and publish the reports;

(p) To be truly effective, national watchdog bodies must be independent. The National Audit Chamber Strategic Plan 2019 – 2024 outlines that, “Its budget is controlled by the primary auditee, the Ministry of Finance. The staffing function is subordinated to another main auditee, the Ministry of Public Service.” The Commission therefore recommends that the Government take firm steps to ensure that the National Audit Chamber has independent control of its own budget and human resources needs;

In relation to the Anti-Corruption Commission

(q) The Commission welcomes the Government’s commitment to strengthening the Anti-Corruption Commission and the “progress toward instituting a Special Court tasked with trying cases related to mismanagement of public resources and corruption”.¹⁸³ The Commission encourages the Government to ensure that all bodies involved in combating corruption are properly resourced, funded, and financially independent. As the budget of the Anti-Corruption Commission is controlled by the Ministry of Finance and Economic Planning, this may cause a conflict of interest if an Anti-Corruption Commission investigation were to focus on an individual related to the Ministry of Finance and Economic Planning. In addition to the formation of the ‘Special Court’, the Commission recommends that a specialist, financially independent and confidential department is established within the Ministry of Justice that would be responsible for assessing cases prepared by the Anti-Corruption Commission to manage cases and subsequent prosecutions;

(r) The Commission welcomes the Government’s commitment to investigate the allegations of corruption made by The Sentry in its report: “The Taking of South Sudan: The Tycoons, Brokers and Multinational Corporations Complicit in Hijacking the World’s Newest Nation”. The Commission encourages the Government to make such an investigation a transparent process, and, at the end of proceedings, to publish the findings in accordance with the Right to Access Information Act (2013) which states, “This Act provides for the right of access to information as fundamental to the fulfilment of human rights and is essential in fighting corruption” (section 4(2));

¹⁸³ “A Response to The Sentry Report on ‘The Taking of South Sudan: The Tycoons, Brokers, and Multinational Corporations Complicit in Hijacking the World’s Newest State’” Office of the President, 7 November 2019.

(s) In order to enforce Article 121 of the Transitional Constitution of the Republic of South Sudan, regarding declarations of wealth, the Government and the Anti-Corruption Commission are encouraged to oblige officials to declare assets held upon commencement of post, and then annually. The Anti-Corruption Commission is encouraged to increase accountability and transparency by making these records public. The Government should consider enacting legislation which would widen the definition of assets to include business interests and also create a criminal offence of making a false or misleading declaration;

In relation to the Bank of South Sudan

(t) The Commission welcomes the Government's commitment to seek membership of the Financial Action Task Force (FAFT) and the Eastern and Southern African Anti-Money Laundering Group (ESAAMLG).¹⁸⁴ As the Bank of South Sudan appears to be currently forming a Financial Intelligence Unit (FIU), membership of such bodies may not happen simultaneously and therefore not be immediate. The Commission calls for the completion of the establishment of the FIU without undue delay in order to facilitate the reporting and investigation of suspicious transactions. Moreover, South Sudan finds itself in the early stages of establishing anti-money laundering and anti-financial crime development systems. The Commission recommends that the Government and Bank of South Sudan build its Financial Intelligence Unit upon FATF recommendations.¹⁸⁵ The Government of South Sudan is encouraged to seek as a mentor or sponsor an experienced person from another country for the FIU to assist with the development of the new South Sudanese body;

(u) The Commission expresses concern regarding reports that Government officials or Politically Exposed Persons (PEPs) are among the shareholders and/or boards of directors of South Sudanese banks, which potentially raises significant conflicts of interest for serving officials. In order to promote the separation of business and politics, the Bank of South Sudan should publish details of all shareholders and members of the boards of directors for each licenced bank. An investigation committee should be formed to analyse shareholdings and directorships and any PEP identified should be forced to either sell the shareholding or resign the Government position;

(v) The Commission notes that section 79 of the Banking Act (2012) allows the Bank of South Sudan to freeze accounts that hold the proceeds of crime. Provisions, such as this, without independent oversight risk being abused for political reasons. The Commission recommends that powers to freeze and potentially forfeit criminal property are reassigned to the Anti-Corruption Commission or law enforcement, to be initiated with the approval of either a court or prosecutor;

(w) The Bank of South Sudan is encouraged to issue a clarification regarding the definition of a Politically Exposed Person (PEP). There is a discrepancy in the definition between the Anti-Money Laundering and Counter Terrorist Financing Act 2012 and the Bank of South Sudan circular dated 11 April 2017, DSR/SD/1/2017 – Customer Due Diligence and Guidelines on Know Your Customer (KYC) for Banks; and

In relation to the Information Commissioner

(x) In order to enforce Article 121 of the Transitional Constitution of the Republic of South Sudan, regarding the prohibition of private business, and to promote the separation of politics and business, the Government and the Information Commissioner are encouraged to develop public records displaying the ownership of South Sudanese companies and property.

183. The Commission recommends the following to Member States:

¹⁸⁴ "A Response to The Sentry Report on 'The Taking of South Sudan: The Tycoons, Brokers, and Multinational Corporations Complicit in Hijacking the World's Newest State'", Office of the President, 7 November 2019.

¹⁸⁵ <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20202.pdf>.

(a) The Commission welcomes the commitment by certain Member States to counter illicit finance emanating from South Sudan. Should any funds ultimately be forfeited, relevant Member States are encouraged to consider, in accordance with the United Nations Convention Against Corruption the repatriation of funds, seeking safeguards against potential “re-corruption”;

(b) In line with seeking safeguards against potential “re-corruption”, Member States should also explore the establishment of an escrow account into which seized funds can be repatriated and disbursed to individuals and communities affected by the perpetration of economic crimes and related violations, in such a way that the resources are not re-looted or misappropriated by either the State or private individuals;

(c) Member States including those affiliated with the Dar Petroleum Operating Company (DPOC), the Greater Pioneer Operating Company (GPOC), and Sudd Petroleum Operating Company (SPOC) involved in the exploration of oil in South Sudan since 2013 which has caused harm to health and the environment including in Upper Nile and Unity States and Ruweng Administrative Area, or which has contributed to the on-going armed conflict in South Sudan, should investigate and, where appropriate, prosecute individuals for their involvement in the commission of crimes related to such human rights violations; and

(d) Member States including those affiliated with the Dar Petroleum Operating Company (DPOC), the Greater Pioneer Operating Company (GPOC), and Sudd Petroleum Operating Company (SPOC) involved in the exploration of oil in South Sudan since 2013 which has caused harm to health and the environment including in Upper Nile and Unity States and Ruweng Administrative Area should make full reparation in the form of restitution, compensation, and satisfaction to all affected individuals and communities, and work closely with the Government of South Sudan to develop, implement, and make public a comprehensive strategy to address the causes and pernicious effects of oil pollution, including by soliciting the input of affected communities.

184. The Commission recommends to all banks operating in South Sudan which have been mandated to collect revenues on behalf of the NRA to review all transfer requests and payments made to the NRA and report any instances that are contrary to the National Revenue Authority Act (2016) to the Bank of South Sudan.

185. The Commission recommends to the international banking community:

(a) The present report and others released by civil society and law enforcement agencies seeks to highlight the financial crime risks emanating from South Sudan. The issuance of such advice and the implementation of financial sanctions may have the undesired effect of banks closing all financial ties with South Sudan in order to de-risk. Banks are encouraged to instead adopt a risk-based approach and seek to support legitimate financial flows and investment regarding South Sudan; and

(b) International banks that engage in correspondent banking relationships with South Sudanese banks are encouraged to conduct a review of historic transactions to identify payments that have benefitted companies related to the now sanctioned Ashraf Seed Ahmed Hussein (“Al Cardinal”) and Kur Ajing Ater. Financial institutions are encouraged to consider submitting suspicious transaction reports describing any identified transactions.

Annex I

Map of the Republic of South Sudan



Annex II

Analysis of Banking Regulatory System in South Sudan

1. Licencing and regulation of the financial sector of South Sudan is provided by the Bank of South Sudan, established pursuant to Section 5 of The Bank of South Sudan Act 2011. There are currently thirty licensed banks operating in South Sudan.¹⁸⁶
2. The Banking Act (2012) provides strong powers to the Bank of South Sudan including the revoking of a banking licence for a bank engaging in criminal activities, money laundering or terrorist financing (section 21(2)(e)). It also provides the fundamental requirement of financial regulation of ‘know your customer’ and states banks shall not maintain accounts for undisclosed persons and must record the identity of customers and beneficiaries (section 77).
3. Banks are also prohibited from operating accounts “if the bank knows, or has reasonable grounds to suspect, that such account or services would support, or aid in the furtherance or perpetration of, any criminal activity, money laundering or terrorist financing” (section 78(1)). The law also creates an obligation for financial institutions to report to the Bank of South Sudan suspicions of when an account has been used for criminality (section 78(2)).
4. This regulation is helpful in tackling economic crime. ‘Reasonable grounds to suspect’ is a low burden proof and therefore banks operating in South Sudan are required to report instances of mere suspicion of where accounts are used to support, aid, or furtherance criminality.
5. The Bank of South Sudan is provided with significant powers to combat illicit finance within section 79 of the Act which states, “The Bank shall, if it has reason to believe that any account held in any bank has funds on the account that are the proceeds of crime, issue a written instruction to such bank to freeze the account, pending further instructions from the Bank” (section 79(1)). On first appearance the powers appear to be a helpful and useful tool to counter financial crime. Instructions to freeze, transfer funds, and close accounts, however, have been sent to banks without providing the underlying reason for doing so. Without independent oversight, which would assess whether the “reason to believe” is justifiable, there is a risk that the power may be abused to impede or completely restrict an individual’s access to funds. For example, the powers could be used to coerce or punish civil society actors who report incidents of corruption or other human rights violations.
6. The Bank of South Sudan issues instructions and guidance to financial institutions via regulations and circulars in accordance with The Bank of South Sudan Act (2011) (section 11(5)(c)(d)).
7. The circular dated 17 March 2017, DCB/BOD/1/2017 – Guidelines for Reporting Large Cash Transactions, recognises the inherent money laundering risk of large cash transactions, stating “The requirement to report large cash transactions is intended to combat money laundering activities and the use of cash to engage in illegal activities or to disguise funds obtained from illegitimate sources. Banks and non-banks financial institutions, instead, should encourage clients to transact using cheques, transfers, and other payment methods available” (paragraph 4).
8. Paragraph 6 of the circular creates an obligation for financial institutions to report to the Bank of South Sudan single cash transactions that are equal and above the value of \$10,000 USD (or equivalent currency) and provides forms upon which to do so.
9. This action of the Bank of South Sudan is commended to help to combat the use of cash payments, with no audit trail, to launder misappropriated Government funds, proceeds of crime, and the financing of illegal activities including terrorism. The obligation is further

¹⁸⁶ <https://bankofsouthsudan.org/banking-supervision/banking-supervision>.

explained in the circular dated 11 April 2017, DSR/SD/1/2017 – Customer Due Diligence and Guidelines on Know Your Customer (KYC) for Banks.

10. This further circular relates to a cornerstone of financial due diligence, which is the principle of ‘Know Your Customer’. Paragraph 17 outlines the need for banks to ensure that payment information is complete and that, should incoming payments lack originator information, and if the information cannot be satisfactorily obtained, the funds should be returned to the source and details reported to the Bank of South Sudan.

11. Politically Exposed Persons (PEPs) are described in paragraphs 27 to 29 and the legal and reputational risks of dealing with a PEP are highlighted. PEPs are defined as “individuals who are or have been entrusted with prominent public functions, including heads of state or of government, senior politicians, senior government, judicial or military officials, senior executives of publicly owned corporations and important political party officials” (paragraph 27).

12. The Anti-Money Laundering and Counter Terrorist Financing Act (2012) defines a suspicious transaction as “an activity or transaction that a reporting person suspects, or has reasonable grounds to suspect:

- (a) involves funds or property that are proceeds of crime;
- (b) funds or property that are related or linked to or are to be used for commission or continuation of a predicate offence, or
- (c) may be an indication of money laundering or predicate offence”

13. The Act establishes a Financial Intelligence Unit (FIU) to sit within the Ministry of Finance and Economic Planning. The South Sudan FIU “shall be responsible for receiving, analysing and disseminating suspicious transaction reports and other information regarding potential money laundering or terrorist financing” (section 6(2)).

14. The powers and duties of the FIU are outlined in section 8 of the Act and include to:

- receive and analyse reports of suspicious transactions (section 8(a));
- disseminate any such reports to the appropriate law enforcement agencies if the FIU has reasonable grounds to suspect that the transaction involves money laundering or any other predicate offence (section 8(b));
- instruct any reporting person to take appropriate steps to facilitate any inspection ordered by the FIU (section 8(c));
- disseminate to the appropriate law enforcement agencies any information derived from an inspection carried out pursuant to paragraph (c), if the FIU has reasonable grounds to suspect that a transaction involves the proceeds of crime or financing of terrorism (section 8(d)); and
- exchange information with overseas financial intelligence units and comparable bodies (section 8(i)).

15. Section 18 of the Act creates an obligation for a financial institution to report suspicious transactions to the FIU. The Commission welcomes the measures taken to establish a FIU and sees this as a positive step in tackling economic crime and related violations.

16. In an attempt to understand the effectiveness of the anti-money laundering legislation and regulations within South Sudan, the Commission sent questionnaires and conducted interviews with senior officials at a number of licenced banks. The Commission is grateful to all financial institutions which met with the Commission and/or provided responses to questionnaires. Amongst other things, witnesses explained that Government officials are often shareholders or serve on the boards of directors of South Sudanese banks. One interviewee explained that having such an official associated with the bank assists in raising capital, obtaining accounts, contracts, and, put simply, “makes life easier.”¹⁸⁷

¹⁸⁷ Confidential Meeting, 24 February 2020, ERN D121475 - D121479.

17. The Commission also understands that the FIU is in the process of being established within the Bank of South Sudan though it is not functional at the time of writing (August 2021). This provides difficulties for financial institutions that have identified suspicious transactions but lack a recipient to whom they can submit their reports. Enquiries have identified banks holding suspicious transaction reports on file internally. This causes a problem in that suspicions regarding economic crime and related violations are not being reported or investigated.¹⁸⁸

¹⁸⁸ Confidential Meeting, 24 February 2020, ERN D121475 - D121479.

Annex III

Oil consortia

1. Dar Petroleum Operating Company (DPOC), established in 2012, is currently the largest oil-producing consortium in South Sudan, operating in Blocks 3C and 7 in former Upper Nile State. The consortium is owned by the Chinese National Petroleum Company (CNPC, 41 per cent), the Malaysian Petronas (40 per cent), Nilepet (8 per cent), Sinopet (a subsidiary of Nilepet, 6 per cent) and the Kuwait/Egyptian Tri Ocean (4 per cent). The joint venture accounts for nearly all of South Sudan's current output.¹⁸⁹ Production from DPOC, currently the largest producer, totalled 22,553,653 barrels in the first half of FY2020/21.¹⁹⁰ These fields produce the Dar blend oil, a heavier crude oil type, that requires special processing and transport conditions.¹⁹¹

2. Greater Pioneer Operating Company (GPOC), similarly established in 2012, operates in Blocks 1, 2 and 4 (northern part of Unity State and Ruweng Administrative Area), near the border with Sudan.¹⁹² The consortium is owned by CNPC (40 per cent), Petronas (30 per cent), Indian ONGC (Oil and Natural Gas Corporation, 25 per cent), and Nilepet (5 per cent).¹⁹³ GPOC is conducting its operations through EPSA (Exploration and Production Sharing Agreements) apparently since September 2018. Oil production has only gradually started up again since August 2018, after having been halted in 2014, as a result of the fighting which destroyed much of the company's facilities.¹⁹⁴ On 2 January 2019, the company restarted production at five of the 16 oil wells at Unity oilfield, in the north of Rubkona County in Block 1.¹⁹⁵ Production from GPOC, the second largest producer, totalled 9,994,000 barrels in the first half of FY2020/21.¹⁹⁶

3. Sudd Petroleum Operation Company (SPOC), also established in 2012 and owned jointly by Petronas (67.875 per cent), ONGC (24.125 per cent) and Nilepet (8 per cent), resumed exploitation of Block 5A in June 2021, in former Unity State and Ruweng Administrative Area, measuring around 20,000 square kilometres.¹⁹⁷ Block 5A has significant potential as it is believed to contain the bulk of the South Sudanese oil reserves (82 per cent).¹⁹⁸ The Block will produce more than 8,000 bpd by the end of 2021, 16,000 bpd by mid-2022; 30,000 bpd by 2025, and is expected to reach a peak of 45,000 bpd in 2028. Other potential oil fields in Mirmir and Jumaa are envisaged to be added increasing production further.¹⁹⁹ The reactivation and security of the Thar Jath oil fields is a stated priority of the South Sudanese and Sudanese Governments, noted explicitly in the Khartoum Declaration of 27 June 2018, a precursor to the R-ARCSS of September 2018.²⁰⁰ There was some oil production at Thar Jath between 2006 and 2012, peaking at 27,000 bpd and at the lowest rate of 15-17,000 bpd. In April 2013, SPOC reactivated Thar Jath oil fields, but production was capped at 10,000 barrels a day because of the lower quality of the oil which

¹⁸⁹ Africa Oil & Power Conference, Juba, November 2018 and DPOC presentation at the conference, *available at* <https://africaoilandpower.com/2018/11/26/south-sudan-oil-power-2018-presentations>.

¹⁹⁰ See <http://www.mofep-grss.org/wp-content/uploads/2021/06/QUARTELY-EBR.pdf>, at p. 11.

¹⁹¹ James, Laura M., (2015) "Fields of Control: Oil and (In)security in Sudan and South Sudan", Small Arms Survey, Human Security Baseline Assessment for South Sudan and Sudan, Working Paper 40, p. 27; Patey, L. (2014) *The New Kings of Crude, China, India and the Global Struggle for Oil in Sudan and South Sudan*, p. 245.

¹⁹² Africa Oil & Power Conference, Juba, November 2018 and GPOC presentation at the conference, retrieved at <https://africaoilandpower.com/2018/11/26/south-sudan-oil-power-2018-presentations>.

¹⁹³ GPOC presentation, retrieved at the Oil & Power Conference 2018, retrieved at <https://africaoilandpower.com/2018/11/26/south-sudan-oil-power-2018-presentations/>.

¹⁹⁴ Hiba Morgan, "South Sudan holds oil conference to boost industry, *Al Jazeera*, 21 November 2018.

¹⁹⁵ Nyamilepedia, "Oil Production Resumes in Rubkona's Unity Oilfields", 2 January 2019; GPOC presentation at Oil & Power Conference, Juba, November 2018, retrieved at <https://africaoilandpower.com/2018/11/26/south-sudan-oil-power-2018-presentations/>.

¹⁹⁶ See <http://www.mofep-grss.org/wp-content/uploads/2021/06/QUARTELY-EBR.pdf>, at p. 11.

¹⁹⁷ See <https://www.africanews.com/2021/06/23/south-sudan-s-block-5a-recommences-oil-production>.

¹⁹⁸ Africa Oil & Power Conference, November 2018, SPOC presentation.

¹⁹⁹ Africa Oil & Power Conference, Juba, November 2018 and SPOC presentation at the conference, retrieved at <https://africaoilandpower.com/2018/11/26/south-sudan-oil-power-2018-presentations/>.

²⁰⁰ Khartoum Declaration of Agreement of the Conflict of Parties of the Conflict of South Sudan, para. 5; Øystein H. Rolandsen and Nicki Kindersley, "South Sudan: A Political Economy Analysis", Norwegian Institute of International Affairs, 2017, p. 21.

needed to be mixed with a lighter blend to allow transportation through the Sudanese pipeline.²⁰¹

²⁰¹ Confidential Meeting, 14 December 2018.

Annex IV

Harm to health and the environment

1. Between 2013 and 2018, oil was spilled at both the Field Production Facility and Greater Pioneer Operating Company (GPOC) well sites in northern Unity State and Ruweng Administrative Area.²⁰² The spillage occurred despite the fact that, due to the conflict, extractive operations had been shut down from December 2013 to July 2018.²⁰³ According to an environmental site assessment conducted by GPOC in July 2018, which was carried out prior to the resumption of its operations at the oil fields at Blocks 1, 2, and 4, unidentified individuals shot a large storage tank in Unity oil field, which led to a major release of hydrocarbon and caused nearly half of the stored oil to leak.²⁰⁴ Unidentified individuals also shot at the El Naar wells, causing oil to spill into retention ponds and surrounding areas.²⁰⁵ Though the reasons for the shootings remain unknown, most of the evaporation ponds did not have linings to prevent chemicals and crude from seeping down into the water table, while some pipes also had leakages which contaminated the soil.²⁰⁶ Additionally, local communities around the oil fields had been using empty chemical containers to store potable water.²⁰⁷

2. Oil-related pollution and environmental damage in Unity State continued following the resumption of GPOC's operations in August 2018. In September and October 2019, for example, two major oil spills erupted from an underground pipeline which runs from Unity oil field to Heglig (Sudan).²⁰⁸ The two spills were located 40 kilometres and 33.5 kilometres north of Rubkona, at Block 1 and 2 oil fields operated by GPOC.²⁰⁹ Oil company staff reported the leakages as having been between 10,000 and 12,500 barrels, and 25,000 barrels of crude oil, respectively.²¹⁰ The Government of South Sudan acknowledged the spills, though attempted to minimise the fallout by only acknowledging that 2,000 barrels had spilled.²¹¹ Satellite imagery reviewed by the Commission confirmed burning oil spills at Unity Oil Field on 21 December 2019, and at El Toor oil facility on 13 January 2020.²¹² Additionally, smaller spills occurred at Tomar South oil fields in December 2019.²¹³

3. Several oil spills occurred because oil production had stopped twice, from April 2012 to April 2013, as well as from December 2013 to July 2018,²¹⁴ as the stopping of oil production can lead to structural damage on the pipelines.²¹⁵ As South Sudan's Minister of Petroleum and Mining, Awow Daniel Chang, clarified in September 2019, "the production has been down for the last five years and the pipeline was empty and had probably become filled with water [which] can expedite the process of corrosion within the pipeline." He further stated "That is why we will all suspect that ruptures will happen from time to time."²¹⁶ Moreover, the pressure used to pump the oil through the pipeline had been too high. According to GPOC, 40 to 45 kilo barrels per day are pumped through the pipeline.²¹⁷ The Commission was able to confirm, however, that up to 60 kilo barrels per day were actually being pumped.²¹⁸ The Commission also learned that GPOC is not planning to build a new pipeline to substitute the current, corroded one.²¹⁹ Further, GPOC is not cleaning the pipeline

²⁰² ERN D121484 - D121650, p. 10; ERN D121652 - D121685, p. 10.

²⁰³ ERN D121484 - D121650, p. 10; ERND121652 - D121685, p. 10.

²⁰⁴ ERN D121484 - D121650, p. 10.

²⁰⁵ ERN D121484 - D121650, p. 10.

²⁰⁶ ERN D121484 - D121650, p. 13.

²⁰⁷ ERN D121484 - D12165, p. 13.

²⁰⁸ ERN 103092 - 103096, para. 13; ERN 103962 -103965, para. 10; ERN D121707 - D121735.

²⁰⁹ Human Rights Council, Report of the Commission on Human Rights in South Sudan, A/HRC/40/CRP.1, 20 February 2019, para. 643.

²¹⁰ ERN D121707 - D121735; Confidential document; ERN 103092 -103096, para. 12.

²¹¹ Confidential file.

²¹² Confidential file.

²¹³ ERN 103991 - 103995, para. 18.

²¹⁴ ERN D121402 - 121420

²¹⁵ ERND121484 - D121650, p. 15; ERN D121707 - D121735.

²¹⁶ ERN D121707 - D121735.

²¹⁷ ERN 103092 - 103096, para. 16.

²¹⁸ ERN 103996 - 104000, para. 8; ERN103977 - 103980, para. 10.

²¹⁹ ERN 103092 - 103096, para. 12.

as regularly as Dar Petroleum Operating Company (DPOC), and did not check the pipeline before resuming oil production in 2018.²²⁰ Moreover, a control system is not installed on site, which would provide a notification when oil leaks from the pipeline.²²¹

4. Another reason for the foregoing environmental damage is that the produced water, which does not drain down as it would with more modern oil technology, remains at the surface where the oil is explored.²²² At the oil fields in Tomar South and Tor (Ruweng Administrative Area), the bottom of the ponds which hold water are not sealed with high density polyethylene, though this practice is used at the oil fields in Paloch (Upper Nile State).²²³ Water contamination also occurs as a result of leaking oil wells,²²⁴ the local population accessing nearby boreholes,²²⁵ and the use of water for households drawn from ponds which were previously used as drilling chemical mud pits²²⁶ but are now often the only source of water available to the local community. During the rainy season, the oil fuses with the waterbodies and contaminates the environment.²²⁷ In 2018, water tested from Pariang revealed contamination of heavy metals such as lead and mercury.²²⁸ The community in Pariang consumes fish from waste water pools²²⁹ concentrated with heavy metals.²³⁰ There is a risk that contaminated fish could carry the pollution along the Nile River as far as Cairo (Egypt).²³¹

5. In 2018, the United Nations Environment Programme reported that an analysis of water samples taken from open mud pits near the Thar Jath oilfield in Unity State contained high concentrations of salts, mostly potassium chloride, which implied that the drilling fluids in these mud pits were not removed after the drilling process was completed. Community water wells have also been found to contain high levels of heavy metals such as lead, which is a well-known carcinogen. These are all attributed to the aforementioned oil extraction activities and poor waste-disposal procedures.²³² The Commission also learned that, following the resumption of oil production near Manga Port (Unity State) in 2018, contaminated water blended with the waterbodies in the area during the rainy season.²³³ As a result, a film of oil floats on the river water at Manga Port, which is the main source of water for the local community, including where they fish.²³⁴ In another oil-polluted area of Ruweng Administrative Area, local community members told the Commission about their crops being destroyed and their cattle dying following oil spillage from the burst pipeline in September 2019.²³⁵

6. It is estimated that the total amount of contaminating fluids that were released into South Sudan's environment between 1999 and 2020 amount to 1.36 trillion (1,362,519,667,348) litres of produced water containing a total of 8.31 million (8,310,007) tons of salt; 7.90 billion (7,896,000,000) litres of oil well drilling fluids containing a total of 1.18 tons of chromium, 12.05 tons of lead, 2.53 tons of nickel, 1.39 tons of cadmium, and 437,806.88 tons of salt; and at least six million litres of crude oil spilled.

7. The Government of South Sudan has been aware of these environmental issues for several years. In 2013, the Minister of Petroleum formed a technical committee tasked to investigate the increased incidence of unusual health problems (diseases) in the oil-producing areas of Upper Nile State, Unity State, and Ruweng Administrative Area, where DPOC (Block 3 and 7) and GPOC (Block 1, 2, and 4), and Sudd Petroleum Operating Company

²²⁰ ERN 103966 - 103976, para 69; ERN 103092 - 103096, para. 12.

²²¹ ERN 103092 - 103096, para. 12; Confidential meeting on 21 October 2019.

²²² ERN 103996 - 104000, para. 8.

²²³ ERN D121652 - D121685, p. 11.

²²⁴ ERN103981 - 103985, para. 6.

²²⁵ ERN 103087 - 103091, para. 11; ERN 104001- 104021, para. 5; ERND121652 - D121685, para. 14; Confidential meeting on 17 February 2020.

²²⁶ ERN D121652 - D121685, p. 12.

²²⁷ ERN D121652 - D121685, p. 26.

²²⁸ Confidential meeting on 17 February 2020.

²²⁹ ERN 104001 - 104021, para. 6.

²³⁰ Confidential meeting on 17 February 2020.

²³¹ Confidential meeting on 21 October 2019.

²³² ERN 103092 - 103096, para. 13; Confidential documents.

²³³ ERN D121480 - D121482, para. 7.

²³⁴ ERN D121480 - D121482, para. 7 and 14.

²³⁵ ERN D121705 - D121706, para 5; ERN 103087 - 103091, para. 7; Confidential documents.

(SPOC) (Block 5a) operate.²³⁶ In Paloch (Upper Nile State), and in Pariang (Ruweng Administrative Area) and Rubkona Counties (Unity State), the committee found increases in abortions, pre-term births, stillbirths, babies born with congenital anomalies who subsequently perished, blindness, male sexual dysfunction, and low fertility among the community.²³⁷ Other health issues, including increased rates of diarrheal disease, febrile illness, joint disease, and skin allergies among individuals exposed to water and farming, were also documented among the communities in these locations.²³⁸ Further, animals, such as cows, goats, and dogs were dying at higher rates and cows and goats exhibited symptoms of night blindness.²³⁹ In Pariang and Rubkona Counties, the Committee documented alarming oil spillage around some oil processing facilities,²⁴⁰ while in Paloch it noted limited oil spillage.²⁴¹

8. In 2016, following reports of abnormal medical symptoms among soldiers deployed to Paloch oil fields, the Ministry of Petroleum, Ministry of Health, and Ministry of Environment formed a team to conduct epidemiological and environmental assessments.²⁴² Biological and environmental samples from the sites in the vicinity of the Paloch oil fields where the soldiers were deployed were sent to the National Health Laboratory Service, National Institute of Occupational Health (South Africa) for analysis.²⁴³ Preliminary findings showed that most of the heavy metals were within accepted limits in water and soil samples. Concentrations of manganese and mercury in the water samples, however, were 10 and 7 times higher than the permissible limits, respectively.²⁴⁴ Concentrations of selenium, chromium, manganese, and mercury were also above the limits in the soil samples.²⁴⁵ Urine samples taken from some soldiers also evinced elevated levels of manganese and mercury.²⁴⁶ The main symptoms presented included skin rash, abdominal discomfort, fever, generalised weakness, headache, eye irritation and night blindness, constipation, and loss of libido, all of which are consistent with a person having been exposed to mercury, manganese, and selenium.²⁴⁷ It was therefore concluded that the results clearly indicated that the heavy metals and petrochemicals contaminated the area.²⁴⁸

9. The Commission received reports alleging that the water and land pollution of crude oil exposure causes birth defects in animals and also stillborn babies or babies with birth defects in the oil regions of Ruweng Administrative Area Unity State²⁴⁹ where GPOC and SPOC are operating in Blocks 1, 2, 4, and Block 5A.²⁵⁰ Crude oil pollution may first affect soil²⁵¹ and water, with plants²⁵² in the region subsequently becoming contaminated with heavy metals.²⁵³ Scientific studies have also documented the embryotoxic and teratogenic effects of hydrocarbons on animals.²⁵⁴ It was inevitable that human beings, particularly pregnant women and their babies, would be affected in this crude oil-polluted environment.²⁵⁵

10. The Commission interviewed a family from Ruweng Administrative Area who stated that, in 2019, the mother had given birth to a baby with severe birth defects after having been exposed to oil pollution and contaminated drinking water.²⁵⁶ Upon genetic testing, no specific

²³⁶ ERN D121686 - D121704, p. 4.

²³⁷ ERN D121686 - D121704, p. 6 and p. 12; Confidential document.

²³⁸ ERN D121686 - D121704, p. 7 and p. 13.

²³⁹ ERN D121686 - D121704, p. 7 and p. 13.

²⁴⁰ ERN D121686 - D121704, p. 14.

²⁴¹ ERN D121686 - D121704, p. 8.

²⁴² ERN D121686 - D121704, p. 19.

²⁴³ ERN D121686 - D121704, p. 19.

²⁴⁴ As per the United States Environmental Protection Agency Maximum Contaminant Levels.

²⁴⁵ ERN D121686 - D121704, p. 19.

²⁴⁶ ERN D121686 - D121704, p. 19.

²⁴⁷ ERN D121686 - D121704, p. 19.

²⁴⁸ ERN D121686 - D121704, p. 19.

²⁴⁹ ERN103981 - 103985, para 11; ERN103991 - 103995, paras. 14-18; ERN104001 - 104021, para. 5, ERN 103996 - 104000, para. 9; 104001 - 104021, para. 5.; ERN 103087 - 103091, para. 7.

²⁵⁰ Confidential document.

²⁵¹ Confidential documents.

²⁵² Confidential document.

²⁵³ Confidential documents.

²⁵⁴ Confidential documents.

²⁵⁵ Confidential documents.

²⁵⁶ ERN 104001-104021, paras. 4-5.

cause was identified which could have explained the birth defects.²⁵⁷ A toxicological analysis of the family's hair revealed traces of elements such as arsenic, lead, uranium, cadmium, mercury, barium, rubidium, and titan.²⁵⁸ The findings are highly consistent with the environmental pollution in the vicinity of oil fields in Unity State. Lead and barium, among other heavy metals, were previously measured to have been above the permissible limit in samples of drinking water.²⁵⁹ According to forensic examinations of the baby undertaken by the Commission, as well as available medical documentation and testing²⁶⁰ and existing scientific literature,²⁶¹ there are reasonable grounds to believe that there is a direct causal link between the toxicological and teratogenic effects of heavy metals in the polluted water and soil through crude oil contamination in Pariang area and the specific disease and severe birth defects of the baby.

11. The Commission further received information about a similar case of deformation in northern Mayendit county (Unity State). In early 2020, a young mother gave birth to a baby with visibly severe birth defects due to which it is unable to walk.²⁶² Although no medical testing was conducted in this case, due to the surface water and chemicals mixing with underground water and the fact that the waste is spreading from the Thar Jath oil fields to the entire region,²⁶³ there are reasonable grounds to believe that the birth defects were similarly caused by contaminated water and agriculture.²⁶⁴

12. In January 2020, a South Sudanese citizen from Ruweng Administrative Area and a national human rights organisation submitted a petition to the Supreme Court against the Ministry of Petroleum, Nile Petroleum Cooperation (NilePet), and GPOC. The petitioners claimed that GPOC's continued exploration and careless production of oil without compliance with and fulfilment of the precautions upon which the license was granted, have threatened and caused the loss of lives, animals, children being born prematurely or deformed due to the radiation of chemicals used by GPOC, environmental pollution, spread of contagious diseases, and displacement of the local population within then Ruweng State.²⁶⁵ According to the petition, all three respondents "have failed to carry out their duties as provided for under the Petroleum Act, 2012, which enjoins them to observe protection of lives, safety of inhabitant and environmental protection".²⁶⁶ The petitioners seek that GPOC be ordered, *inter alia*, to avoid, reduce, prevent, or manage environmental hazards and risks associated with the exploration and production of oil in the area, and pay \$500,000,000 USD as compensation for the lives lost, the properties destroyed, displaced communities, and environmental pollution, and that the court immediately suspend GPOC's license.²⁶⁷ While the petition was submitted in January 2020, the Chief Justice of the Supreme Court has not yet formed a panel to consider it.²⁶⁸

13. In April 2020, and on behalf of the Government of South Sudan, another human rights organisation²⁶⁹ filed suit against the Minister of Justice of South Sudan before the East African Court of Justice.²⁷⁰ The applicant based the reference on at least six oil spills due to leakages of pipelines, weak ruptures on the pipelines, exploration, and pollution of the environment which occurred in Unity State and Ruweng Administrative Area between September 2019 and March 2020.²⁷¹ According to the applicant, crude oil waste in Upper Nile State is poorly disposed of in different ponds and floods during rainy seasons into the

²⁵⁷ ERN 104001-104021.

²⁵⁸ ERN 104001-104021.

²⁵⁹ Confidential documents.

²⁶⁰ ERN 104001- 104021.

²⁶¹ Confidential documents.

²⁶² Confidential document.

²⁶³ ERN TW245 - L0015, para. 5.

²⁶⁴ Confidential document.

²⁶⁵ Confidential document.

²⁶⁶ Confidential document.

²⁶⁷ Confidential document.

²⁶⁸ ERN 103996 - 104000, para. 20.

²⁶⁹ End of May 2020, the South Sudan Union of Farmers in the Ruweng Administrative Area has joined the reference against the Minister of Justice of the Republic of South Sudan representing the Government of the Republic of South Sudan.

²⁷⁰ ERN D121736 - D121769, paras. 1-2, and 5-7.

²⁷¹ ERN D121736 - D121769, paras. 51-58.

environment.²⁷² The explorations are being conducted by the two consortia (DPOC and GPOC), in which the respondent as the Republic of South Sudan is a shareholder.²⁷³ The oil spills occurred in Blocks 1, 2, and 4 located in Unity State and Ruweng Administrative Area under GPOC, and in Blocks 3 and 7 located in Upper Nile State under DPOC.²⁷⁴ The applicant further alleged that the recent leakage in the swampy area of Unity State and Ruweng Administrative Area exceeds 2,000 barrels of crude oil and that the water bodies pour through the Nile River into the world oceans, and that the River provides the civilian population with water and seafood.²⁷⁵

14. According to the applicant, the acts of both consortia (DPOC and GPOC) were unconstitutional and a breach of the Treaty Establishing the East African Community in Articles 6(d) and 7(2) as they “infringe the fundamental rights”.²⁷⁶

15. The applicant seeks to demonstrate that the negative impact of the spillages and burned crude oil on the environment and the health of residents in the affected areas is caused by the oil industry,²⁷⁷ and that inhabitants display symptoms suspected to have been caused by the fumes of burning oil, including coughing, skin problems, eye pain, and alarming birth defects.²⁷⁸ The applicant contends “that the oil spill does not only amount to environmental pollution, but an ‘environmental genocide’”.²⁷⁹

16. Finally, it is the applicant’s claim that due to the illegal or unlawful actions and omissions of the officers of the respondent (the Government of South Sudan), it is responsible for the damage, environmental pollution, and “environmental genocide” caused by GPOC and DPOC in which the respondent is a shareholder. The applicant claims damages amounting to a total of \$720 million USD.²⁸⁰

17. In May 2020, the applicant filed an injunction against DPOC and GPOC to restrain them from pumping oil with immediate effect, as well as to restrain from exporting crude oil through the pipelines, pending determination of the case.²⁸¹ The following month, in June 2020, the East African Court of Justice allowed the Government of South Sudan and the applicant to attempt to settle the case through mediation.²⁸² After hearing the parties’ submissions and agreeing on alternative dispute resolution, the Court also allowed the suit filed by the applicant which sought the court’s injunction to be withdrawn.²⁸³

Findings

18. Under international human rights law, the Republic of South Sudan is obligated to respect, protect, promote, and fulfil the human rights of all persons within its territory or under its control, without discrimination. The Bill of Rights contained in the Transitional Constitution of the Republic of South Sudan (2011) states that all organs of the Government shall respect, uphold, and promote the rights of the people of South Sudan to life, dignity, integrity, liberty and security of persons, and the special rights of women and children.²⁸⁴ In accordance with international standards, South Sudan’s Child Act (2008) defines children as individuals under the age of 18.²⁸⁵ The Child Act upholds the rights of children to life, survival and development, well-being and health, and to liberty and security of person.²⁸⁶

²⁷² ERN D121736 - D121769, para. 58.

²⁷³ ERN D121736 - D121769, para. 46.

²⁷⁴ ERN D121736 - D121769, para. 49.

²⁷⁵ ERN D121736 - D121769, paras. 62 and 64.

²⁷⁶ ERN D121736 - D121769, para. 70.

²⁷⁷ ERN D121736 - D121769, para. 77.

²⁷⁸ ERN D121736 - D121769, para. 77.

²⁷⁹ ERN D121736 - D121769, para. 81.

²⁸⁰ ERN D121736 - D121769, paras. 86 and 89.

²⁸¹ ERN D121483 - D121483.

²⁸² <https://www.eac.int/press-releases/2112-government-of-south-sudan-allowed-to-settle-case-with-litigant-through-mediation-as-alternative-dispute-resolution-mechanism>

²⁸³ <https://www.eac.int/press-releases/2112-government-of-south-sudan-allowed-to-settle-case-with-litigant-through-mediation-as-alternative-dispute-resolution-mechanism>

²⁸⁴ Transitional Constitution of the Republic of South Sudan (2011), Bill of Rights.

²⁸⁵ Child Act (2008), Art. 36.

²⁸⁶ *Ibid.*, at Arts. 12, 15, and 19.

19. South Sudan is also party to the African Charter on Human and Peoples' Rights which came into effect for South Sudan on 19 August 2016.²⁸⁷ The African Charter prohibits the arbitrary deprivation of life, and safeguards the rights to life and physical integrity, to liberty and security of person, to health, property, and to family life.²⁸⁸

20. In a complaint brought against Zaire, the African Commission noted that the failure of the State party to provide basic services such as safe drinking water constitutes a violation of the right to health.²⁸⁹ In another complaint against the Gambia, the African Commission explained that States parties to the African Charter have to take "concrete and targeted steps", while taking full advantage of their available resources to "ensure" that the right to health is fully realised in all aspects without discrimination of any kind.²⁹⁰ The African Commission's jurisprudence has consistently underlined the fact that human rights, including social and economic rights, are indivisible, interdependent, and interrelated with other human rights.

21. The Commission notes that human rights and the environment are inextricably intertwined, and that a safe, clean, healthy, and sustainable environment is essential for the enjoyment of numerous human rights, including the rights to life, health, food, water, housing, culture, development, property, and home and private life. As regards the right to life, the African Commission has explained that "the Charter envisages the protection not only of life in a narrow sense, but of dignified life. This requires a broad interpretation of States' responsibilities to protect life. Such actions extend to preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies. The State also has a responsibility to address more chronic yet pervasive threats to life, for example with respect to preventable maternal mortality, by establishing functioning health systems".²⁹¹

22. The African Commission is further clear that the right to life involves positive obligations for the State: "The right to life should be interpreted broadly. The State has a positive duty to protect individuals and groups from real and immediate risks to their lives caused either by actions or inactions of third parties. In cases where the risk has not arisen from malicious or other intent then the State's actions may not always be related to criminal justice. Such actions include, inter alia, preventive steps to preserve and protect the natural environment and humanitarian responses to natural disasters, famines, outbreaks of infectious diseases, or other emergencies".²⁹² The African Commission moreover explains that the State's obligations concerning the right to life include the progressive realisation of economic and social rights: "Given the role of the State in the enjoyment of a number of other rights which might, collectively, be constitutive of the condition of life, especially a dignified life, its progressive realisation of various economic, social and cultural rights will contribute to securing a full and dignified life. Violations of such rights may in certain circumstances therefore also entail violations of the right to life".²⁹³

23. South Sudan is further obligated under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) to ensure access to health services for all women, including reproductive health.²⁹⁴ Women and girls across South Sudan continue to be affected disproportionately by the lack of access to adequate healthcare, including in areas situated near oil fields such as those in Unity State and Ruweng Administrative Area.

24. Based on the evidence collected, and through its continued exploration and production of oil in Upper Nile and Unity States and Ruweng Administrative Area, there are reasonable grounds to believe that the Government of South Sudan has committed acts and omissions

²⁸⁷ Also known as the Banjul Charter.

²⁸⁸ African Charter, Arts. 3-6, 14, and 16.

²⁸⁹ Free Legal Assistance Group, Lawyers' Committee for Human Rights, Union Interfricaine des Droits de l'Homme, *Les Témoins de Jehovah vs Zaire Communications Nos. 25/89, 47/90, 56/91, 100/93* (1996), 9th Activity Report. This decision was taken at the 18th Ordinary Session, Praia, Cape Verde, October 1995).

²⁹⁰ *Purohit and Moore vs The Gambia* (Communication No. 241/2001, (2003), 16th Activity Report, Annex VII).

²⁹¹ See General Comment No. 3 on the African Charter on Human and Peoples' Rights: The Right to Life (Article 4) Adopted during the 57th Ordinary Session of the African Commission on Human and Peoples' Rights held from 4 to 18 November 2015 in Banjul, The Gambia, at para 3.

²⁹² *Ibid.*, para. 41.

²⁹³ *Ibid.*, para. 43.

²⁹⁴ Convention on the Elimination of All Forms of Discrimination against Women, Art. 12.

amounting to serious violations of human rights law under the Bill of Rights enshrined in the Transitional Constitution of the Republic of South Sudan, the African Charter on Human and Peoples' Rights, and CEDAW, including violations of the rights to life, dignity, integrity, liberty and security of persons, as well as violations of the rights of children to life, survival and development, well-being and health, and to liberty and security of person.
