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**Human Rights Council**

**Thirty-seventh session**

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Agenda item 4

**Human Rights Situations that require
the Council’s attention**

 Report of the Commission on Human Rights
in South Sudan[[1]](#footnote-2)\*, [[2]](#footnote-3)\*\*

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 I. Introduction

1. In its resolution 31/20 of 23 March 2016, the Human Rights Council established the Commission on Human Rights in South Sudan for a period of one year, and requested the Commission to, inter alia, monitor and report on the situation of human rights in South Sudan to make recommendations for its improvement, and to assess past reports on the situation of human rights since December 2013, in order to establish a factual basis for transitional justice and reconciliation.

2. On 14 June 2016, the President of the Human Rights Council appointed Yasmin Sooka, Kenneth R. Scott and Godfrey M. Musila to serve as the three members of the Commission, with Ms. Sooka as its Chair. Mr. Scott was replaced by Professor Andrew Clapham as Commissioner on 21 September 2017. Mr. Musila resigned from the Commission on 31 January 2018.

3. On 14 December 2016, the Human Rights Council convened a special session on South Sudan to discuss the deteriorating situation of human rights, which was attended by the Chair of the Commission. The Commission submitted its first report A/HRC/34/63 on 6 March 2017. At its 34th Session on 24 March 2017, the Human Rights Council extended the Commission’s mandate in Resolution 34/25 for a period of one year, renewable as authorised by the Human Rights Council.

4. The Commission was supported by a secretariat of fourteen professional staff based in Juba and Addis Ababa, consisting of human rights investigators, legal and gender advisers, forensic and military experts, a coordinator and security and administrative officers. The first member of the secretariat was deployed on 15 August 2017 and the secretariat was fully deployed as of 28 October 2017.

5. The African Union Commission of Inquiry on South Sudan, UNMISS Human Rights Division, the South Sudan Human Rights Commission, Amnesty International, Human Rights Watch and a number of South Sudanese civil society organisations and non-governmental organisations (NGOs) have documented human rights violations and crimes committed by both sides to the conflict since December 2013.[[3]](#footnote-4)

6. The Commission chose to focus on incidents that are emblematic of crimes and violations committed during the past two years, during which there was limited reporting. This report examines recent incidents in the former states of Western Bahr el Ghazal, Central Equatoria, Eastern Equatoria and Upper Nile, and seeks to clarify responsibility, as far as possible, for alleged gross violations and abuses of human rights and related crimes committed in those locations during 2016 and 2017.

 II. Mandate/Methodology

 A. Mandate

7. On 24 March 2017, the Human Rights Council extended the Commission’s mandate in Resolution 34/25 for a period of one year. The Council also mandated the Commission to include “determin[ing] and report[ing] the facts and circumstances of, collect[ing] and preserv[ing] evidence of, and clarify[ing] responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability, and to make such information available also to all transitional justice mechanisms, including those to be established pursuant to chapter V of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, including the hybrid court for South Sudan, once established in cooperation with the African Union.”

8. The Council further requested in Resolution 34/25 that the Commission continue to monitor the human rights situation in South Sudan and make recommendations to prevent its further deterioration. The Commission is also to report on the factual basis for transitional justice and reconciliation and to provide guidance on transitional justice, including accountability and reconciliation and healing, as appropriate, and – once the Government of South Sudan commits to cooperating with the African Union on establishing the hybrid court for South Sudan – to make recommendations on technical assistance to the Government to support accountability, reconciliation and healing.

9. The Commission is further mandated to engage with the Government of South Sudan, international and regional mechanisms, including the United Nations, the United Nations Mission in South Sudan, the African Union, including by building upon the work of its Commission of Inquiry on South Sudan and its African Commission on Human and Peoples’ Rights, the Intergovernmental Authority on Development, including the Partners Forum, the Chair of the Joint Monitoring and Evaluation Commission and civil society, with a view to providing support to national, regional and international efforts to promote accountability for human rights violations and abuses.

10. Furthermore, the Commission is mandated to make recommendations on technical assistance and capacity-building, as appropriate, including to law enforcement institutions, on the promotion and protection of human rights and fundamental freedoms, including on addressing sexual and gender-based violence.

 B. Methodology

 1. Standard of Proof

11. Consistent with the practice of other United Nations fact-finding bodies, the Commission employed a “reasonable grounds to believe” standard of proof in making factual determinations on individual cases, incidents, and patterns of conduct. These factual determinations provided the basis for the legal qualification of incidents and patterns of conduct as human rights violations and, where appropriate, war crimes and crimes against humanity.

12. However, the Commission’s mandate to collect and preserve evidence to be provided to various accountability mechanisms including the Hybrid Court for South Sudan as well as the other transitional justice mechanism set out in Chapter V of the Agreement for the Resolution of the Conflict in South Sudan (ARCSS) also provided guidance for the secretariat’s working methods. The Commission sought to collect and preserve evidence to a standard that will support future accountability mechanisms. In this context, the secretariat placed an emphasis on collecting with clear chain of custody detailed, high-quality witness statements and official documentation, and cataloguing and organizing evidence in a database which can serve as a basis for future criminal investigations and accountability proceedings.

13. The Commission is satisfied that there are “reasonable grounds” to believe that an incident or pattern of conduct has occurred when it has 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 has occurred. While this standard of proof is lower than the standard required in criminal proceedings to achieve a conviction, it is sufficiently high to call for further investigations into the incident or pattern of conduct, and the findings may be considered to constitute prima facie grounds to initiate a possible prosecution. The findings of the Commission appearing in this report are therefore based on the “reasonable grounds” standard of proof.

14. Individual cases and incidents reflected in this report are therefore based on at least one credible direct source of information, which was independently corroborated by at least one or more credible sources of information.

15. 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. In the few instances where this standard of proof could not be met, but the Commission still considered it appropriate to reflect the incident or pattern, identifying the underlying sources.

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

* Interviews of victims, their families, and eyewitnesses with direct knowledge of the issues, incidents, and trends, who were assessed by the Commission to be credible and reliable and the information valid;
* Satellite imagery from reliable sources, authenticated video and photo material, and other documents containing direct information from a reliable source;
* Publicly available admissions of relevant facts by the Government of the Republic of South Sudan, the Sudan People’s Liberation Movement/ Army (SPLA/M) or the Sudan People’s Liberation Movement/ Army in Opposition (SPLA/M-IO);
* Laws, policies and directives of the Government of South Sudan and the SPLA/M as well as internal documents, provided that they were received from a credible and reliable source and their authenticity could be confirmed; and
* Statistics, surveys, situation reports, and other quantitative information generated by the United Nations, to the extent that the data is based on an apparently sound methodology and the inputs underlying the data are considered valid and originating from a credible and reliable source.

17. 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 institutes 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 reports, submissions, books, documentaries and similar materials, where the Commission assessed the source to be credible and reliable and the information to be valid.

18. The reliability and credibility of each source was carefully assessed by the Commission. This assessment 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 his or her age, trauma, how far back the events occurred, etc.;
* 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.

19. The Commission also considered that any piece of information had to be assessed for its validity 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.

20 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.

21. 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 has decided to introduce them for the purpose of providing an example or an illustration of broader human rights issues and/or patterns of conduct.

 2. Protection of victims and witnesses

22. While, the secretariat collected many witness statements of victims and witnesses of violations, identifying and protecting victims and witnesses and other potential sources of testimony during an on-going internal armed conflict was challenging. Though some victims and witnesses could be located within the UNMISS Protection of Civilians sites (PoCs) in UNMISS compounds, many victims and witnesses had been displaced, often multiple times, into harsh and dangerous living conditions, far away from towns and villages, or transport hubs.

23. With regard to sexual and gender-based violence, the secretariat interviewed women both individually and in group discussions in UNMISS PoCs, refugee settlements and other safe places in South Sudan and neighbouring countries. Beyond violations of a sexual and gender-based nature, women spoke to the secretariat about the overall impact of the conflict on their livelihoods, family and societal relations, sexual and reproductive health and medical needs, trauma, and general insecurity. Similarly, the secretariat members met with children who had previously been recruited into armed groups. The secretariat ensured that a caseworker or guardian was always present for these discussions and inquired with the children whether they preferred to meet in groups or individually and proceeded accordingly.

24. Throughout the conflict, civil society activists, human rights defenders, humanitarian actors, journalists and print media, and even United Nations staff members have been subject to threats, intimidation, harassment, detention and, in some instances, killing by Governmental actors and armed groups. Notwithstanding such an environment, many witnesses showed enormous courage by reaching out and making a contribution to the work of the Commission. The secretariat exercised caution in communicating with sources inside the country.

25. Since the outbreak of the conflict in late December 2013, a number of inter-governmental bodies, international and local NGOs and media have undertaken extensive interviewing of victims and witnesses to the conflict. The continuing trauma suffered by thousands of civilians since the outbreak of violence made the secretariat sensitive to the risks of re-traumatisation and it took appropriate measures in this regard. The secretariat was conscious of the fact that in South Sudan there is limited counselling or psychosocial support available to victims and witnesses; however, whenever possible and as necessary, victims and witnesses were directed towards existing support services.

26. In line with existing United Nations policy on information sensitivity, classification and handling, information provided by witnesses and other confidential material collected are classified as strictly confidential.[[4]](#footnote-5) Details which could reveal the identity of victims or witnesses such as names, dates and places have been omitted in order to ensure victims, witnesses and their families’ safety and security.

 C. The Commission’s work

27. The Commissioners undertook three missions to South Sudan in September, October and December 2017. During these missions, they visited Akobo, Bor, Juba, Wau, Pajok and Torit in South Sudan and also visited Ethiopia and Uganda. The Commission also organised a workshop on Sexual and Gender Based Violence in Juba in October 2017.

28. From its base in Juba, the secretariat undertook investigative missions to Aburoc, Akobo, Bor, Kajo Keji, Lainya, Malakal, Pajok, Torit, Wau, Wau Shilluk, and Yei within South Sudan, as well as to Addis Ababa and Gambella in Ethiopia and Adjumani, Arua, Elegu, Gulu, Kampala, Kiryandongo-Bweyale Moyo, Palabek and Palarunya, in Uganda.

29. The Commission found, throughout its work, that victims and witnesses were willing to share their experiences, including on sexual violence. In the Commission’s view, additional time is needed to further engage with victims and witnesses to ensure that their experiences are reflected in all aspects of the Commission’s future work.

30. The Commission took over 230 detailed individual witness statements from victims, witnesses, community leaders, civil society activists and international personnel. It also gathered over 58,000 documents covering incidents in South Sudan since December 2013. All evidence collected is preserved in the Commission’s database and archives. Given the volume of the material collected, it will take significant time and resources to process these materials for cataloguing and to analyse their informational and evidential value in establishing responsibility for violations and crimes committed.

31. In light of the mandate’s focus on accountability and identifying responsibility for gross violations of human rights and related crimes, the Commission has focussed not only on establishing the occurrence of violations but also on identifying those bearing responsibility for those violations and crimes.

32. In investigating the linkage evidence between the crimes and those responsible, it has sought to identify command structures, patterns in conduct, and indicators of control and discipline. This is a complex task normally involving significant circumstantial evidence and the material collected provides an invaluable basis for future prosecutions and accountability.

33. The Commission received allegations linking individual alleged perpetrators to specific violations or to patterns of violations. In some instances, there is sufficient information to warrant criminal investigations of individual alleged perpetrators under international humanitarian law. In this regard, the Commission has identified eight Lieutenant Generals, 17 Major Generals, eight Brigadier Generals, five Colonels and three State Governors that may bear individual responsibility for serious violations of human rights and international crimes.

34. The Commission has collected and preserved this evidence in conformity with its mandate of supporting accountability mechanisms. For reasons of witness protection, individual names have not been included in this present report, and are retained on a strictly confidential basis by OHCHR. In some instances, there was insufficient information to identify individuals responsible, but the armed groups responsible have been identified. In a few instances, although credible information exists that a violation or abuse occurred, responsibility could not be established given the limited resources and time available to the Commission. Sufficient time and resources are required for further investigations and to draw meaningful conclusions as to who was responsible.

35. The Commission is grateful to UNMISS for their support in facilitating transport where feasible and to the Government for granting the Commission access to the relevant parts of the country.

 III. Background

 A. Agreement on the Resolution of the Conflict in the Republic of South Sudan (2015)

36. The Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) between the Government and the opposition, established the Transitional Government of National Unity (TGoNU), tasked with implementing the commitments contained therein.[[5]](#footnote-6) The Peace Agreement declared a permanent ceasefire applicable to all forces of the warring parties, armed groups, and all other forces or militias allied to either party.[[6]](#footnote-7)

37. The parties agreed to refrain from prohibited actions outlined in the Cessation of Hostilities Agreement, including actions that may impede or delay the provision of humanitarian assistance or protection to civilians; sexual and gender-based violence; recruitment and/or use of child soldiers by armed forces or militias; hostile propaganda, unauthorized recruitment, mobilization, redeployment and movement of forces; and acts of hostility, intimidation, violence or attacks against the civilian population including IDPs and returnees, UNMISS personnel, installations or equipment, international humanitarian agencies and organization and their personnel.[[7]](#footnote-8)

 B. Breakdown of the ARCSS

38. Soon after the signing of the ARCSS, in October 2015, with reservations from both sides, President Salva Kiir unilaterally declared a new “federal” system of 28 states, to replace the original ten (Presidential Order, No. 36/2015). The decree exacerbated tensions over boundaries and access to natural resources and continues to fuel conflict across the country. In January 2017, President Kiir announced the creation of additional states, bringing the total to 32.[[8]](#footnote-9)

39. Following international pressure, Riek Machar took up the position of First Vice President in the TGoNU under President Salva Kiir under the terms of the ARCSS. This uneasy truce did not last long. Following skirmishes in Juba between the SPLA and SPLA-IO in early July 2016, significant fighting broke out in the city on 8 July 2016, resulting in widespread killings and rape of civilians, and extensive property damage and looting. At least 36,000 people were displaced, and 300 killed in fighting between the SPLA and the SPLA-IO, that involved the use of combat helicopters, tanks and heavy weapons.[[9]](#footnote-10)

40. The violence in Juba triggered further violence across the country. Riek Machar and his SPLA‑IO forces were chased out of Juba, and across Central and Western Equatoria to the Democratic Republic of Congo. Following a ceasefire, declared on 11 July 2016, the SPLA-IO leader Taban Deng was appointed First Vice President in Riek Machar’s place, in an attempt to maintain the legitimacy of the ARCSS. Since then, Taban Deng’s forces, referred to as SPLA-IO (TD) have been fighting forces loyal to Riek Machar, referred to as SPLA-IO (RM) and carrying out operations in Upper Nile, Unity, Western Bahr el Ghazal and Jonglei States.

41. Riek Machar’s personal exclusion from the revitalisation of the ARCSS in December 2017, perpetuates the Government’s strong position vis-à-vis the opposition, both in Addis Ababa and on the battlefield.

 C. IGAD Monitoring Mechanism: JMEC and CTSAMM

42. The Joint Monitoring and Evaluation Commission (JMEC) was established by IGAD as a mechanism to ensure that the ARCSS is adhered to by all parties. It is: “responsible for monitoring and overseeing the implementation of the Peace Agreement… In case of non-implementation of the mandate and tasks of the TGoNU, or other serious deficiencies, the JMEC shall recommend appropriate corrective action…”.[[10]](#footnote-11)

43. The Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM) is responsible for monitoring and verifying alleged ceasefire violations.[[11]](#footnote-12)

 IV. Current Context

 A. Political and Security Context

44. Between February 2017 and January 2018, Upper Nile, Unity, Northern Bahr el Ghazal, Western Bahr el Ghazal, Jonglei and the Equatorian States were mainly affected by the conflict. which has led to massive population displacement, human rights violations, and a growing humanitarian crisis.

45. Since July 2016, the conflict has spread and become increasingly complex, reigniting and incorporating historical localised inter and intra-communal conflicts.[[12]](#footnote-13) According to the NGO Search for Common Ground, inter-communal violence reached unprecedented levels between January and May 2017. There was a two-thirds increase in violence against civilians and nearly one and a half times more communal ethnic conflict events compared to the corresponding period in 2016, which was the previous high in violence in South Sudan’s history.[[13]](#footnote-14)

46. Senior SPLA commanders have continued to benefit from the conflict in 2017, receiving appointments to governorships and other senior positions in reward for their loyalty, as well as being reincorporated into the SPLA.[[14]](#footnote-15) This ensured their allegiance to President Salva Kiir, and added to a further militarisation of the political space.

47. Alongside the broader national conflict, inter-communal and intra-communal tensions also negatively affect the security environment in Unity, Jonglei, Northern Bahr el-Ghazal, Warrap and Lakes State. Widespread criminality, the prevalence of small arms, the use of violence to capture and control resources, and a culture of impunity continues to fuel conflict at the local and national levels, and threaten to further undermine the most recent national peace efforts.

 1. Non-State Actors

48. New armed groups continue to emerge out of the initial split between the SPLA and the SPLA‑IO and the subsequent split in 2016 within the SPLA-IO itself as several officers defected to create their own armed groups.[[15]](#footnote-16) In addition to the SPLA-IO loyal to Riek Machar (RM) and the SPLA-IO loyal to Taban Deng (TD), the following armed groups are now participating in the revitalization process: the Group of Former Detainees, the Federal Democratic Party/South Sudan Democratic Forces (FDP/SSDF) represented by Gabriel Changson Chan; the National Democratic Movement (NDM), represented by Dr. Lam Akol; the National Salvation Front (NAS), represented by Lieutenant General Thomas Cirillo Swaka; the People’s Democratic Movement (PDM), represented by Taban Julu Ladimbe Lomuja; the South Sudan National Movement for Change (SSNMC), represented by Joseph Bakosoro; the South Sudan Patriotic Movement,/Army (SSPM/A) represented by Hussein Abdelbagi Akol; the South Sudan United Movement, represented by Denay Chagor; and the South Sudan Liberation Movement, represented by Bapiny Montuil.[[16]](#footnote-17) The Commission has received information about defections from the SPLA or the two factions of SPLA-IO to these groups in the course of 2017.[[17]](#footnote-18)

49. With the exception of the SPLA-IO, these groups currently only have regional strongholds, and until the signing of the 2017 Cessation of Hostilities agreement, had also been fighting among themselves.[[18]](#footnote-19) As of January 2018, there were numerous armed groups active in South Sudan seeking to achieve local and national federal interests, but they have only succeeded in adding to the security vacuum, creating even greater national insecurity and disunity.

 2. Cessation of Hostilities Agreement 2017

50. In December 2017, the Intergovernmental Authority on Development (IGAD) backed a high-level revitalization forum on the ARCSS in Addis Ababa, in what is seen by many as a final attempt to restore the peace process. The Government, the SPLA-IO, and several armed groups signed a ceasefire on 21 December 2017.[[19]](#footnote-20)

51. The agreement came into effect on 24 December 2017, mandating all forces to “immediately freeze in their locations”, halt actions that could lead to confrontation and release political detainees, in addition to taking specific measures to protect vulnerable persons including children, women, girls, the elderly, and persons with disabilities or special needs; support and facilitate the reunion of families and the decent burial and memorialization of the dead; facilitate the free movement of persons, including women and girls; and ensure protection of media and civil society.[[20]](#footnote-21)

52. Under the Agreement, particular violations of human rights law and international humanitarian law are highlighted and provision is made for monitoring compliance. The obligation on the parties to prevent, investigate and ensure accountability for breaches of the Agreement does not preclude investigations and punishment by any other entities.[[21]](#footnote-22)

53. Despite ordering his forces to cease all hostilities, Riek Machar released a statement on 22 December stating that forces should still be allowed to “act in self-defence or against any aggression.”[[22]](#footnote-23) All parties to the conflict have relied on similar language to justify ongoing attacks and continued violations during cessation of hostilities periods.

54. On 29 December 2017, IGAD released a statement condemning violations of the agreement, committed just days after its signing.[[23]](#footnote-24) In January 2018, the Council of Ministers of IGAD issued a further statement on reports of violations of the ceasefire agreement, stating:

It is deplorable that the conduct of the Parties amounts to not only a failure to comply with the Articles of the [Agreement on the Cessation of Hostilities] ACOH, but also serious violations of international human rights and humanitarian laws. These violations have been perpetrated by the SPLA-IG and SPLA-IO (RM) and SPLA-IO (TD) against their own people, and include the killings of civilians, inflicting serious mental and physical injuries on people, rape, sexual violence and looting.[[24]](#footnote-25)

55. This has been echoed by the United Nations and the African Union. The Commission is concerned that the parties to the conflict continue to commit violations of the agreement, denying this chance to make progress towards peace and a more stable future.

 3. Targeted Sanctions and Arms Embargo

56. In September and December 2017, the United States announced targeted sanctions against four South Sudanese officials for their roles in threatening the peace, security and stability of South Sudan: Benjamin Bol Mel, President Salva Kiir’s principal financial adviser; Malek Reuben Riak Rengu, Deputy Chief of Defence and Inspector General of the SPLA; Michael Makuei Lueth, Minister of Information, Communications Technology and Postal Services; and Lt. Gen. Paul Malong Awan, former Chief of General Staff of SPLA.[[25]](#footnote-26) The Government dismissed the action as unjustified and unhelpful to the peace process.[[26]](#footnote-27)

57. Other individuals subject to sanctions by the United Nations and others are SPLA officers: Lieutenant General Gabriel Jok Riak, Major General Marial Chanuong Yol Mangok, and Major General Santino Deng Wol and SPLA-IO commanders: 1st Lieutenant General Simon Gatwech Dual, Lieutenant General James Koang Chuol Ranley and Major General Peter Gatdet Jaka.

58. On 2 February 2018, the European Union (EU) announced its first sanctions related to the situation in South Sudan. Paul Malong, Malek Reuben Riak and Michael Makuei Leuth are now also subject to asset freezes and travel bans by all EU member states.[[27]](#footnote-28)

59. On the same day, the United States, announced an arms embargo on all parties to the conflict in South Sudan, citing the continued use of military force by the Government and armed opposition, despite the 21 December 2017 Agreement on the Cessation of Hostilities, the continued obstruction of UNMISS from fulfilling its mandate, and the continued violence against civilians and humanitarian workers.[[28]](#footnote-29)

 4. Repression of Civil Society, Opposition Voices and Press Freedom

60. Since the beginning of the conflict, the environment has grown increasingly repressive towards civil society, human rights activists, and journalists.[[29]](#footnote-30) The National Security Service (NSS) has increasingly employed surveillance and arbitrary detention to silence political opponents and civil society voices. In December 2017, for example, the NSS arrested five members of a newly-formed human rights organisation.[[30]](#footnote-31) At the time of writing, four have been released; one remains in detention.

61. The NSS has also resorted to intimidation, abductions and kidnapping to clamp down on opposition activities in the region.[[31]](#footnote-32) For example, James Gatdet Dak, a former SPLA-IO spokesman who had refugee status in Kenya, was deported from Kenya in late 2016 in violation of international refugee law. He is currently on trial at Juba High Court for a number of criminal offences including treason and insulting the President.

62. Aggrey Idri, Chairman of the SPLM-IO Humanitarian Affairs Committee, and Dong Samuel Luak, a prominent South Sudanese human rights lawyer, were abducted in Nairobi and forcibly disappeared in January 2017.[[32]](#footnote-33) Amnesty International and Human Rights Watch have received credible reports that the two men had been seen in custody at the NSS headquarters in Juba on 25 and 26 January 2017.[[33]](#footnote-34) They believe they were then transferred to another facility under the control of the South Sudanese government.[[34]](#footnote-35) In August 2017, South Sudanese security operatives in Kampala attempted to forcibly detain the deputy military spokesperson of the SPLA-IO, Gabriel Lam.[[35]](#footnote-36) Moreover, at the end of December 2017, the SPLM/A-IO Governor for Kapoeta State, Marko Lokidor Lochapio, was abducted from Kakuma refugee camp in Kenya and allegedly handed over to the NSS.[[36]](#footnote-37) At the time of writing, his whereabouts are unknown.

63. South Sudan is one of the most dangerous places in the world for journalists, with many having been killed, physically assaulted and accused of propagating “Western agendas.”[[37]](#footnote-38) This has had a significant chilling effect on the press.

64. In August 2017, an American freelance journalist, Christopher Allen, was killed during fighting between the SPLA and the SPLA-IO. After initially accusing Allen of being a rebel, the Information Minister and Government Spokesman Michael Makeui later stated that the Government regretted his death, and that he had not been deliberately targeted, but was killed by cross-fire.[[38]](#footnote-39)

65. The United Nations Panel of Experts on South Sudan, furthermore, reports that NSS operatives have targeted South Sudanese and foreign reporters, and that the South Sudanese authorities have either canceled or failed to approve the accreditation of at least 20 foreign journalists, effectively banning them from the country.[[39]](#footnote-40)

66. The Commission notes that the Commission Chairperson’s opening remarks at a 15 December 2017 press conference were censored. All critical remarks which referred to alleged human rights violations by the SPLA or NSS were redacted from the transcript that was published in the Juba Monitor on 16 December 2017.[[40]](#footnote-41)

 5. Political Detainees and “Prisoners of War”

67. Under the Cessation of Hostilities Agreement, the Government has committed to publishing the names of “prisoners of war”[[41]](#footnote-42) and political prisoners. The Commission notes, however, that the names of political prisoners and persons in detention by the NSS have not been made public. The Commission raised the matter of two UNMISS national staff members, detained by the authorities and whose whereabouts remain unknown, with the First Vice President, Taban Deng Gai, at a meeting in Juba on 11 December 2017.

68. The Commission notes the list issued by the SPLA-IO (RM) with the names of alleged political detainees and “prisoners of war” detained by both sides and urges the Government and the SPLA-IO to work closely with the International Committee of the Red Cross (ICRC) and UNMISS to clarify the fate of the individuals and release them immediately.

 6. Economy

69. The economic situation continues to worsen as the country experiences a macroeconomic collapse.[[42]](#footnote-43) The economy is estimated to have contracted by 11 percent in the past fiscal year, due to conflict, low oil production, and disruption to agriculture.[[43]](#footnote-44) The fiscal deficit, inflation, and parallel market premium have all soared. For example, the South Sudanese Pound was officially traded at around 128 South Sudanese Pounds (SSP) to the United States Dollar on 31 December 2017, compared to around 3 SSP to the dollar in 2013.[[44]](#footnote-45) In addition, the cost of living has continued to escalate markedly, with particularly acute effects in urban areas, and continued economic decline has undermined people’s access to basic resources.[[45]](#footnote-46)

70. Moreover, inconsistent and intermittent payment of public sector employees’ salaries have impacted the provision of basic health-care and education services.[[46]](#footnote-47) The country’s political and military elites now seek other sources of revenue such as teak and gold. In particular, this has led to large parts of the Equatorias becoming further embroiled in the conflict as military and political leaders attempt to acquire territory, economic resources, and precious commodities for the “war economy.”[[47]](#footnote-48)

 7. Transitional Justice Institutions

71. Under Chapter V of the Peace Agreement, TGoNU is mandated to establish three transitional justice institutions: the Commission for Truth, Reconciliation and Healing (CTRH); the Hybrid Court for South Sudan; and a Compensation and Reparation Authority (CRA), aimed at facilitating truth, reconciliation and healing, compensation and reparation.[[48]](#footnote-49)

72. At the time of writing, the African Union and the Government of South Sudan have yet to make significant progress in establishing these three institutions which together constitute a holistic transitional justice programme. Failure to bring the CTRH, the Hybrid Court and the CRA to life would be a missed opportunity on the part of the African Union and the international community to provide fora for the people of South Sudan to attain truth, justice and reparations for human rights violations and crimes committed since December 2013.

 B. Humanitarian situation

73. While the political and security apparatuses bear the apparent hallmarks of a functioning state, the humanitarian situation across the country has reached an all-time low. Between February 2014 and May 2016, South Sudan was declared a Level 3 humanitarian emergency, in the same category as Syria, Iraq and Yemen.[[49]](#footnote-50) Approximately one third of the population has been displaced, including more than 2.4 million refugees and more than 1.9 million internally displaced persons (IDPs).[[50]](#footnote-51) Approximately 7.5 million people need humanitarian assistance and protection.[[51]](#footnote-52) These staggering statistics underscore the urgent need to address the primary driver of the man-made humanitarian catastrophe in South Sudan – the ongoing conflict.

 1. Starvation and food insecurity

74. The country faces unprecedented levels of food insecurity, with more than half of its population severely food insecure.[[52]](#footnote-53) For the period September 2017 to March 2018, the Integrated Food Security Phase Classification for South Sudan found populations in “humanitarian catastrophe” in all three Greater regions of South Sudan, concentrated in areas affected by fighting.[[53]](#footnote-54)

75. Food shortages are increasing in Central and Western Equatoria, a region traditionally considered the breadbasket of the country, but now the scene of bitter fighting and devastation.[[54]](#footnote-55) The Commission spoke to women and men in refugee camps in Uganda and Ethiopia who had fled South Sudan due to the threat of starvation. A young man from Old Fangak in Upper Nile State fled to Juba in November 2017, but on finding no food in Juba, continued on to Uganda with his family.[[55]](#footnote-56) Similarly, a couple with a young baby told the Commission that having fled from Yei in Central Equatoria to Juba in search of safety, they found: “no work and nothing to eat,” so they went to Uganda.[[56]](#footnote-57)

76. At the other end of the country, a Shilluk man, fleeing to Aburoc in Upper Nile in February 2017, told the Commission about the devastating impact of their displacement:

Four of the villagers whom I was running and hiding with, died of hunger, thirst and, fatigue, while in the bushes on our way to Aburoc. The heat of the sun worsened our physical condition. So, during the day we took shelters in the almost balding bushes and moved up north in the evening to save the remaining energy that we had. One among those four individuals that died in our journey was my eleven year-old son who got so weak due to starvation, thirst and exhaustion.[[57]](#footnote-58)

77. Elsewhere in the country, witnesses told the Commission that SPLA soldiers deliberately attacked them during harvest season and disconnected or damaged sources of water.[[58]](#footnote-59) In November 2017, the Commission interviewed a man who described what he found on returning home to Wau Shilluk after being displaced by the conflict:

While in Kodok, I heard the information that villagers from Wau Shilluk could come back to our town without being harmed, so I immediately started then my journey back to my village. However, things were no longer the same as I came back because except for the school buildings that is no longer functional, everything is already gone. We only had remnants of the houses that we once had; our newly harvested crops at the time of the attack were all gone; our herd of cattle and flock of sheep and goats were all gone. We really have nothing now in Wau Shilluk. All the humanitarian agencies and NGOs that helped the displaced civilians from Malakal town, were no longer here since the attack happened. Now, we do not have enough food to eat and nobody is coming to our village to help us in our present condition. In order to survive, we relied mainly on eating pumpkin and guavas and sometimes grasses because we lost everything we used to have.[[59]](#footnote-60)

78. The Commission heard similar accounts from other witnesses, including that people ate tree leaves to survive as they walked to the Ethiopian border.[[60]](#footnote-61)

 2. Denial of Humanitarian Access

79. According to the [United Nations Office for the Coordination of Humanitarian Affairs](https://reliefweb.int/organization/ocha) (OCHA), over 1,159 humanitarian access incidents were reported by humanitarian actors in South Sudan in 2017, “indicative of increasingly difficult times for aid workers in the country.”[[61]](#footnote-62) In the Commission’s view, humanitarian aid has become a “political football” in the conflict. The Commission has noted that the SPLA and the SPLA-IO adopt various strategies to deliberately obstruct humanitarian access or redirect aid towards themselves or their own preferred communities. According to the South Sudan Protection Cluster, these strategies include deliberately creating an environment of restricted physical access, looting humanitarian supplies, and restricting movement by denying access to areas with populations suspected of supporting other groups, or different ethnicities.[[62]](#footnote-63) Approximately 47 per cent of the total incidents reported in 2017 involved violence against humanitarian personnel and assets. These incidents included killing of 28 aid workers, robbery, looting and threats or harassment.[[63]](#footnote-64)

80. Hundreds of thousands of people are unable to receive humanitarian aid in South Sudan due to insecurity or restrictions imposed by the Government and the SPLA-IO.[[64]](#footnote-65) The Panel of Experts on South Sudan concluded that the Government deliberately prevented lifesaving food assistance from reaching citizens during most of 2017. According to the Panel, this caused extreme food insecurity among large sections of the population, and led to malnutrition and death by starvation, particularly in Wau County.[[65]](#footnote-66)

81. Large-scale looting of humanitarian facilities is commonplace. In June and July 2017 alone, eighteen humanitarian compounds were broken into and 670 tons of food items stolen.[[66]](#footnote-67) The Commission interviewed witnesses who described a pattern of looting and destruction of civilian aid. One witness told the Commission that around 1 July 2017, SPLA soldiers destroyed food aid in Mathiang:

[T]he World Food Program also brought food which had not been distributed and the government forces spoiled it by shooting at it and cutting all of the bags… the food was left open and it spoiled in the rain.[[67]](#footnote-68)

82. In Pagak, SPLA soldiers looted at least seven humanitarian and non-governmental organisations. According to a witness, “food items that were meant for schoolchildren were looted, including sorghum (6.854 Metric tons), pulses (1.710 metric tons) and vegetable oil (0.541 metric tons) […]”.[[68]](#footnote-69)

83. The Commission has also documented incidents of the SPLA-IO seeking to impose restrictions on humanitarian assistance, such as fees on humanitarian organisations landing in SPLA-IO controlled territory.[[69]](#footnote-70)

84. In November 2017, President Kiir declared that all humanitarian convoys and NGOs should be accorded free, unimpeded and unhindered movement and that all roadblocks should be removed.[[70]](#footnote-71) Despite this, restrictions on humanitarian access continue.[[71]](#footnote-72) OCHA states that: “Bureaucratic impediments are a predominant concern for the humanitarian community in 2017,” including numerous cases of access denials related to work permits of aid workers travelling from Juba to field locations.[[72]](#footnote-73)

85. Humanitarian aid delivery in South Sudan is already challenging even without these additional impediments. More than 70 per cent of roads are inaccessible during the rainy season, between July and December.[[73]](#footnote-74) The insecurity means that the humanitarian community must rely on air transportation almost year-round, which can be up to eight times more expensive than road transportation.[[74]](#footnote-75) Coordinating the logistics of humanitarian aid delivery is also complicated by communication challenges. South Sudan still does not have a single communication channel that covers the entire country due to gaps in coverage and defective infrastructure.[[75]](#footnote-76) Furthermore, communication problems have deteriorated since Juba-based mobile phone providers switched off mobile telephone relay antennas in opposition controlled territories.[[76]](#footnote-77)

 3. Healthcare

86. The healthcare system is a major humanitarian concern in South Sudan. While people in urban areas are able to access medical care, those in rural and conflict-affected areas have minimal access to basic services. Even the Juba Military Hospital, the main military hospital in the country, is oversubscribed and underfunded, preventing it from providing adequate services for military personnel. At the time of writing, the hospital which has a maximum capacity of 150 people, is providing inpatient services for more than 500 patients, including civilians, many of whom are treated in tents outside the building due to lack of space.[[77]](#footnote-78)

87. According to the head of the hospital, the hospital treats SPLA-IO patients, referred by ICRC.[[78]](#footnote-79)

88. Elsewhere in the country, access to healthcare continues to diminish as healthcare facilities are destroyed, health workers are attacked, and shortages of drugs and skilled healthcare professionals persist. In many areas, the only medical facilities are field hospitals and clinics set up by organisations such as the ICRC, Médecins sans Frontières (MSF) and International Medical Corps (IMC), which may be reached by walking for several days.[[79]](#footnote-80) Due to attacks by both sides to the conflict, the United Nations reports that less than 50 per cent of medical facilities are functioning in areas affected by conflict.[[80]](#footnote-81)

89. A witness told the Commission that he was at a medical clinic in Maiwut in early July 2017:

I suddenly saw people running from all directions. Then I saw government soldiers shooting at them. I was scared of what was going to happen, so I remained at the clinic compound. Then a few metres outside, I saw two soldiers grouping all the old men and separating them from women. Vulnerables were there too - they were unable to run away because of their incapacity to do so. Then the uniformed soldiers suddenly killed all of them. Some soldiers were shooting at them while others used machete and knives to kill them. Others used pieces of wood to hit them. It was horrible to watch.[[81]](#footnote-82)

90. The soldiers proceeded to set fire to the clinic compound, causing the staff to gather the remaining patients together and flee to Ethiopia.[[82]](#footnote-83)

91. Healthcare facilities were targeted in Malakal and Pagak in Upper Nile State and Lainya and Yei in Central Equatoria. The Commission documented physical injuries sustained by healthcare professionals and patients in attacks by both the SPLA and SPLA-IO.[[83]](#footnote-84) The absence of services means that cases of emergency obstetric care, tuberculosis, HIV/AIDS and mental health issues go largely untreated, causing increased mortality and morbidity.[[84]](#footnote-85)

92. Disease outbreaks have lasted longer than ever and reached previously unaffected areas, weakening already vulnerable people’s ability to cope with multiple shocks. For the first time since South Sudan’s independence, the cholera outbreak is continuing through the dry season, reaching new locations and becoming the longest and most widespread outbreak since 2011.[[85]](#footnote-86) This is a consequence of the ongoing conflict.

 4. Displacement

 a) Refugees

93. South Sudan is the world’s fastest growing refugee crisis. Over 2.4 million citizens are seeking refuge abroad, including more than one million South Sudanese in Uganda alone.[[86]](#footnote-87) Others have fled to Sudan, Ethiopia, Kenya, the Democratic Republic of the Congo and Central African Republic. Families crossing the borders have cited the security situation, hunger, and disease as the primary driving factors.[[87]](#footnote-88)Around 87 per cent of South Sudanese refugees in the region are women and children, and more than 75,000 South Sudanese refugee children are unaccompanied or separated from their parents.[[88]](#footnote-89)

 b) Protection of Civilian Sites

94. According to OCHA, nearly four million people have been displaced by the conflict, including more than 1.9 million people internally displaced.[[89]](#footnote-90) Those civilians displaced at the start of the conflict in December 2013, are now entering their fifth year of displacement.[[90]](#footnote-91) Protection of Civilian sites (PoCs) were established in an emergency context, and the protracted conflict is leading to a much longer-term arrangement than initially envisioned.[[91]](#footnote-92) As one witness states:

The people in the PoC camps have it worse than any of us who have left or are in the refugee camps outside of the country. At least we are free here, but they are being held like hostages in their own country […].[[92]](#footnote-93)

95. The prolonged confinement in PoCs, coupled with the constrained humanitarian services have a negative and gendered impact on the situation of the displaced in South Sudan. At the Malakal PoC in 2017 six people, five of whom were men aged 15 to 29, committed suicide, while 31 attempted suicide, almost half of whom were men between the ages of 17 and 29.[[93]](#footnote-94)

96. Women and children face ongoing security threats in the PoCs. In Juba, women told the Commission that since July 2016, cases of rape, gang rape, disappearance and abduction of women from the PoCs had increased.[[94]](#footnote-95) The Commission also received reports of the SPLA and the SPLA-IO attempting to recruit people from within the PoCs, including children.[[95]](#footnote-96) Owing to this, and the poor conditions in the PoCs, women described health challenges, including: untreated medical issues resulting from rape, lack of water, limited nutrition options for their children, access to education and the daily risk of sexual violence outside the PoCs as they gather firewood to cook food for their families.[[96]](#footnote-97)

 5. Mental Health Crisis

97. The extent of the psychological damage that the conflict and displacement has had on South Sudanese people will have long lasting consequences. A number of witnesses the Commission spoke to presented visible symptoms of psychological distress.[[97]](#footnote-98) In 2016, Amnesty International highlighted the mental impact of the conflict as well as the poor availability, accessibility and quality of mental health services across the country to address psychological trauma.[[98]](#footnote-99) Additionally, a recent study in South Sudan found that almost 41 per cent of people exhibit symptoms of probable post-traumatic stress disorder (PTSD).[[99]](#footnote-100) This has significant long-term consequences for individual, family and community well-being.[[100]](#footnote-101)

 V. Applicable Law

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

 A. International Human Rights Law

99. Under international human rights law, the Republic of South Sudan is obliged to respect, protect, promote, and fulfil the human rights of all persons within its territory or under its control,[[101]](#footnote-102) without discrimination. This includes the obligation to ensure a prompt, adequate, and effective remedy to those whose rights have been violated, including the provision of reparations and to investigate and bring to justice perpetrators of human rights violations.

 1. Treaty Law

100. South Sudan is a state party to the African Charter on Human and Peoples’ Rights (the African Charter) and five United Nations human rights treaties: the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; and the Convention on the Rights of the Child (CRC).[[102]](#footnote-103) In addition, South Sudan recently ratified the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), with reservations.[[103]](#footnote-104) The Maputo Protocol upholds the rights of women to non-discrimination, to the right to life, liberty and integrity of person and the protection of women in armed conflict.[[104]](#footnote-105)

101. International human rights law applies both in times of peace and armed conflict, and under these treaties the rights are non-derogable.[[105]](#footnote-106)

102. Under CAT, acts of torture and inhuman or degrading treatment or punishment are absolutely prohibited and cannot be justified under any circumstances. The State has a positive obligation to take effective measures to prevent all acts of torture and cruel, inhuman, or degrading treatment or punishment, to promptly investigate any allegation of such treatment, to ensure full accountability for any such act and to ensure that victims receive adequate redress and rehabilitation.[[106]](#footnote-107)

103. As a party to CEDAW, the Republic of South Sudan is obliged to take necessary action to prevent, protect against, and respond to violence against women, whether perpetrated by private or public actors.[[107]](#footnote-108) In its General Recommendation No. 35 (2017), updating its General Recommendation No. 19 (1992), the CEDAW Committee found that acts of sexual violence against women are also violations of CEDAW. The Committee emphasises that States must address all forms of gender-based violence against women committed by State, and non-State actors through an effective and accessible legal framework, and must investigate, prosecute and provide reparations for survivors.

104. CEDAW is complemented by United Nations Security Council Resolution (UNSCR) 1325 (2000), UNSCR 1820 (2008); UNSCR 1888 (2009), UNSCR 1960 (2010) UNSCR 2106 (2013), UNSCR 2122 (2013) and UNSCR 2242 (2015) which address the disproportionate impact of armed conflict on women and girls, emphasising that States must fully apply the relevant norms of international humanitarian law and international human rights law to women and girls, and take special measures to protect women and girls from gender-based violence during armed conflict.

105. The CRC defines a child as a person under 18 years old.[[108]](#footnote-109) Under the Convention, the Government of the Republic of South Sudan guarantees children the rights to life, survival and development, to protection from violence and abuse, to the highest attainable standard of health, to education, not be tortured, sentenced to the death penalty nor suffer other cruel or degrading treatment or punishment.[[109]](#footnote-110) The State must take all feasible measures to ensure that children under the age of 15 do not take a direct part in hostilities, and must refrain from “recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.”[[110]](#footnote-111) Under the CRC, Governments must do everything they can to protect and care for children affected by armed conflicts.[[111]](#footnote-112)

106. The protection of children in armed conflict is further strengthened by the monitoring and reporting arrangements established under UNSCR 1612 (2005) which gather information and monitor six grave violations against children in armed conflict: killing and maiming; recruitment or use of child soldiers by parties to the conflict; abduction of children; attacks against schools or hospitals; rape and other forms of sexual violence against children; and denial of humanitarian access. Parties to the conflict in South Sudan have been listed by the United Nations for committing grave violations against children – the SPLA for killing and maiming, as well as for recruitment and use of child soldiers, abduction and rape and sexual violence against children.[[112]](#footnote-113) The SPLA-IO and allied groups have been listed for recruitment and use and killing and maiming.[[113]](#footnote-114) The SPLA and the SPLA-IO are considered to be persistent perpetrators of these violations.[[114]](#footnote-115) The Nuer White Army is listed for recruitment and use of child soldiers.[[115]](#footnote-116)

107. According to UNICEF, 3,739 incidents of grave violations against children in South Sudan were reported between December 2013 and October 2017, affecting 117,386 children. UNICEF believes that the true numbers are higher, due to lack of access to some areas.[[116]](#footnote-117) The Commission gathered firsthand information of all six grave violations.[[117]](#footnote-118)

108. The Republic of South Sudan is a party to the African Charter on Human and Peoples’ Rights which came into effect for South Sudan on 19 August 2016. From that date onwards, the Republic has been bound by its provisions.[[118]](#footnote-119) The African Charter prohibits the arbitrary deprivation of life and physical or mental torture, and safeguards the rights of non-discrimination, to equality before the law, to life and physical integrity, to liberty and security of person, to have his or her cause heard in a court of law, the right to health and to property, to education and to family life.[[119]](#footnote-120)

109. The African Commission has interpreted torture as the “intentional and systematic infliction of physical or psychological pain and suffering in order to punish, intimidate or gather information. It has found that torture can be carried out by “State or non-State actors at the time of exercising control over such person or persons.”[[120]](#footnote-121)

110. At the time of writing, the Republic of South Sudan is not a party to the Genocide Convention, the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocols; the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its Optional Protocol; the International Convention on the Elimination of all Forms of Racial Discrimination (CERD); the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICRMW); the International Convention for the Protection of all Persons from Enforced Disappearance (ICPPED), the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol, or the three Optional Protocols to the CRC.[[121]](#footnote-122)

111. The Government has signed but not ratified the African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention).[[122]](#footnote-123)

112. In addition to its treaty obligations, a range of instruments assist in understanding and interpreting human rights obligations, most notably the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (Joinet/Orentlicher Principles) and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (Van Boven Principles).[[123]](#footnote-124)

113. Emphasizing the obligation on States to take effective action to combat impunity and investigate, try and punish perpetrators, and to restrict the use of amnesties, the Joinet/Orentlicher Principles underscore the requirement to investigate, try and punish perpetrators, to:

Provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered; to ensure the inalienable right to know the truth about violations; and to take other necessary steps to prevent a recurrence of violations.[[124]](#footnote-125)

114. The Principles underscore the importance of finally addressing impunity for human rights violations and crimes in South Sudan. The Van Boven Principles emphasise the centrality of victims to any justice or truth-telling process in South Sudan. The State must provide victims with adequate, effective and prompt reparation for gross violations of international human rights law or serious violations of international humanitarian law.[[125]](#footnote-126)

115. Other important instruments include the Declaration on the Protection of Persons from Enforced Disappearances;[[126]](#footnote-127) the Guiding Principles on Internal Displacement;[[127]](#footnote-128) andthe Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[[128]](#footnote-129)

 a) State Responsibility and non-state actors

116. Under international law, including human rights law, the State may be held generally responsible for the wrongful conduct of non-State individuals or groups when the latter are acting in “complete dependence” on the State.[[129]](#footnote-130) A State might also be held responsible in cases in which non-State individuals or groups act on its instructions or under its direction or its “effective control”[[130]](#footnote-131) and also when its own agents acknowledge and adopt the conduct of non-State groups.[[131]](#footnote-132) States must investigate the use of lethal force by their agents, particularly those involved in law enforcement.[[132]](#footnote-133) For State investigations to be effective, they must be as prompt as possible, exhaustive, impartial, independent and open to public scrutiny.[[133]](#footnote-134)

117. The African Commission on Human and Peoples’ Rights has explained that:

A State can be held responsible for killings by non-State actors if it approves, supports or acquiesces in those acts or if it fails to exercise due diligence to prevent such killings or to ensure proper investigation and accountability.[[134]](#footnote-135)

118. With regard to sexual violence, the United Nations Committee for the Elimination of Discrimination against Women has recently explained:

Article 2 (e) of the Convention explicitly provides that States parties are required to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. This obligation, frequently referred to as an obligation of due diligence, underpins the Convention as a whole and accordingly States parties will be responsible if they fail to take all appropriate measures to prevent as well as to investigate, prosecute, punish and provide reparation for acts or omissions by non-State actors which result in gender-based violence against women.[[135]](#footnote-136)

 2. Customary International Human Rights Law

119. The Republic of South Sudan is bound by provisions of international human rights law that have attained the status of customary law.[[136]](#footnote-137) The International Court of Justice in its Reservations to the Convention on Genocide, Advisory Opinion (1951) was clear that the principles underlying the Convention are binding on all states whether or not they are parties to the Convention:

The origins of the Convention show that it was the intention of the United Nations to condemn and punish genocide as "a crime under international law" involving a denial of the right of existence of entire human groups, a denial which shocks the conscience of mankind and results in great losses to humanity, and which is contrary to moral law and to the spirit and aims of the United Nations (Resolution 96 (1)of the General Assembly, 11 December 1946). The first consequence arising from this conception is that the principles underlying the Convention are principles which are recognized by civilized nations as binding on States, even without any conventional obligation. A second consequence is the universa1 character both of the condemnation of genocide and of the co-operation required "in order to liberate mankind from such an odious scourge" (Preamble to the Convention). The Genocide Convention was therefore intended by the General Assembly and by the contracting parties to be definitely universal in scope.[[137]](#footnote-138)

120. While armed opposition groups cannot become parties to international human rights treaties, such non-state actors are increasingly deemed to be bound by certain international human rights obligations, particularly those actors exercising de facto control.[[138]](#footnote-139)

121. UNMISS has stated:

The most basic human rights obligations, in particular those emanating from peremptory international law (jus cogens) bind both the State and armed opposition groups in times of peace and during armed conflict. In particular, international human rights law requires States, armed groups and others to respect the prohibitions of extrajudicial killing, maiming, torture, cruel inhuman or degrading treatment or punishment, enforced disappearance, rape, other conflict related sexual violence, sexual and other forms of slavery, the recruitment and use of children in hostilities, arbitrary detention as well as of any violations that amount to war crimes, crimes against humanity, or genocide.[[139]](#footnote-140)

122. The United Nations Committee on the Elimination of Discrimination Against Women has recently confirmed that:

Both international humanitarian law and human rights law have recognised the direct obligations of non-State actors, including as parties to an armed conflict, in specific circumstances. These include the prohibition of torture, which is part of customary international law and has become a peremptory norm.[[140]](#footnote-141)

123. In this context, the Commission draws attention to the Committee’s important references to gender-based sexual violence amounting to torture:

Gender-based violence against women, may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices, among others. In some cases, some forms of gender-based violence against women may also constitute international crimes.[[141]](#footnote-142)

124. At a minimum, the SPLA, pro-government militias and armed youth, as well as the SPLA-IO and armed groups under their control, are required to respect all these human rights and prevent or punish the related international crimes. The Commission is particularly concerned that all parties, groups and individuals should immediately take steps to halt sexual violence and hold those responsible accountable.

 B. International Humanitarian Law

125. International humanitarian law regulates the conduct of parties to an armed conflict. It comprises the principles and rules that seek to mitigate the effects of war by limiting the means and methods of conducting military operations and by obliging parties to spare those not participating in hostilities. Under the laws of war, not all deliberate killings are prohibited; however, the deliberate killing of civilians not directly participating in hostilities is expressly prohibited. Other guiding principles are those of distinction, proportionality and precaution in attack.[[142]](#footnote-143)

126. In the Commission’s view, international humanitarian law applied to the non-international armed conflict in South Sudan when clashes broke out between the SPLA and the SPLA-IO on 15 December 2013. Such a conclusion is also evidenced in statements issued by the International Committee of the Red Cross (ICRC) in January 2014 until the present.[[143]](#footnote-144) To date, the situation has deteriorated from December 2013, thus ensuring the applicability of international humanitarian law during this period. Once the threshold for the application of Common Article 3 to the 1949 Geneva Conventions has been reached, the provisions which operate to protect the victims of war continue to apply even when there may appear to be periods of calm.[[144]](#footnote-145) It is worth recalling here the considered words of the ICRC in their 2016 Commentary to the Geneva Conventions:

Armed confrontations sometimes continue well beyond the conclusion or unilateral pronouncement of a formal act such as a ceasefire, armistice or peace agreement. Relying solely on the existence of such agreements to determine the end of a non-international armed conflict could therefore lead to a premature end of the applicability of humanitarian law in situations when in fact a conflict continues.[[145]](#footnote-146)

127. The Republic of South Sudan is also a State Party to the four Geneva Conventions of 1949 and the three Additional Protocols of 1977 and 2005.[[146]](#footnote-147)

 1. Common Article 3 to the Geneva Conventions

128. All parties to the conflict, including armed opposition groups, are required to observe Common Article 3 which encapsulates the most fundamental principles of respect for human dignity. Common Article 3 binds all parties to the conflict to treat humanely persons taking no active part in hostilities, including those placed hors de combat, without any adverse distinction.[[147]](#footnote-148) Common Article 3 prohibits violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, taking of hostages, outrages upon personal dignity as well as the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, respecting the generally recognized principles of fair trial and due process.[[148]](#footnote-149)

 2. Additional Protocol II to the Geneva Conventions

129. Additional Protocol II to the Geneva Conventions applies to non-international armed conflicts. It develops and supplements Common Article 3 without modifying its application.[[149]](#footnote-150) Additional Protocol II became applicable to the conflict between South Sudan’s Government and Opposition forces when the SPLA-IO forces were operating under responsible command, controlling territory, and demonstrating a capacity to conduct sustained and concerted military operations.[[150]](#footnote-151)

130. Under Additional Protocol II, individual civilians, the civilian population, medical units and transport and places of worship shall not be objects of attack.[[151]](#footnote-152) Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited.[[152]](#footnote-153) Starvation of civilians as a method of combat is prohibited, as is attacking, destroying, removing or rendering useless, objects indispensable to the survival of the civilian population.[[153]](#footnote-154) The displacement of the civilian population is prohibited unless the security of the civilians involved or imperative military reasons so demand. Where displacement takes place, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.[[154]](#footnote-155)

131. Additional Protocol II also proscribes collective punishment, pillage, outrages upon personal dignity, in particular humiliating and degrading treatment, rape, indecent assault and prohibits both the recruitment of children under fifteen and allowing such children to take part in hostilities.[[155]](#footnote-156)

 3. Customary International Humanitarian Law

132. In addition, all parties to the conflict are bound by the relevant rules of customary international law applicable in non-international armed conflict. Parties to conflicts must at all times, abide by the principles of distinction, proportionality and precaution in attack.[[156]](#footnote-157) Under the principle of distinction, the civilian population, as well as individual civilians and civilian objects, must not be the object of attack and parties to the conflict must at all times distinguish between civilians and combatants.[[157]](#footnote-158) Only military objectives may be attacked.[[158]](#footnote-159) Indiscriminate attacks are prohibited.[[159]](#footnote-160) Launching an attack which is disproportionate is prohibited. This means:

Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.[[160]](#footnote-161)

133. Attacks on civilian objects are prohibited unless the object is used in such a way that it loses its civilian character and qualifies as a military objective.[[161]](#footnote-162) All parties must take all feasible precautionary measures to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians, and damage to civilian objects.[[162]](#footnote-163) Further, those sent to provide assistance to civilians without directly taking part in hostilities, including medical and religious personnel, humanitarian workers and organizations and United Nations peacekeepers, are specifically protected under customary international law.[[163]](#footnote-164)

134. Unlawful killing, torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment, rape, pillage, enforced disappearance, arbitrary deprivation of liberty, forced displacement are prohibited.[[164]](#footnote-165) Children, the elderly, people with disabilities and the infirm affected by armed conflict are entitled to special protection, and children under the age of 15 must not be recruited into armed forces and armed groups.[[165]](#footnote-166)

135. States are responsible for all violations of international humanitarian law committed by their armed forces or those acting under their direction or control.[[166]](#footnote-167) Under customary international law, the Government of South Sudan is obliged to investigate serious violations of international human rights and international humanitarian law and to ensure full reparation for loss or injury caused by the State.[[167]](#footnote-168)

136. Certain violations of international humanitarian law can constitute war crimes and engage individual criminal responsibility on the part of their perpetrators.[[168]](#footnote-169) Under customary international law, individuals may be criminally responsible for committing, attempting, assisting, facilitating, aiding or otherwise abetting the commission of a war crime, and may be criminally responsibility under command responsibility.[[169]](#footnote-170)

137. South Sudan is obliged to investigate and prosecute gross violations of international human rights law and serious violations of international humanitarian law, in particular those that amount to crimes under international law, and to punish individual perpetrators.[[170]](#footnote-171)

 C. International Criminal Law

138. International criminal law governs situations in which individuals can be held individually criminally responsible for gross violations of international human rights law and serious violations of international humanitarian law which amount to crimes under international law. South Sudan has the primary obligation to ensure accountability for these crimes. To comply with this obligation, the State must ensure that its domestic legislation incorporates the necessary legal basis to enable domestic courts to duly exercise jurisdiction over such crimes, in accordance with applicable principles of customary and treaty law.[[171]](#footnote-172)As part of the duty to provide effective remedies, the State is obliged to ensure reparation for the injuries suffered, to uphold the inalienable right to know the truth about violations and take other necessary steps to prevent a recurrence of violations.[[172]](#footnote-173)

139. South Sudan has committed itself to prosecute international crimes through signing a Memorandum of Understanding with the African Union to establish a Hybrid Court for South Sudan. The Commission has reviewedthe Statute for the Hybrid Court, dated 10 August 2017, annexed to that agreement.[[173]](#footnote-174) The Draft Statute will confer on the Hybrid Court primacy over the national judiciary, ensuring that it will be empowered to assert jurisdiction over cases whether or not investigations and prosecutions are being conducted in the courts of the Republic of South Sudan. The Hybrid Court will have jurisdiction over genocide, crimes against humanity, war crimes and other serious crimes under international law and relevant laws of South Sudan including torture, gender based crimes and sexual violence, crimes against children, and other serious crimes against persons or property.[[174]](#footnote-175)

 1. Genocide

140. The principles prohibiting genocide, as explained above by the International Court of Justice, are binding law even for those states that have not become parties to the Convention. Under the Convention, genocide is defined as:

Any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; (e) forcibly transferring children of the group to another group.[[175]](#footnote-176)

141. The definition of genocide contained in the Draft Statute for the Hybrid Court follows that contained in the Genocide Convention, with an additional provision specifying: “acts of rape or any other form of sexual violence.”[[176]](#footnote-177) The National Legislative Assembly has before it a proposed amendment to the Penal Code to allow for the prosecution and punishment of genocide.[[177]](#footnote-178)

 2. Crimes against Humanity

142. To date, the law of South Sudan has not included crimes against humanity, however the Hybrid Court Draft Statute defines crimes against humanity as any of the following crimes, when committed as part of a widespread or systematic attack against any civilian population: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape; sexual slavery; enforced prostitution; forced pregnancy and any other form of sexual violence; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law; enforced disappearance of persons; and other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.[[178]](#footnote-179) The draft legislation pending before the National Legislative Assembly would add a Section 206B to the Penal Code thereby allowing for the trial punishment of certain crimes against humanity at the national level.[[179]](#footnote-180)

 3. War crimes

143. Under South Sudan’s Geneva Convention Act (2012), there can be prosecutions before the South Sudanese Courts for breaches of provisions of the Geneva Conventions, such as Common Article 3 which applies to the non-international armed conflict in the Republic of South Sudan, as well as for breaches of Additional Protocol II. Jurisdiction for breaches of Common Article 3 and Protocol II as they apply to the armed conflict in South Sudan extends to all acts committed on the territory, as well as acts committed by South Sudanese nationals outside the country.[[180]](#footnote-181)

144. The Draft Statute of the Hybrid Court defines war crimes as: serious violations of article 3 common to the Geneva Conventions of 12 August 1949 for the protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include in particular: (a) Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; (b) Collective punishments; (c) Taking of hostages; (d) Acts of terrorism; (e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; (f) Pillage; (g) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees for fair trial under African regional instruments and general international law; (h) Threats to commit any of the foregoing acts.[[181]](#footnote-182)

145. Further war crimes that would be applicable to the armed conflict in South Sudan are reflected in the Draft Statute as “other serious crimes under international law”: intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities; intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law; intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations and or the Constitutive Act of the African Union, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict; intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives; ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand; killing or wounding treacherously a combatant adversary; declaring that no quarter will be given; destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict; employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incision.[[182]](#footnote-183) The amendment to the Penal Code currently in draft form before the National Legislative Assembly lists a limited number of war crimes which could be tried and punished at the national level.[[183]](#footnote-184)

 4. Torture

146. The prohibition on torture is recognised under customary international law and as a peremptory norm.[[184]](#footnote-185) Acts of gender-based violence including rape can be forms of torture and individuals may be prosecuted for the crime of torture separately from torture as a war crime, or as a crime against humanity.[[185]](#footnote-186)

147. States have positive obligations to protect women and girls from rape and sexual violence. The Committee Against Torture has emphasized that where State authorities or other officials know or have reasonable grounds to believe that torture and ill-treatment is being committed by non-State officials or private actors, and they fail to exercise due diligence to prevent, investigate, prosecute or punish the perpetrators, the State bears responsibility and: “the State’s indifference or inaction provides a form of encouragement and/or de facto permission.” This principle applies to: “State parties’ failure to prevent and protect victims from gender-based violence, such as rape […]”[[186]](#footnote-187) States are also obliged to ensure accountability and redress when non-State actors perpetrate conflict-related sexual violence.[[187]](#footnote-188)

148. Traditionally, the prohibition on rape and other forms of sexual violence as torture has generally been considered in situations of detention; however, there has been recent recognition of its applicability in extra-custodial settings. As the Special Rapporteur on Torture recently stated:

The definition of torture does not necessarily depend on the precise purpose or intensity of the inflicted pain or suffering, but on the intentionality and purposefulness of that infliction in conjunction with the powerlessness of the victim.[[188]](#footnote-189)

149. The Commission would highlight that in the context of South Sudan control over some towns has shifted between the government and opposition forces multiple times over the course of the conflict, in some cases a town might change hands perhaps twelve times in as many months. In addition, while some armed groups are allied with the Government, other armed groups may change allegiance from day-to-day, moving from being part of the opposition to be being part of the Government and then perhaps even breaking away again. Neither the war crime nor the crime of torture are limited to actions by state agents. Nor indeed is there any such limitation for the torture as a crime against humanity. In addition to being liable to be prosecuted for torture as a war crime,[[189]](#footnote-190) non-state agents can be prosecuted for torture where a public official has instigated, consented to or acquiesced in the torture inflicted by the non-state agent. Or indeed where the non-state agent is acting in opposition to the state, an individual non-state agent can still be considered a person “acting in an official capacity” due to the way the opposition group is exercising control over the population. This was the case for the Afghan “warlord” Zardad who was successfully prosecuted in London for torture in 2005.[[190]](#footnote-191)

150. In the context of South Sudan, and the widespread use of sexual violence used to deliberately terrorise the population, it is noteworthy that crimes of torture, including rape and other forms of sexual violence, may be prosecuted outside South Sudan, in particular in state parties to the United Nations Convention Against Torture where such states have created jurisdiction to try those found on their territory as foreseen in Article 7(1) of the Convention Against Torture.

 5. Individual criminal responsibility before the Hybrid Court for South Sudan

151. Under the Draft Statute for the Hybrid Court, individuals, both civilian and military, regardless of rank and affiliation, may be held criminally responsible for the following international crimes: genocide, crimes against humanity, war crimes and other serious crimes under international law. The precise crimes have been detailed above. In addition, the Hybrid Court will have jurisdiction over serious crimes under the relevant laws of South Sudan. Serious crimes under the laws of South Sudan are defined for the purposes of the Statute as including torture, gender based crimes and sexual violence, crimes against children, and other serious crimes against persons or property.

152. Individual criminal responsibility under the Statute covers those who “planned, instigated, ordered, committed aided and abetted, conspired or participated in a joint criminal enterprise in the planning, preparation or execution of a crime” under the Statute.[[191]](#footnote-192) The official position of any accused person shall not relieve that person of criminal responsibility nor mitigate punishment, and no immunities shall bar the Court from exercising its jurisdiction.[[192]](#footnote-193)

153. Under the Statute, a superior is criminally responsible:

If he or she knew or had reason to know that the subordinate was about to commit [acts referred to in the statute] or had done so and the superior had failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.[[193]](#footnote-194)

 6. Jurisdiction of the International Criminal Court and Prosecution for International Crimes outside South Sudan

154. South Sudan is not a State Party to the Rome Statute. To the extent that such crimes are committed by nationals from States Parties to the Rome Statute, the International Criminal Court (ICC) will have jurisdiction over these individuals for genocide, crimes against humanity or war crimes as defined by the ICC Statute. In the absence of a referral of the situation to the Prosecutor by the Security Council, jurisdiction could be triggered either by a referral of the situation by a State Party or by the Prosecutor initiating an investigation.

155. In addition, those suspected of these international crimes may be arrested and prosecuted in states that have jurisdiction over such crimes committed outside their territory. Several states have adopted legislation that would allow them to prosecute the crimes listed in Article 8(2) paragraphs (c) and (e) of the ICC Statute. Moreover, the list of customary international war crimes that could be prosecuted by other states extends beyond those listed in the Rome Statute and is said to include:

* Using prohibited weapons;
* Launching an indiscriminate attack resulting in death or injury to civilians, or
* An attack in the knowledge that it will cause excessive incidental civilian loss;
* Injury or damage;
* Making non-defended localities and demilitarised zones the object of attack;
* Using human shields;
* Slavery;
* Collective punishment;
* Using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including by impeding relief supplies.[[194]](#footnote-195)

156. The ICRC Rules on Customary International Humanitarian law state in Rule 157 that: “States have the right to vest universal jurisdiction in their national courts over war crimes.” In many cases the legislation will require that the individual is present in the territory of the prosecuting state, but the Geneva Conventions do not require any particular link between the accused and the prosecuting state. As stated above, States parties to the Torture Convention may also decide to prosecute those accused of torture that are found in their territory.

 D. Domestic Law

 1. Transitional Constitution (2011), Bill of Rights

157. 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, non-discrimination and equality before the law, the special rights of women and children, and freedom from arbitrary detention and torture or cruel, inhuman or degrading treatment or punishment.[[195]](#footnote-196)

158. The Constitution contains provisions on states of emergency, declaring that while part of the Bill of Rights may be suspended, the protections of the right to life, prohibition on torture, right of non-discrimination, the right to litigation, and right to a fair trial may not be limited.[[196]](#footnote-197) For other rights, derogations are permitted only if they are clearly proclaimed in accordance with the law, limited to what is strictly required by the situation, and not discriminatory.[[197]](#footnote-198)

 2. Penal Code (2008)

159. The rights to life and physical integrity are also protected by South Sudan’s criminal law in several provisions of the Penal Code Act 2008. Ordinary criminal provisions prohibit murder, rape and other sexual offences, kidnapping, abduction, assault, grievous hurt, violations of personal liberty, robbery and damage to or destruction of property, among others.[[198]](#footnote-199)

 3. Criminal Procedure Act (2008)

160. Under the Criminal Procedure Act, every accused person is guaranteed a fair and speedy trial without delay, presumed innocent until proven guilty, protected from cruel or inhuman treatment or punishment, arbitrary detention, arrest and from non-discrimination and compensated for criminal harm.[[199]](#footnote-200)

 4. Geneva Convention Act (2012)

161. With the introduction of the Geneva Convention Act (2012), South Sudan incorporated the provisions of the Four Geneva Conventions and its Additional Protocols into domestic law. The Act creates offences and penalties for breaches of the Conventions and Additional Protocols.[[200]](#footnote-201) As explained above, with regard to the non-international armed conflict, the Act extends to all those who commit breaches on the territory of South Sudan, as well as acts committed by South Sudanese nationals outside the country fall within the scope of this Act. The Act also covers those who aid, abet or procure any other person to commit any breach of the Geneva Conventions or their Protocols.

 5. Child Act (2008)

162. In accordance with international standards, the Child Act defines children as individuals under the age of 18. The Act upholds the rights of children to non-discrimination, to life, survival and development, to education, well-being and health and to liberty and security of person.[[201]](#footnote-202) The minimum age for conscription or voluntary recruitment into armed groups is 18 years, and it is prohibited to use children in military or paramilitary activities.[[202]](#footnote-203)

 6. SPLA Act (2009)

163. The SPLA Act provides for the establishment, governance, and discipline of the State’s armed forces. The SPLA Act establishes a system of military justice for both criminal and disciplinary offences. SPLA courts martial have jurisdiction over both offences of a military nature (desertion, unauthorized absence, disobedience of lawful orders, disrespect to a superior commissioned officer and cowardice in action, for example), and also over ordinary crimes that are not of a military nature, such as murder, rape, assault and theft.[[203]](#footnote-204)

 VI. Thematic Human Rights Issues

 A. The Status of Women in South Sudan

164. The lives of South Sudanese women and girls are shaped primarily by tradition, culture and custom. International human rights law, the Transitional Constitution, and the domestic law of South Sudan recognise the fundamental rights of women to equality and non-discrimination, to life and liberty and integrity of the person and protection from sexual and gender-based violence during armed conflict.[[204]](#footnote-205) Despite these guarantees, the daily existence of women and girls is governed by clan and family dictates, duties and responsibilities as a wife, mother and daughter.

165. A woman’s status in this patriarchal society is largely determined by marriage, the “bride wealth”[[205]](#footnote-206) her family obtains upon her marriage and her ability to reproduce within that union. Marriage processes in most South Sudanese communities are centered on the negotiation and agreement of “bride price,” exchanged in the form of cattle, goats, precious minerals, other material goods and in some cases money. These discussions on “bride wealth” usually exclude women and take place largely between a woman’s male relatives and clan members.[[206]](#footnote-207) Any unions outside of these arrangements are not acceptable to the clan and can result in severe punishment for women and girls who enter or attempt to enter into these, including criminal prosecution for “adultery.”[[207]](#footnote-208)

166. As an unmarried girl, her value is linked to her potential for marriage and the consolidation of clan and social relations. Women in South Sudan carry the responsibility of being family unifiers or strengthening family, and even political ties, through marriage and producing children.[[208]](#footnote-209)

167. Practices of polygamy and early marriage still characterise marriage in South Sudan. While the influence and practice of Christianity has had an impact on reducing polygamy, it is common for men to marry more than one woman. Women’s agency within marriage is therefore further reduced as they enjoy limited economic power and compete for resources among their co-wives and their children. South Sudan recently ratified the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), entering reservations to provisions that discourage polygamous marriages and encourage monogamous marriage.[[209]](#footnote-210) These reservations inhibit women’s equality and prioritise tradition and custom over addressing the low status of women.

168. In the event of the loss of a spouse, traditional social protection measures such as wife inheritance and “ghost marriages” to ensure a man’s name is continued, and that his family is taken care of after his death, continue to be practiced in some communities.[[210]](#footnote-211) Women are vulnerable when a husband dies. Inheritance and distribution of property is determined by the husband’s relatives and in many instances, especially where a woman does not have sons, she will not inherit from her deceased husband’s estate. One woman told the Commission that after armed robbers killed her husband in Juba in December 2016, “my husband’s family took the two plots [of land that he owned]. I have no rights.”[[211]](#footnote-212)

169. Women in polygamous unions face further difficulties when a husband dies, more so if they are from a different ethnic community to their husband and extended family. Not only do they run the risk of losing property and being disinherited, but also losing custody and/or access to their children should they choose to leave the husband’s family.[[212]](#footnote-213) A woman told the Commission that she left South Sudan to take refuge in Uganda after her husband, who worked for the Government, was killed by opposition forces. She returned to her house after her husband had died in the hospital:

[T]hey [my co-wife and relatives] had taken everything except my clothes. I left that place immediately. I asked my brother-in-law for some money, that I wanted to come here to Uganda since my husband died and all my things [belongings and property] were taken. He said I should go and leave the child behind, because she is their child.[[213]](#footnote-214)

170. Beyond the family circle, violations against individual women and girls are treated as violations against the family and clan and are largely adjudicated by Chiefs, spiritual and religious leaders. In instances where the legal system is relied on, often as a result of a failure to reach a customary settlement, custom and culture may continue to prevent justice from being done. In December 2017, the Commission received reports about a case in Eastern Equatoria in which a police officer, convicted and sentenced to three years in prison for the rape of a female child, was prematurely released from prison the same day, suggesting external interference in the justice process.[[214]](#footnote-215)

171. In cases involving rape, tradition and custom often dictate that the perpetrator, if known, marry the victim as compensation to the family or provide compensation if the victim is married.[[215]](#footnote-216) Traditional and cultural norms place enormous value and importance on virginity and purity of women. Women and girls who are raped face stigmatisation once it becomes known. The ongoing conflict has added to the burden of womanhood, especially for survivors of sexual violence.

172. Early marriage is a key feature of gender relations in South Sudan. [[216]](#footnote-217) A range of institutions including the Ministry of Gender, Child and Social Welfare, South Sudanese NGOs, civil society organisations and United Nations agencies have initiated various programmes to address early marriage.[[217]](#footnote-218) While statutory law protects children from early marriage, many communities generally consider any girl who has reached puberty as marriageable.[[218]](#footnote-219)

73. Even before the current conflict began, early marriage was a means for families to escape poverty and destitution. The ongoing conflict in South Sudan, coupled with families facing severe economic hardships, have resulted in young girls being forced into marriage.[[219]](#footnote-220) Some community members in a refugee settlement noted that despite having been granted asylum by host governments, some families continued to send girls back across the border to South Sudan to marry, effectively bypassing national laws that prohibit early marriage.[[220]](#footnote-221)

174. Early marriage results in limited access to education and high levels of illiteracy, as girls leave school in order to care for their new home and family.[[221]](#footnote-222) One man described with disappointment how his plans to educate his daughter were thwarted by her early marriage:

All I had planned in my life, worked hard for [was destroyed]. I planned that in 2017 none of my children would know cultivation [on the farm] but would know education; but I have lost everything… [My son] is in university and the girl is married, she spoiled her studies.[[222]](#footnote-223)

1. Sexual and Gender-Based Violence

175. Sexual and gender-based violence in South Sudan is not new and predates the current conflict.[[223]](#footnote-224) Crafting responses to address sexual and gender based violence in the ongoing conflict, must take into account the continuum of violence throughout the history of South Sudan as well as the current conflict-related violence.[[224]](#footnote-225) In the current context women’s lives have little value resulting in extremely high levels of sexual and gender-based violence.[[225]](#footnote-226)

176. The Commission encountered women who were survivors of repeated sexual and gender-based violence both during the civil war with Sudan and in the current conflict. A woman from a village near Juba who was raped in December 2013 said:

I was tortured in the 1990s. Then I was living in […] and the SPLA attacked the village. They caught us and tortured and beat us. In the 1990s it was the SPLA soldiers who tortured and beat me and in the recent war it is the SPLA soldiers who did it. In 1990 SPLA were rebels [guerrillas], now they are government […] In the previous war, the first torture, I was beaten by sticks. I was not married. I was still a girl [a virgin]. In the recent war is when I was thoroughly beaten and tortured, it makes me think about the first experience [in the 1990’s].[[226]](#footnote-227)

177. The history of subjugation of Southerners by the North commodified and dehumanised both men and women.[[227]](#footnote-228) Violence was a characteristic of inter-communal conflicts that included cattle raids in neighbouring communities that often resulted in the abduction of women and children. Decades of armed conflict and a proliferation of small arms and light weapons have added to an environment in which a plethora of gendered violations were already taking place.[[228]](#footnote-229)

 C. Conflict-related sexual violence

178. As the conflict enters its fifth year, rape and other forms of sexual violence remain a central feature of the conflict. While comprehensive statistics on conflict-related sexual violence in South Sudan are not available, the AU Commission of Inquiry, the OHCHR Assessment Mission, UNMISS, Amnesty International, Human Rights Watch and a number of South Sudanese civil society and NGOs have documented these violations throughout the conflict.

179. The Secretary-General noted that 217 cases of sexual violence were perpetrated in a period of two weeks, between 8‑25 July 2016.[[229]](#footnote-230) In 2016, a UNFPA survey found that 72 per cent of women in UNMISS PoCs in Juba alone had reported having been raped since conflict broke out.[[230]](#footnote-231) Between October 2016 and March 2017, Amnesty International interviewed 182 individuals affected by sexual violence and documented rape and gang rape of women and girls, mutilations of genitalia including castration and sexual torture of men.[[231]](#footnote-232) In January 2018, a CTSAMM report documented 154 verified cases of sexual and gender based violence perpetrated in Central Equatoria region during 2017, although the true figures are likely to be much higher.[[232]](#footnote-233)

180. The Commission has paid particular attention to the sexual and gender-based violence perpetrated throughout the conflict, with a particular focus on sexual violence. The Commission documented the experiences of female and male victims aged between twelve and 85 years-old. Victims of sexual violence included the elderly, children, pregnant women, and those living with disabilities, including those with mental health challenges.

181. The Commission notes the correlation between the spread of the conflict from the Greater Upper Nile to the Equatorias and part of the Greater Bahr el Ghazal region, and the increase in incidents of sexual violence in these regions. The Commission documented incidents of rape, gang rape, forced sexual acts and mutilation of genitalia and forced stripping perpetrated during military attacks in these areas between 2016 and 2017.

182. Women in the PoCs in Juba spoke to the Commission about numerous rapes and other sexual violence of women and girls during and since July 2016. Women in the PoCs Juba and elsewhere in the country have experienced rape and other sexual violence multiple times, some describing experiences of rape both at the start of the conflict in December 2013 and during their displacement in the PoCs.

183. While in many incidents, victims, witnesses and survivors were unable to specifically identify perpetrators, they were able to provide the Commission with information identifying the armed groups involved. Numerous survivors and witnesses interviewed told the Commission about physical assault, cruel, inhumane and degrading treatment, torture, and psychological abuse meted out by both parties to the armed conflict, and their associated militias.[[233]](#footnote-234)

184. One witness told the Commission how two SPLA soldiers raped her in her home in Juba in July 2016, when she was 18 years-old.[[234]](#footnote-235) The Commission also received a witness statement taken by the Centre for Peace and Justice, a South Sudanese civil society organisation, regarding a 40 year-old Nuer woman affiliated with SPLA-IO, from Leer County. She was detained and gang raped by a group of SPLA-IO soldiers in the forest between Koch County and Bentiu PoC in July 2016:

We were around twenty-five women excluding children, we were [in] SPLA-IO controlled area but when we reach[ed] Koch County in the SPLA-IO controlled side we were stopp[ed] and we were investigate[d], we told them that we were coming from Payak and our husband[s] were SPLA-IO soldiers, their commander released us and he told us to go through [the] forest until we reach Guit because Koch Headquarter is Government controlled area, they may beat us. We move through the forest as he said but on our way we met [a] group of soldiers for SPLA-IO who order us to stop and take away all our things and money and decided to rape us. All of us were raped there in the forest except one woman who was killed because she refused to be rape[d].[[235]](#footnote-236)

185. Women were subsequently victimised and violated as punishment for being associated with armed groups or political formations. A victim told the Commission that: “What I can remember is that the time they were torturing us, they called us rebels and that's why they were torturing us. They were just calling us enemies; the word they used was enemies.”[[236]](#footnote-237)

186. Survivors testified to the brutality of rape and sexual violence which was often accompanied by severe beatings, threats of death, insults, and hate speech. Pain was inflicted by using the butt of a gun, kicking all over the body, and caning with sticks and various implements made of animal hide.[[237]](#footnote-238) Other acts included castration and mutilation of genitalia, forced sexual acts, being forced to watch as a loved one was raped and insertion of objects into genitalia, and forced stripping. Various instruments were used in the acts including sticks, tree branches, knifes, pangas[[238]](#footnote-239),pliers, pincers and firearms.[[239]](#footnote-240) A survivor described the following:

The other woman, the other soldiers was [were] trying to rape was killed because she resisted. First, they forced her to the ground and one soldier inserted the upper part [muzzle] of his rifle forcibly to the woman’s vagina and then shot her dead.[[240]](#footnote-241)

187. Rape and sexual violence is used by perpetrators as a tool to punish, humiliate and destroy the family and social fabric. Witnesses told the Commission that victims were forced into performing acts of sexual violence in the presence of others, usually family members, neighbours or community members and other survivors and victims.[[241]](#footnote-242)

188. Survivors from Yei, Kajo Keji, Pageri, Pajok, Mathiang, Maiwut, Longechuk and Pagak told the Commission that these violations happened as they fled on foot seeking safety. One young woman separated from her family explained that as she and others travelled from her village in Kajo Keji to Uganda, she was stopped and searched by four Government soldiers.[[242]](#footnote-243) After demanding money from her and searching her possessions, two soldiers raped her as the other two stood by and watched.[[243]](#footnote-244)

189. In Ethiopia, the Commission heard that rapes occurred when women returned to Pagak from the border where they went in search of food. Witnesses narrated how mothers had felt obliged to return, despite the risk, to find food for their children, out of fear they would die of starvation. Along the way, they met a group of 30 soldiers who severely beat and gang raped the women. A relative of one of the women told the Commission:

[My sister-in-law] had gone back to Pagak earlier in the day to get food with a group of women because we were so hungry. [She] returned around 6.00pm in the evening by herself […] she was extremely weak and dirty. […] She eventually managed to tell me the soldiers beat her until she fell on the ground because she resisted having sex with them. She kept knocking her fists together three times. I understood this to mean she was raped by thirty men.[[244]](#footnote-245)

190. Other rapes and gang rapes occurred during attacks on villages. The Commission heard how women and girls were separated from men, who were killed during the attack on Mathiang in August 2017:

My family and I were rushing away when all of a sudden we were surrounded by armed SPLA soldiers with the villagers they caught on their way. […] The SPLA then separated the men from women. They were then shooting the men they caught […] then after they killed the men, they [SPLA] took the women with them and dragged them separately in a different direction. I assumed they raped all the women.[[245]](#footnote-246)

191. The Commission heard accounts of abductions, enslavement and servitude of women and girls. In cases where the women escaped, they told how they were threatened and ill-treated in addition to being forced to do chores like cooking and cleaning for their captors. One woman narrated how she and another woman were captured and detained for almost two months by the SPLA-IO in the Yei area. She was pregnant at the time. The two women were detained between August and November 2016, during which they were moved from base to base, compelled to collect food from abandoned houses and cook and serve the soldiers:

On our way back […] we met ten soldiers. […] the ten soldiers took us to a place called […] At their base, we were put under guard and were forced to cook for the soldiers. […] During our stay some of the soldiers were labelling us as spies.[[246]](#footnote-247)

192. In Wau, the Commission interviewed an 85 year-old woman who was gang raped and forced to watch her husband and son killed. After raping her, the perpetrators argued whether or not to kill her with one saying:“she is an old woman, she will die anyway, let’s just leave her.”[[247]](#footnote-248)

 1. Men and Boys

193. The Commission interviewed male survivors, documenting incidents of rape and sexual violence perpetrated against both men and boys held in detention, during flight, and as punishment during attacks. Incidents included gang rape, forced sexual acts, castration, genital mutilation, severe harm to genital areas and forced stripping.[[248]](#footnote-249) In two instances, victims were castrated and died as a result of their injuries.[[249]](#footnote-250)

194. One survivor told the Commission how he and another man, travelling in a group with women and children, were forced to strip at a checkpoint. He was severely beaten over a period of five to six hours with the butt and magazine of a gun. He was forced to watch the gang rape of women while his male companion was forced to lie down and serve as a “mattress” while a woman was raped on top of him. After about four hours, the witness was dragged further into the bushes and gang raped by some of the soldiers. He survived because he was left for dead.[[250]](#footnote-251)

195. Men also reported being beaten, tortured and/or detained because they were male and suspected of involvement with one or other of the warring parties and armed groups. A victim described his torture in detention. His torturers showed him a selection of instruments that would be used to castrate him. This treatment took place over a number of weeks:

[I suffered] cuts to my chest by [the] knife of the guards. They used a bayonet. The torture did not happen in the barracks, they would tie my eyes [blindfold] and then drive somewhere. They tried to castrate my testicles, but thanks God, they did not succeed. […] My eyes were tied, what I felt was a type of scissors that captures skin/flesh and then pulls. During the interview [interrogation] by the MI they threatened to use these instruments if I did not talk.[[251]](#footnote-252)

196. The Centre for Peace and Justice interviewed a witness who gave an account of a group of armed Nuer opposition soldiers wearing red cloth around their heads, coming to his home in Malakal on 24 December 2013. On the orders of an army officer, they shot and killed his father, raped and killed his mother, and killed all of his brothers and sisters before castrating him with a knife. The survivor believes that his family was attacked because they are Dinka and his father was loyal to the government.[[252]](#footnote-253)

197. Testimony from male survivors and witnesses, regarding injuries as well as health and medical problems experienced following detention, are strong indicators of sexual violence against men.[[253]](#footnote-254) The Commission believes that such crimes are grossly under-reported.

 2. Lasting impact of sexual violence

198. Sexual violence has deep and lasting effects on individuals and communities. In some instances, survivors are further victimised as a result of the stigma to the family and community. Married survivors face the possibility of divorce or estrangement from their husbands, as they are held responsible for having put themselves at risk of violation. In one instance, a 54 year-old man from Maiwut told the Commission of an instance in late July 2017 when a rape survivor was divorced by her husband as a result:

I would also like to add that when government troops went to Pagak and the ladies went back to Pagak for food, the SPLA soldiers took the ladies and raped them that night. The ladies didn’t return until the next morning. I was at the bridge but I don’t know the exact number of women who were raped in Pagak. Their husbands went back to look for them. There is one man who even divorced his wife because she went to Pagak and the SPLA soldiers raped her.[[254]](#footnote-255)

199. A major concern relates to victims receiving medical assistance for the injuries they have sustained, arising from sexual violence. One man told the Commission how more than one year after a severe beating by SPLA-IO soldiers, he continued to experience the effects of being tortured:[[255]](#footnote-256)

In 2015, there was a lot of swelling from my anus all the way to the scrotum. It was because of the beating I received in Bor. The doctor had [to perform] a large operation. After they caught me in the bush, they started caning me. I could not reply. They kept hitting me with their gun butts until there was so much pain that I don’t know what they did there. I don’t recall much. I was unconscious.[[256]](#footnote-257)

200. Many have expressed the view that the psychological scars and impact on individuals, families and communities will remain for generations to come. A witness described the mental and physical impact of witnessing numerous violations and the prolonged displacement and family separation since the start of the conflict:

I have one wife and five children here in Kule Camp. I have another wife and two sons in Bentiu. I have one more son (14 years old) who lives in Gulu, Uganda with my sister. I am not right because of it, not mentally nor physically. As a man, it is more difficult sometimes… women can show their emotions… I am a man, I laugh during the day, but at night… I can’t sleep, I cry… We are asking the international community to bring us peace… peace is the only solution.[[257]](#footnote-258)

201. A consequence for many women raped has been unwanted pregnancies. One young woman raped by two Government soldiers on her way to Uganda in August 2016, gave birth to a baby. She told of the difficulty of being an unmarried single mother separated from her family and living alone in the refugee settlement. [[258]](#footnote-259) In another case, a woman described both falling pregnant following rape by a soldier and miscarrying the baby after two months. She and other villagers were beaten because they were suspected of harbouring SPLA-IO fighters. “I was forced to conceive, not by my husband but the soldiers who forced me to conceive. […] the beating by the soldiers led me to miscarry.”[[259]](#footnote-260)

202. In another incident, one woman explained to the Commission that although she had been raped and had conceived soon after, she did not conceive by the soldiers who raped her but rather her husband. During the interview, her emphasis on distancing the paternity of the child from the perpetrators of rape, demonstrated the levels of stigma with regard to rape and pregnancy.[[260]](#footnote-261)

203. In the Juba PoCs, there is a silence surrounding rape and the complications for a displaced woman explaining pregnancy in the absence of a husband. Some anecdotal evidence refers to court cases where in-laws have rejected their daughters-in-law because they have fallen pregnant while the husband is on the battlefront or has died.[[261]](#footnote-262)

204. A male survivor reported ongoing physical challenges such as the development of hemorrhoids and swelling of the rectal and scrotal areas. One man told the Commission that almost two years after torture in detention; he still felt pain around his pelvis.[[262]](#footnote-263) Service providers informed the Commission that they have performed fistula and other gynaecological surgeries on survivors.[[263]](#footnote-264)

205. Many survivors continue to present physical wounds and injuries sustained from sexual violence. Many also face the prospect of having contracted HIV and AIDS as well as other sexually transmitted diseases. Survivors interviewed by the Commission spoke about their relief at finding out that they were HIV negative in those limited instances where they were tested.[[264]](#footnote-265)

206. Unfortunately, many survivors have not been tested for HIV because of the stigma associated with rape, fearing that should it be known that they have tested, knowledge of their violation will spread among the community.

 3. PsychosocialImpact

207. The brutality of acts of sexual violence acts in South Sudan and their attendant physical and psychological effects have become a characteristic of the conflict. The Commission found that there is an overwhelming need for psychosocial support for the traumatic events that South Sudanese citizens have experienced. This was vividly apparent throughout the Commission’s work. Investigators heard and observed in numerous instances, witnesses, survivors and victims’ presenting with signs of post-traumatic stress disorder, secondary trauma and deep distress. Effects such as depression, sadness, hopelessness, dejection, descriptions of struggling to do daily tasks and functions, disturbed sleep patterns, nightmares and accounts of substance abuse accompanied many of the descriptions and narratives of violations. One woman told investigators: “I am thinking a lot. I think of committing suicide at night but people are telling me not to because I will not go to heaven. I can’t sleep at night. I am willing to see the doctor and counselling if it is available.”[[265]](#footnote-266)

208. A survivor of a brutal gang rape said: “If I did not have children I would have killed myself already. They were like animals. They brutally raped me like they were animals. It was so painful and so humiliating that I wanted to die, but not yet, I still have children to live with.”[[266]](#footnote-267) These women, and other survivors, emphasised their children being their only reason for living.

209. Another young survivor described feelings of loss, shame and fear because of an uncertain future. These feelings were compounded by being unable to go school to complete her education, because of sexual violence. She told the Commission:

[…] because of that [the rape] I dropped out of school. I now have nothing to do, just staying at home. Not being in school is what is paining me so much. The blood of the people that they murdered, they shot before me and died, they keep on haunting me… they keep on haunting me as soon as I recall it […] sometimes my appetite is gone.[[267]](#footnote-268)

210. The Commission also observed that often, women spoke about rapes being a substitute for other violations considered much worse, for example to protect a loved one’s life or to protect them from sexual violence, in the case of children, “[t]hey told me they would rape my daughter if I cried. I told them if they were going to take my daughter, they should rape me. Two soldiers raped me. They then told me to take my children from there to the PoC.” [[268]](#footnote-269) Another woman who witnessed the gang rape of her elderly mother, the castration of her husband, and her son forced to have sex with his grandmother said: “The war has brought me nightmares. It didn’t just scare me to death, it forced me to watch my own twelve year-old son have sex with my own mother – otherwise we would all die”.[[269]](#footnote-270)

211. The Commission found that there is an awareness among survivors of the need for psychosocial interventions and responses to sexual violence. In group discussions conducted by the Commission, both women and men spoke of the heavy psychological toll sexual violence has had on individuals, families and communities. In a statement, one female survivor clearly articulates that “[T]he assistance victims need is trauma healing and counselling because once [a] woman is raped her thinking changes and she may have mental problems”.[[270]](#footnote-271)

 4. Responses

212. The medical, psychosocial, and justice needs of survivors in South Sudan are so overwhelming, and yet access to medical facilities remains a major concern since much of the state infrastructure for medical services has been severely damaged or destroyed in the fighting.

213. The Commission heard that many cases of sexual violence against women continue to be referred to traditional mechanisms. Survivors state that these are inadequate to address their specific needs.[[271]](#footnote-272) As discussed later in this report, the protracted nature of the conflict has adversely affected the formal justice system, resulting in it being either completely absent or only partially functional, particularly outside of Juba. Moreover, in view of the persistent state of displacement of many survivors, courts are completely inaccessible.

214. The Commission heard many survivors demand justice and accountability for the sexual violence endured in South Sudan as well as access to services, security, psychosocial support as well as prevention.

215. The coordinated response of the GBV Cluster, which includes the Ministry of Gender, Child and Social Welfare, the Ministry of Health, UNMISS, United Nations agencies, civil society organisations, and humanitarian organisations provides an important referral pathway providing counselling and other psychosocial services by both state and non-state actors.[[272]](#footnote-273) Nevertheless, the magnitude of the challenges facing survivors accessing medical, psychosocial and justice services cannot be over-emphasized. Furthermore, the Commission observed a disconnect between the services advertised as being available and the experience of survivors in accessing those services. In the PoCs in particular, the Commission observed well-stocked clinics, and organisations offering substantial medical and psychosocial support; however, many survivors told the Commission that they had not been able to access even basic medical and psychosocial services.

216. Humanitarian agencies and others providing frontline services are not required to document or report sexual violence for purposes of judicial or legal proceedings.[[273]](#footnote-274) During the Commission’s work, local civil society organisations provided information on conflict-related sexual violence and responses that that can be effectively used in designing and implementing prevention and protection initiatives. This remains a weakness with a need for an appropriate plan for documentation at the level of the humanitarian agencies and the international community in order to ensure effective reporting and documentation.

217. While the Commission was encouraged to learn that South Sudan had concluded its National Action Plan aimed at improving women’s peace and security, in accordance with Security Council Resolution 1325, in practice implementation remains a challenge. In addition, women’s organisations and representatives of various women’s groups have been engaged in processes engendering the Security Sector through the Constitutional Review process outlined in the ARCSS. It is the hope that this process will be fully inclusive and that women in displacement and refugee communities will be able to participate and substantively benefit from the outcomes. Despite these positive initiatives, much more needs to be done to address structural discrimination against women and to take action. Voicing the views of many people the Commission spoke with, one witness told the Commission:

We are fed up; we have been told what the Government need to do to bring peace. We are waiting and being told the Government will do this or that. Where is the Hybrid Court? Where is peace in South Sudan?[[274]](#footnote-275)

 a) Access to justice

218. Many women and male interviewees described how in South Sudan the rule of law “rules out women” when it comes to accessing justice mechanisms.[[275]](#footnote-276) Several women from women’s civil society organisations explained that in addition to limited implementation of various laws and policies, the majority of South Sudanese – and women in particular, have very little understanding of their rights regarding access to justice.[[276]](#footnote-277) In addition, where women have tried to pursue justice options, the system has let them down.

219. In one case, where a sixteen year-old girl from Yei was allegedly raped by an SPLA soldier from the Dream Barrack in Yei, neither civilian nor military authorities in Yei took action to prosecute the soldier, leading civil society to protest.[[277]](#footnote-278) As a result of the protests, the case was eventually tried in the Yei Criminal Court. Unfortunately, a judicial strike between May to September 2017, delayed the conclusion of the case. At the time of writing, the judgment was yet to be handed down and moreover, with the presiding judge being the only judge in the Yei area, the prospects for a speedy resolution to the case are not good.[[278]](#footnote-279)

220. There is a real need to ensure that all citizens understand their rights and are able to access justice and legal aid services. This is particularly necessary for women and girls, since they are disproportionately affected by violence, including at the hands of the security sector and other armed groups.[[279]](#footnote-280)

 b) Government response

221. As a party to the African Charter on Human and Peoples’ Rights (African Charter), CEDAW and CAT, the Republic of South Sudan is obliged to take action to prevent, protect against, and respond to sexual violence in an effective way.[[280]](#footnote-281) States must address all forms of gender-based violence against women committed by state, and non-state actors alike through an effective and accessible legal framework, and must investigate, prosecute and provide reparations for survivors. It is therefore incumbent on the Government to initiate investigations and prosecutions and hold accountable soldiers alleged to have perpetrated sexual violence in conflict.

222. The Government of South Sudan has committed itself to address sexual violence in conflict as outlined in the 2014 Joint Communiqué with the Special Representative of the United Nations Secretary General on Sexual Violence in Conflict.[[281]](#footnote-282) To date, however, the Government has not implemented its obligations to ensure protection and security; justice and accountability; cessation of hostilities; and service provision for survivors of sexual violence.[[282]](#footnote-283) The Commission notes the establishment of the Technical Working Group on sexual violence in conflict and the appointment of a focal person within the Office of the President.[[283]](#footnote-284) While theoretical commitments and training are important, they are not a replacement for prosecutions.

 c) Opposition response

223. As with the Government, the leadership of the SPLA-IO has also signed with the Special Representative, an undertaking to address sexual violence in conflict.[[284]](#footnote-285) The agreement places an onus on opposition forces to collectively condemn, investigate and punish acts of sexual violence in conflict within their ranks.[[285]](#footnote-286) The SPLA-IO must take concerted action to fulfil its commitments to addressing sexual violence in conflict.

 5. Violations / Alleged Crimes

224. Based on the evidence collected, the Commission has reasonable grounds to believe that the SPLA and their associated militias have committed acts of sexual violence against women and men including rape and castration. The Commission also has reasonable grounds to believe that the SPLA-IO has committed acts of sexual violence against women and men.[[286]](#footnote-287)

225. These acts amount to serious violations of human rights law under the Bill of Rights in the Transitional Constitution of the Republic of South Sudan, the African Charter on Human and Peoples’ Rights, the Maputo Protocol and CEDAW. In circumstances where acts of sexual violence are torture, their prohibition is a recognized part of customary international law and a peremptory norm,[[287]](#footnote-288) and the individual perpetrators could be prosecuted for the crime of torture in jurisdictions outside South Sudan.[[288]](#footnote-289)

226. These are crimes under the domestic law of South Sudan, including grievous hurt (Article 235), rape (Article 247), “unnatural offences” (Article 248) and acts of gross indecency (Article 249).[[289]](#footnote-290)

227. Furthermore, the Commission finds reasonable grounds to believe that in many instances there is a nexus between the commission of these violations and the non-international armed conflict ongoing in South Sudan. Accordingly, they are violations of international humanitarian law under Common Article 3 to the Geneva Conventions and Additional Protocol II to which South Sudan is a party and which it has incorporated in its Geneva Convention Act (2012). They may also amount to war crimes under the of the Draft Statute of the Hybrid Court for South Sudan: Article 4(a) (Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment) and 4(d) (Outrages on upon dignity).

228. The Secretary-General in his report called upon the Security Council to continue to include sexual violence as part of the designation criteria for sanctions, and to ensure that dedicated gender and conflict-related sexual violence expertise informs the work of sanctions committees and monitoring entities.[[290]](#footnote-291) The Secretary-General also made the point that his Special Representative[[291]](#footnote-292) should share information with sanctions committees, where appropriate.

 D. Impact of the Conflict on Children

229. The protracted conflict in South Sudan is having a devastating impact on children’s realization of their fundamental rights. These include the rights to life, survival and development; protection from violence, injury and abuse, including sexual violence; cruel or degrading treatment and punishment; liberty and security of person; the right not to be recruited into the armed forces or armed groups; and to health, food and education. These rights and protections are guaranteed under the CRC, the African Charter, the Maputo Protocol, as well as domestic law, specifically South Sudan’s Transitional Constitution 2011 and the Child Act 2008.[[292]](#footnote-293)

230. The impact of displacement, lack of food, education and healthcare will have deep and lasting effects on the future of the country, with South Sudan in danger of losing a generation of children.[[293]](#footnote-294) Of the four million displaced South Sudanese, 60 per cent or 2.4 million are children.[[294]](#footnote-295) Further, children have been disproportionately affected by the separation of family members due to fighting and displacement. Since the beginning of the civil war, almost 16,000 unaccompanied, separated and missing South Sudanese children have been registered for family tracing services, with less than one-third having been reunited with their families.[[295]](#footnote-296)

231. The Commission worked with two civil society organisations and community leaders to hold seven group discussions involving 53 youth (37 boys and 16 girls, aged eleven to seventeen),[[296]](#footnote-297) displaced from the Greater Equatorias, Upper Nile and Jonglei to enable children to share their experiences, as well as their aspirations for the future.[[297]](#footnote-298) In nearly all cases, children had immediate relatives who were killed or fighting; had witnessed the rape or killing of a family member; were recruited into the armed forces or armed groups themselves; were separated from their families; and/or were forced to care for their siblings because their family members were separated or had died. The children told the Commission that their main challenges are lack of food, medical care and schools.[[298]](#footnote-299)

 1. Violations of the right to life, survival and development

232. More than 2,300 South Sudanese children have been killed or injured since the conflict first erupted in 2013.[[299]](#footnote-300) The Commission documented numerous instances where children were victimised on the basis of their ethnicity or their relatives or community members’ perceived political affiliation, frequently during government military operations against opposition groups.[[300]](#footnote-301) Among the main perpetrators of these violations were the SPLA, the SPLA-IO (RM) and SPLA-IO (TD) forces.

233. A 28 year-old mother from Yei told the Commission about what happened to her children when SPLA soldiers attacked the town in August 2016. She secured her eight month-old daughter on her back and fled with her four year-old and eight year-old daughters leading the way. She noticed a white substance on her shoulders and discovered that her baby had been shot and the liquid oozing down her arms was her child’s brain.[[301]](#footnote-302) Almost instantaneously, she heard her four year-old daughter screaming for help because she had too been shot.[[302]](#footnote-303) As she tried to reach out to her child, she was shot in the arm. Her baby and four year-old daughter both died.[[303]](#footnote-304) She told the Commission she cannot bring herself to visit the mass grave where her daughters’ bodies are burried. When the Commission last spoke to her she said that her eight year-old daughter who had survived was too weak to walk due to lack of food.[[304]](#footnote-305)

234. A witness from Mathiang, Upper Nile described the day SPLA soldiers came to his home in July 2017 saying:

When SPLA came, they told me to come out. When I came out, they shot me [in my] leg. Then my wife [came] out and started to shout at them. Then they shot [at] my wife[’s] head. They killed her. Then our children started to cry and shout. […] They killed two of my children who were at home that time. [...] They took everything from my home.[[305]](#footnote-306)

 2. Violations of the rights to protection from violence, injury or abuse, including rape and sexual violence

235. With the breakdown of traditional social structures, the ongoing conflict and related displacement has resulted in significant numbers of children who are increasingly vulnerable to violence, injury and abuse. One woman from the Fertit community described how SPLA soldiers attacked her 17 year-old son in June 2016 as her family was escaping to the UNMISS PoC Site in Wau, telling the Commission:

[…] one neighbour of mine saw the soldiers stabbing him in the neck and then shooting him in the ear. […] When she saw him, they had stripped him of his t-shirt and [had] tied his hands with it. He was also stripped to his shorts. He was already dead [when] they threw him into the well.[[306]](#footnote-307)

236. Furthermore, UNICEF estimates that nearly 25 per cent of conflict-related sexual violence committed in South Sudan involves children, with girls particularly vulnerable to sexual violence, abuse and exploitation.[[307]](#footnote-308) The Commission spoke with one 16 year-old girl from the Kakwa community in Obua, Central Equatoria, who was raped by two armed SPLA soldiers after they killed her mother and abducted her uncle in 2016.[[308]](#footnote-309)

237. Another witness told the Commission about a girl being raped by armed soldiers in Juba in November 2017:

The men pulled [16 year-old victim] out of the tukul and took her out of the compound. […] I could hear what was happening. One of the soldiers raped her. When he had finished, I heard him ask the other soldier to come and rape her [too]. The second soldier said “No, let her go.” It was about 3 a.m. when [16 year-old victim] returned to the compound. […] Nobody came to help that night. This is the practise here in Juba. If people leave their homes to come and help, it is likely that they will be killed. […] I went to the police and asked why they didn’t come. […] They pretended that they hadn’t heard anything.[[309]](#footnote-310)

238. The Commission also received reports that girls continued to be raped outside of the UNMISS PoCs when they gathered firewood for cooking.[[310]](#footnote-311) One child associated with the Shilluk Agwelek militia witnessed soldiers kill two girls for resisting rape in Melut, Upper Nile, while sparing the life of a 17 year-old girl in Bor, Jonglei because she did not resist.

 a) Child, early and forced marriage

239. In 2016, South Sudan had the fifth highest rate of child marriage in the world, with 52 per cent of girls married by age 18 and nine per cent married by age 15.[[311]](#footnote-312) Harmful traditional practices such as child, early and forced marriage have been exacerbated by the conflict. As families have been destroyed and the social fabric eroded through violence and displacement, many of the economic and social burdens have fallen on girls, who are increasingly relied upon to gather firewood, carry water, cook and assume the role of family breadwinner.

240. Many girls find it difficult to remain in school due to financial constraints, domestic chores and social norms. High rates of child, early, and forced marriage influence literacy rates as only 6.2 per cent of girls complete primary school and the level of child marriage exceeds the rate of girl enrolment in secondary school.[[312]](#footnote-313) The practice of child, early and forced marriage also perpetuates one of the highest maternal mortality rates in the world, estimated at 789 deaths per 100,000 live births in 2015.[[313]](#footnote-314)

241. There are several drivers for child marriage in South Sudan, including the belief that child marriage is a form of protection for girls from pre-marital sex and unwanted pregnancies.[[314]](#footnote-315) Women across the country informed the Commission that a driving factor for early marriage was also single parents aiming to marry their daughters early in order to support the extended family through the daughter’s bride price, and as a protective measure for female-headed households.

242. One eighteen year-old woman from Mathiang, Upper Nile told the Commission that she was in Mathiang when fighting broke out in 2014. Her father and brother, both SPLA-IO soldiers, were killed when SPLA attacked Pagak and Malakal, respectively. The woman told the Commission, she “didn’t bother with schooling” and she and her mother decided it would be best if she got married as a means of subsistence. In May 2016, she married a 30 year old man. She gave birth to a daughter over a year ago, but she lost her husband, also an SPLA-IO soldier, during the Government offensive in Mathiang in 2017. She now raises their child alone.[[315]](#footnote-316)

243. In cases where girls have been raped, marriage to the perpetrator is often seen as a solution to avoid penalty or social stigmatization, both for the offender and the survivor.[[316]](#footnote-317) The Commission received information about 25 SPLA soldiers allegedly raping a very young girl in Central Equatoria in late 2017. One of the suspected perpetrators attempted to negotiate marriage with her father to avoid being prosecuted. Her father did not accept the soldier’s offer and an investigation is currently ongoing.[[317]](#footnote-318)

 3. Violations of the rights to liberty and security of person; not to be recruited into the armed forces or armed groups or to suffer cruel or degrading treatment and punishment

244. According to UNICEF, an estimated 19,000 children have been recruited and associated with the armed forces and armed groups since the conflict erupted in December 2013.[[318]](#footnote-319) A recent report by CTSAMM indicates there is enough “anecdotal evidence to suggest the recruitment and employment of “child soldiers” goes on throughout the country.”[[319]](#footnote-320) According to the Report of the Secretary-General on Children and Armed Conflict, the SPLA, SPLA-IO and the Nuer White Army routinely recruit children under the age of eighteen, a crime under the South Sudan Child Act (2008).[[320]](#footnote-321) Furthermore, the conscription or enlistment of children under the age of fifteen years into the armed forces or groups or using them to participate actively in hostilities are violations of international human rights law and constitute war crimes under the Draft Statute of the Hybrid Court.[[321]](#footnote-322)

245. In addition to documenting nine firsthand accounts of children associated with armed forces or armed groups (eight boys and one girl; aged twelve to seventeen), the Commission also observed children who had been recruited into armed groups or the armed forces during its missions to various parts of the country. In September 2017, in Pajok, Eastern Equatoria, the Commission observed at least three adolescent boys who were suspected to be part of an Acholi militia brandishing rifles while patrolling.[[322]](#footnote-323) The following month, the Commission observed seven or eight adolescent boys who were recruited as part of SPLA-IO (TD) forces or “The Peace Wing” on the West Bank of the Nile.[[323]](#footnote-324) On 15 January 2018, CTSAMM reported on the presence of at least 590 children among SPLA-IO (TD) in Pibor, Jonglei;[[324]](#footnote-325) children among Mathiang Anyoor in Yei, Central Equatoria; and children among SPLA-IO (TD) forces in Wau, Western Bahr el Ghazal.[[325]](#footnote-326)

246. The Commission has received evidence documenting the presence of children among the SPLA in Pibor, Jonglei and in Tonga, Aburoc and Awarajok, Upper Nile.[[326]](#footnote-327) It has also received evidence documenting cases of at least 200 children among the SPLA-IO (TD) in Dithang, Upper Nile.[[327]](#footnote-328) Following reports that there are children among the armed forces and armed groups in other parts of the country, UNMISS is currently conducting verification exercises in Upper Nile, as well as Western Equatoria and Unity states.[[328]](#footnote-329) On the basis of the information the Commission has gathered, it finds there are reasonable grounds to believe that parties to the conflict, namely the SPLA, SPLA-IO (RM), SPLA-IO (TD) and the Shilluk *Agwelek* militia have recruited and used children in hostilities, in contravention of South Sudan’s domestic laws and international obligations.

247. Children were routinely abducted and forced to join fighting forces. Children themselves informed the Commission that they were recruited to the military or armed groups, under threat of force, from outside their homes and schools, or had joined armed groups or armed forces “voluntarily” to protect themselves or family members. The children also told the Commission that they were part of active combat having received military training in the use of weapons, and also worked as bodyguards and lookouts, cooked, washed clothes and carried water and firewood. If the children were paid at all, they infrequently received small amounts of money, or were paid in food.

248. Children also disclosed that they were forced by Commanders to kill civilians and loot humanitarian assets. Further, the conditions they lived under were often harsh and it was difficult to leave, even in instances where they had originally volunteered to join the armed forces or armed groups. Children associated with the armed forces or armed groups also told the Commission they were subjected to corporal punishment if they did not obey orders, including beatings with rifles or rubber cords. Several children voiced their despair over the “impossible” choices they were forced to make, and the trauma of those experiences.

249. Once associated with the armed forces and armed groups, children were also found to be at greater risk of sexual violence. One girl told the Commission about a Commander who repeatedly approached her, attempting to coerce her into being his wife while she was under-age. Other children indicated that there were girls living in a Shilluk Agwelek base who were married to soldiers and had fallen pregnant, with the soldiers reportedly ordering the girls to leave once they became pregnant, rendering them vulnerable to further violence.

 4. The Right to Education

250. The conflict in South Sudan has destroyed the education system, with children in South Sudan being denied their right to education. According to UNICEF, 72 per cent of South Sudanese children (two million) are estimated to be out of school; the highest proportion of children out of school in the world.[[329]](#footnote-330) Since the beginning of the conflict in December 2013, 25 per cent fewer primary schools are functioning, while 31 per cent of primary schools have suffered at least one or more attack.[[330]](#footnote-331)

251. The reasons often cited for non-functioning schools included the displacement of teachers, the destruction of school facilities and teaching and learning materials and overcrowding due to displacement.[[331]](#footnote-332) Pervasive food insecurity also has a direct impact on education. According to UNICEF: “Almost three million children are severely food insecure, more than one million are acutely malnourished [and] more than a quarter of a million [are] severely malnourished.”[[332]](#footnote-333) The Education Cluster reports that lack of food is the leading cause of boys dropping out of school, and the second most common cause for girls, after early marriage.[[333]](#footnote-334)

252. The denial of humanitarian access, including interference in the delivery of critical aid, attacks on personnel and damage to facilities, has further undermined the right to education.[[334]](#footnote-335) The Commission received reports of SPLA-IO (RM) soldiers looting food items intended for over 3,000 schoolchildren during the Government offensive in Pagak in July 2017.[[335]](#footnote-336) SPLA soldiers also reportedly looted and vandalized materials from a local secondary school, including textbooks and other educational supplies in Mathiang, as well as from other schools in Maiwut and the villages leading into Pagak.[[336]](#footnote-337) After the Government offensive, at least 90 per cent of schools in Longechuk and Maiwut counties have stopped functioning, affecting at least 19,904 children (11,115 boys, 8,789 girls).[[337]](#footnote-338) As a result of the conflict, children in these areas have also not been able to take national examinations.[[338]](#footnote-339)

253. As one witness told the Commission, the lack of access to education is a significant conflict driver:

If children feel hopeless, they will join the armed forces - children in South Sudan play war games with fake guns because that is all they know. Education in this country is being used as a tool of war.[[339]](#footnote-340)

254. Another witness indicated, “All in all, if the situation does not stabilise, education will be like another time bomb.”[[340]](#footnote-341) UNICEF reports that if the conflict endures, only one in 13 children is likely to finish primary education in South Sudan.[[341]](#footnote-342)

 a) Repurposing school grounds for military use

255. The Commission has found that children are being denied access to education in Upper Nile states because combatants are repurposing their schools as campsites and weapons and ammunition depots.[[342]](#footnote-343) The use of school buildings for military purposes strips them of their civilian character, undermines the protections granted to schools under international law and endangers the lives of students and teachers. According to the Secretary-General, in 2017, 21 schools in South Sudan were used for military purposes, with the majority of cases attributed to the SPLA and SPLA-IO.[[343]](#footnote-344) The Commission also received information that following the SPLA occupation of a school in Mathiang in 2014, three RPGs, one AK-47, and ammunition were recovered, endangering schoolchildren who were found playing with the these items.[[344]](#footnote-345)

 5. The Right to Health

256. South Sudan remains one of the most difficult places in the world for children to access essential healthcare. Substandard medical infrastructure, high rates of malnutrition and disease produce a situation in which one in seven South Sudanese children dies before his/her fifth birthday, accounting for over 39,000 children per year.[[345]](#footnote-346) UNICEF reports that recurrent changes in governance structures and financial constraints have undermined sustained access to quality services and investment.[[346]](#footnote-347) With upsurges in malaria, cholera and kala-azar (visceral leishmaniasis),[[347]](#footnote-348) children are even more vulnerable in the face of insecurity and rampant displacement.

257. Four years of conflict has also had devastating and long lasting implications for child survivors’ mental health. World Vision estimates that more than 150,000 children in northern Uganda’s settlements require psychological support after fleeing violence in South Sudan, including in Imvepi and Bidi Bidi camps.[[348]](#footnote-349) Related trauma may present as insomnia, regressive behavior, social withdrawal, hallucinations and violent or self-destructive tendencies.[[349]](#footnote-350) However, in an under-resourced environment, limited humanitarian aid is often directed at responding to other urgent needs. In sharing their experiences with the Commission, numerous children indicated they have difficulty coping after having witnessed violence firsthand or from the loss or separation of loved ones due to the war. One twelve-year-old girl from Mathiang, Upper Nile told the Commission, “We can all share our experiences, but you will hear the same stories… what binds us is that we share common stories. It is part of our healing.”[[350]](#footnote-351)

 VII. The Armed Forces of the State, the Opposition Armed Groups, and Militia

258. This section provides an overview of the broad military context of armed groups operate in South Sudan; namely their organisational structure, internal functioning and methods of operation on the battlefield.Other than the militias organized along ethnic lines,[[351]](#footnote-352) all the armed groups reportedly initially emerged as dissatisfied defectors from within the SPLA.

259. Poor road infrastructure and heavy and prolonged rains during the rainy season, have a massive, negative impact on the mobility of armed groups. While the SPLA has the ability to deploy by air or river, fighters from the opposition must advance on foot during the rainy season, or wait until the roads dry out. This generally results in “seasonal” fighting, with the wet season being used to plan and prepare for operations which will be executed in the dry season.

 A. The Armed Forces of the State (SPLA)

260. Many SPLA commanders held ranks within the Sudan Defence Forces (SDF), including the founding leader John Garang himself. The defections from the SDF that bolstered the ranks of the SPLA in its early days were a precursor to later defections from the SPLA, which created many of the opposition groups fighting the SPLA today.[[352]](#footnote-353)

261. Given the relative effectiveness of the SPLA against the Sudanese armed forces on the battlefield, the groups that splintered from the SPLA had little need to depart from the SPLA model. As a result, the uniforms, weapons and vehicles of the various groups fighting in South Sudan today show more similarities than differences in tactics and appearance.

262. Following the Comprehensive Peace Agreement, it was intended that the SPLA would transform itself into a regular, conventional defence force, guided by military codes of conduct. Real transformation in this regard has not occurred, however, and the liberation struggle pedigree remains. The SPLA leadership was apparently quite happy to retain its “liberation” identity, and only appeared to accommodate the requirements laid out in the transformation plan because, as one analyst observed, they were “keen to focus on becoming more professional and operationally effective, but much less concerned about affordability or accountability.”[[353]](#footnote-354)

 1. Overlapping Military and Political Spheres

263. In South Sudan, there is often little distinction between the military and political elites, given how commonplace it that generals have become governors and governors have become generals, with rank and appointment often reflecting loyalty, rather than achievement. As well as acknowledging the political/military duality of the highest office of state, the SPLA Act illustrates how this is possible:

The President and Commander-in-Chief may grant to such person as he or she deems fit, a commission as an officer in the SPLA in accordance with the rules and regulation governing commissioning.[[354]](#footnote-355)

264. There are examples of local political leaders holding military rank, involving themselves in operational planning, and even appearing armed on the battlefield issuing orders to soldiers.

 2. Characteristics of Armed Groups that Defected from the SPLA

265. In South Sudan, defected units frequently retain the nomenclature of their original unit. For example, defecting members of the SPLA Presidential Guard, also known as the “Tiger Division” became the SPLA–IO Tiger Division. This often leads to situations where both Government and Opposition have units with the same name, or where units named as “Opposition” fight for the Government. The tendency for commanders to exaggerate the size of their units in order to obtain a higher rank has also created a situation whereby the normal assumptions about the fighting strength of a unit based on the rank of its commander, or on a hierarchical indicator, such as a label of division or brigade, are no longer valid.

266. Defecting troops usually take their weapons and equipment with them. In cases where an entire unit defected and retained control of an area, it was able not only to remain in its own barracks, but also to maintain possession of the heavy weapons and vehicles.[[355]](#footnote-356)

 B. Armed Opposition Groups and Militia

267. The political and armed groups that oppose the Government of President Salva Kiir are often collectively referred to as “opposition”. However, this should not be interpreted to mean that they belong to one unified opposition.

268. Parts of the opposition still use the SPLM/A title. To distinguish themselves from the SPLM/A “in Government”, they have adopted the suffix “in-Opposition” (-IO). The SPLA-IO has subsequently undergone further fragmentation, such that the various factions are now identified by an additional suffix corresponding to the initials of their leader.

269. SPLA–IO (RM): The main “in Opposition” group, led by Riek Machar, is essentially that part of the SPLA that defected in 2013-14, primarily along ethnic lines. Although being non-Dinka was the original criteria, it inevitably resulted in the SPLA–IO becoming dominated by the second largest ethnic group, the Nuer. Over time, this led to dissatisfaction amongst other ethnic groups who splintered off from the SPLA–IO to form their own armed groups. Thereafter, the armed group that has remained loyal to Riek Machar bears his initials (RM) in its name. Militarily speaking, the SPLA–IO (RM) mirrors the SPLA model, albeit a smaller, less well-equipped version.

270. SPLA-IO (TD): This faction is led by the First Vice President, Taban Deng Gai. Having defected from the SPLA-IO, it fights for the government, despite retaining its IO suffix. Although nominally in command of the (TD) faction, Taban Deng has no military background, having previously been Minister for Mining, and Governor of Unity State.

271. After his defection from SPLA–IO (RM) and subsequent re-alignment with the Government, SPLA troops were nominally placed under his command. In addition, Taban Deng has attracted former SPLA–IO commanders to join his cause, allegedly with promises of remuneration, who have brought their troops with them.[[356]](#footnote-357) The Commission heard that the SPLA-IO (TD) were used in the Upper Nile / Shilluk campaigns simply because they gave the SPLA “plausible deniability” for violations committed.[[357]](#footnote-358)

272. The SPLA General commanding forces in Upper Nile told the Commission that SPLA-IO (TD) “are our allies” but that they were not under his command, and would not be part of the SPLA “until the integration process is complete.”[[358]](#footnote-359) He declined to comment on this integration process, saying “you will have to ask Juba.” He said that if SPLA-IO (TD) positions were attacked, he would send his troops to their aid. Interestingly, that added that he “only trusted them 50/50”.

273. Dinka Mathiang Anyoor: A Dinka militia originally raised in 2012 in Northern Bahr el Ghazal by the former SPLA Chief of Staff Lt. Gen. Paul Malong.[[359]](#footnote-360) Its members were recruited from Dinka cattle guards of the Greater Bahr el Ghazal area, the Titweng and *Gelweng*, who have historical links with the SPLA and were used as proxy forces during the second civil war and since the CPA against southern militia.[[360]](#footnote-361) At the time, a border war with Sudan was feared, and with tension arising from disputes along the northern boundary of Bahr el Ghazal, local youth were easily recruited to the cause.

274. The Mathiang Anyoor were subsequently deployed into other parts of South Sudan, particularly around Wau and in the Equatorias in 2016-2017. The Mathiang Anyoorrarely carried out large-scale operations on their own, but were always integrated with, or supported by SPLA units and firepower. Over time, more and more Mathiang Anyoor soldiers have been formally incorporated into the ranks of the SPLA, although witnesses, recognising them by their speech and appearance, may still refer to them as Mathiang Anyoor, or the “Dinka army”.

275. Nuer White Army: The White Army are known for the white ash they wear their bodies before going into battle, and their history is related to the cattle traditions of Jonglei and Upper Nile States.[[361]](#footnote-362) Reflecting the original split along ethnic lines in the current conflict, Nuer youth have flocked to the ranks of the Opposition, led by their fellow Nuer Riek Machar. Such gatherings of Nuer Youth are inevitably referred to as White Army regardless of the accuracy of this label.

276. Shilluk Agwelek militia: Originating from the Shilluk lands on the west bank of the Nile in Upper Nile State, the Agwelek militia was originally part of the South Sudan Democratic Movement/Army (SSDM/A). When the SSDM/A realigned itself with Juba, the Agwelek went alone. The Agwelek militia differs from their Dinka and Nuer adversaries in two principal ways. Firstly, they are a formed body and fight together under the command of their leader Major General Johnson Olony Thubo, himself a Shilluk, alongside other armed groups. Secondly, their focus is primarily the defence of the Shilluk lands so unlike the other militias they have not engaged in expeditionary actions in other areas.

277. Unidentified Armed Groups (UAGs): This is label serves as a “catch-all” for armed groups that are known to be present and operating in their areas of responsibility (AOR), but whose purpose and alignment is not clear. Information received by the Commission from Torit, Wau and Yei regularly mentions unidentified armed groups. Some are suspected of being aligned with SPLA–IO, while others are “local interest” rather than SPLA–IO aligned, but still oppose the Government.[[362]](#footnote-363)

278. Others still are simply armed criminal groups taking advantage of local insecurity to prey upon the civilian population. Ironically, because they have a purely-for-profit motive, they have rarely been cited in connection with human rights violations.

 VIII. Emblematic Incidents

279. The Commission focused on reporting the facts and circumstances of recent incidents in Western Bahr el Ghazal, Central and Eastern Equatoria, and Upper Nile, and on clarifying responsibility for alleged gross violations of human rights and related crimes committed in those locations in 2016 and 2017. The Commission chose to focus on incidents that are emblematic of crimes and violations committed over the past two years, and to clarify responsibility for these acts, as far as possible.

 A. Yei, Lainya and Kajo Keji Counties, Central Equatoria State, 2016–2017

 1. Background

280. With the exception of Juba, most of the old Central Equatoria state, including Yei, Lainya, and Kajo Keji Counties in the south of the state, remained relatively peaceful when the civil war broke out in South Sudan in December 2013. The Central Equatoria area is predominantly home to the Bari-speaking Equatorian tribes including Kakwa, Bari, Pajulu, Baka, Mundu, Avukaya, Kelico and Lugware. Other ethnic groups have also been historically present, particularly in Yei town, including Dinka and Nuer.

281. By the middle of 2015, however, this had begun to change. Pre-existing tensions between the Equatorian communities and Dinka pastoralists backed by the SPLA emerged and were compounded by the government’s failure to implement the ARCSS and the perceived Dinka domination of political and security institutions.[[363]](#footnote-364) This was exacerbated by President Salva Kiir’s Establishment Order No. 36/2015 of October 2015 which increased the number of states from ten to 28. As a result of this decree, an SPLA Officer was appointed as Governor of the new Yei River State. Consequently, by the end of 2015, SPLA-IO activity had started to increase in Central Equatoria, particularly in Yei and the surrounding areas.

282. Following the return of Riek Machar to Juba in April 2016 pursuant to the ACRSS, on 8 July 2016, fighting erupted between government and opposition forces in Juba. An initial altercation rapidly escalated to heavy gunfire and artillery and the SPLA subsequently attacked the SPLA-IO cantonment sites in Jebel and Gudele areas of Juba, using helicopter gunships. The events that unfolded in Juba between 8 and 11 July 2016, and the human rights violations that occurred have been extensively documented by the UNMISS Human Rights Division and others.[[364]](#footnote-365)

283. Riek Machar fled through the Equatorias and into the Democratic Republic of Congo (DRC), reportedly accompanied by 2,000 to 4,000 supporters in the initial stages of his journey.[[365]](#footnote-366) Although Riek Machar eventually went to the DRC, his original plan was reportedly to establish a base in a location between Lainya and Wonduruba (in Lainya County), from where he would replenish his supplies and await diplomatic intervention in support of the ARCSS. However, persistent attacks by the SPLA helicopter gunships, his inability to muster sufficient forces, and the depletion of supplies and ammunition forced him to abandon this strategy. As Riek Machar and part of his forces headed west toward Mundri, roughly a battalion of SPLA-IO troops (approximately 600 soldiers) reportedly remained in Central Equatoria under Lt. Gen. John Jok, from the Nuer community.[[366]](#footnote-367)

284. On 11 July 2016, SPLA-IO forces reportedly attacked government installations in Lainya.[[367]](#footnote-368) According to the Inspector of Police for Lainya County, the SPLA-IO attacked the police station in Lainya and looted the armoury.[[368]](#footnote-369) The same day, SPLA soldiers and *Mathiang Anyoor* reinforcements arrived in Lainya town, attacked the town and embarked on arbitrary arrests of civilians and mass looting of homes in and around Lainya.

285. One witness told the Commission that he was near the Lainya marketplace at about 09:00 when opposition forces attacked the soldiers on 11 July. He fled with his family and some other families to the bush near Bereke. When some of the men amongst them returned to town a few hours later they found the SPLA and Mathiang Anyoor forces arresting civilian men and burning and looting houses:

Government soldiers were all over the town. The entire town had been looted and the Government soldiers were arresting all the men. The old people who had been left in the home because they were unable to flee into the bush had been burnt in their homes.[[369]](#footnote-370)

 2. Yei and Lainya Counties, July 2016 to December 2017

286. Riek Machar’s flight through Central Equatoria triggered a surge in violence over the next couple of weeks as the SPLA carried out an intense military campaign to flush out remaining SPLA-IO elements. Throughout July, August, and September 2016, clashes between the SPLA and the SPLA-IO occurred throughout the new Yei River state, from Lainya down to Lasu, near the border with the DRC.[[370]](#footnote-371) Amongst other clashes, SPLA military operations were reported in Lainya, Yei, and Wonduruba on 1 September 2016 involving helicopter gunships and troops deployed from the 6th Division from Maridi, Western Equatoria.[[371]](#footnote-372)

287. The Governor of Yei River State is alleged to have requested President Kiir to send Mathiang Anyoor reinforcements and subsequently approximately 600 armed SPLA and Mathiang Anyoor forces were deployed in Yei and the surrounding areas.[[372]](#footnote-373)

288. The growing insecurity over the following months, also led to an increased militarisation of Central Equatoria with the SPLA controlling town centres such as Yei while the SPLA-IO moved more freely through the countryside.

289. By December 2016, SPLA-IO forces established a headquarters in Lasu and began to carry out guerrilla attacks against government installations and convoys from their locations in the bush and villages around Yei and Lainya Counties.[[373]](#footnote-374) What followed has been a bitter guerilla war characterized by SPLA-IO ambushes and hit and run attacks countered by a punitive SPLA counter-insurgency, targeting civilians. Witnesses also told the Commission that when the government forces based in Yei suffered battle or ambush casualties, they would carry out retaliation attacks on the civilian population in Yei when they came back into town.[[374]](#footnote-375)

290. The citizens of Central Equatoria have borne the brunt of this conflict as the SPLA and its allied Mathiang Anyoor militia began a clamp down on the civilian populations they believed were supporting the opposition. One witness told the Commission that “After Riek Machar’s expulsion from Juba in July 2016, Government forces start to suspect everyone in Yei of being loyal to him.”[[375]](#footnote-376) Another witness quoted the Governor Lokonga as telling a crowd of mourners, after an ambush attacked a convoy carrying a number of government ministers and community leaders which resulted in two casualties on 14 August 2016:[[376]](#footnote-377)

You people of Yei, if you do not advise your children, every house will witness this kind of sorrow. Everyone will cry. Except I am not the Governor of this state![[377]](#footnote-378)

291. The witness recalled that “The crowd was very unhappy. We took this statement to mean that the people of Yei would suffer the consequences of this incident.”[[378]](#footnote-379) The Governor’s statements in August caused most of the civilian population to flee to the bush or across the border to Uganda.

292. In response to the increasing insecurity, local young men mobilised themselves to defend the community and started searching vehicles, particularly along Kaya Road about thirteen miles outside Yei town. In July/August 2016, these local youths killed a Dinka man who worked for an NGO. A witness told the Commission that following the incident, the Governor declared, in a public speech, that “all the youths of Yei were rebels, especially the “Boda-Boda” drivers”, and that the “intelligence and military forces should look for the youths of Yei and ‘they should be taken care of”.[[379]](#footnote-380)

293. The same day, approximately 64 young men were arrested in Yei and detained at the Mahad SPLA military barracks. After considerable pressure from community leaders and after coverage in the press, 24 of the detainees were released in early 2017. The fate of the remaining men remains unknown. A detainee who was released in 2017 relayed his experience to a witness interviewed by the Commission. He told the witness that the soldiers would regularly take the detainees out and force them to dig graves, but they did not know who was going to be buried there. The soldiers would also randomly remove detainees from the cells and those men would never be seen again. He said that over a period of time, the number of young men detained there with him began to decrease gradually.[[380]](#footnote-381)

294. The Commission received numerous reports of summary killing of civilians, particularly of young men suspected of supporting the SPLA-IO.[[381]](#footnote-382) According to one witness, on 12 January 2017, a group of displaced young Kakwa men returning to their village were shot at by Government soldiers as they approached a checkpoint along the Kaya road, near Yei town.[[382]](#footnote-383) The soldiers shot and killed four of the men on the spot, while four others were injured. Two of them reportedly suffered such bad head wounds that their brain tissue was exposed. Villagers managed to take them to Yei Hospital, but the staff there were unable to treat them and decided to evacuate them to Uganda. On the way to the airstrip, SPLA soldiers stopped the group and accused the patients of being rebels. They took them all to the military barracks in Yei where soldiers detained the patients and beat the driver severely. The soldiers insisted that the injured men should be taken back to Yei Hospital, so they were driven back there. One of the men died the following day and the other, the day after.[[383]](#footnote-384)

295. SPLA soldiers also repeatedly abducted civilians who would later be found dead. A witness from Gimunu, a few kilometers to the east of Yei town, described how SPLA soldiers abducted and killed eleven civilians between April and June 2017. The witness recounted one incident in which Government soldiers abducted three Kakwa men from their homes late at night in June 2017. According to the witness, shortly after the men were taken away, local people heard screams in the distance, as though the men were being tortured. When they did not return, a group of local men went searching for them and found their bodies near Gimunu town centre a few days later. Their eyes had been removed from their sockets and their necks had been slit with pangas[[384]](#footnote-385)*.*

296. Another witness, a 25 year-old Pojulu woman from Wonduruba, in Lainya County described how, in August 2017 she was among about 75 women and 17 men abducted by SPLA soldiers in Wonduruba. She was pregnant at the time and had her two children with her. They were accused of being supporters of Riek Machar and taken to a place called “Gahgiri” where the soldiers first tortured, then killed all the men. Some of them were decapitated and the women were detained in the same room as the men’s decomposing bodies. Her husband was among those killed. The women were eventually released and some identified their husbands among the decapitated bodies.[[385]](#footnote-386)

297. UNMISS Human Rights Division documented the killing of 114 civilians by pro-Government forces in and around Yei between mid-July 2016 and mid-January 2017, pointing out that the actual number of fatalities and injuries over that period is likely to be much higher.[[386]](#footnote-387)

298. Multiple women and girls from the Lainya and Yei areas interviewed by the Commission also described how they were gang raped by government Dinka soldiers, often while they were fleeing insecurity in the Lainya and Yei areas.[[387]](#footnote-388) A 23 year-old woman from Yei described being stopped by Mathiang Anyoor soldiers in July 2017, as she and her family were fleeing on foot to Uganda. She recounted:

They started beating my husband, his brother and my father-in-law. They were beating them with the butts of their guns. They all had guns. This happened along a path through the bush, as we were fleeing from village to village through bush paths. As they were beating them, they were shouting: “Where do you come from? Where are you going?” They were shouting that we should go back. They tied my husband, his brother and my father-in-law down. They also tied me to a tree. They said “Here we are going to sleep with you in front of your husband”. My two children were near me when I was tied up and while all this was taking place. The youngest one was crying. I would say that there were about fifteen Mathiang Anyoor soldiers in total. Out of this number, five of them raped me. My husband, his brother and father were all there while they were raping me. My children also sat on the ground nearby while it was going on.[[388]](#footnote-389)

299. The witness lost consciousness during the rape. When she came to, her children were beside her crying, but her husband, his brother, and father were gone and have not been seen since.[[389]](#footnote-390)

300. The testimonies heard by the Commission are supported by those of UNMISS and CTSAMM. UNMISS documented multiple allegations of conflict-related sexual violence by SPLA and SPLA-aligned armed groups in and around Yei between July 2016 and January 2017. UNMISS was able to document the cases of at least eleven women and girls, emphasising that the actual number of cases is likely to be much higher due to limited access to the area and under-reporting.[[390]](#footnote-391) Similarly, in its report of 3 November 2017, CTSAMM referred to over twenty cases of rape by soldiers from both the SPLA and SPLA-IO that were reported to medical personnel in Yei in July 2017. CTSAMM observed that this number was a small proportion of the actual number of rapes that took place over that period, and that rape incidents were under-reported because of fear or shame.[[391]](#footnote-392)

301. A local source in Lainya town acknowledged that local officials were hearing of women being raped in Lainya and the surrounding villages and that these incidents of rape coincided with the deployment of Mathiang Anyoor forces in Central Equatoria. According to the source: “between August and September 2016, twenty-seven women were raped that I am aware of. They were raped while coming from or going to the farm. SPLA would ambush them and rape them.”[[392]](#footnote-393)

302. Another local official confirmed that incidents of rape were massively under-reported, and that community elders received hundreds of complaints of rape, but only eight or so were officially reported.[[393]](#footnote-394)

303. In addition to attacks on civilians themselves, the Commission heard of widespread looting and destruction of civilian property by SPLA and Mathiang Anyoor soldiers in the Yei and Lainya areas.

304. One Kakwa witness who lived in Yei town told the Commission that he abandoned his home and moved to Lutaya, on the outskirts of Yei, in August 2016, hoping it would be safer there. However, government soldiers came there too and systematically looted houses in Lutaya:

In the first week of September 2016, between 60 and 100 Government Dinka soldiers came into Lutaya. They were on foot. They started breaking into houses and looting property from them. They appeared to be targeting the well-structured houses. I think they were targeting these houses because they thought their occupants would be more affluent and therefore have possessions worth looting. They were stealing television sets, radios, solar energy panels and similar things. When they got to the smaller houses or huts, they stole goats and chickens. They continued this looting for two to three days.[[394]](#footnote-395)

305. The burning of Lutaya is corroborated by information provided to the Commission, according to which on 16 January 2017 the Catholic Church and the surrounding houses in Lutaya were burnt down by the governmental security forces.[[395]](#footnote-396)

306. Another witness described an incident in May 2017, in which government soldiers looted mattresses and food items from a house where four men and two women lived in Gimunu, approximately thirteen kilometers outside Yei town, then forced the residents to carry the items away for the soldiers. He provided their names, then added: “[w]e eventually discovered their bodies about two weeks later in Koya, near the River Koya.”[[396]](#footnote-397)

307. SPLA soldiers and Mathiang Anyooralso burned houses and structures. A 76 year-old Kakwa man from Gimunu described how, in August 2016, Government soldiers “started burning the area where I lived in Gimunu up to a two-mile radius.”[[397]](#footnote-398)

308. These accounts of widespread burning of homes are corroborated by satellite images produced by UNOSAT showing the destruction of structures by March 2017.[[398]](#footnote-399) The image of Yei town and its outskirts shows 6,300 structures were destroyed, primarily on the outskirts of town.[[399]](#footnote-400) Another image showing the route from Yei town down to the border depicts 18,318 destroyed structures with a note that most of these structures appear to have been destroyed by fire.[[400]](#footnote-401)

309. Similarly, CTSAMM visited Lainya, Morobo, Lutaya, Sanzasiri, and Glumbi in January and February 2017 and noted in each case large numbers of abandoned, destroyed, and burned homes. Indeed, in respect of Lainya, CTSAMM noted that 3,080 residences had been burned. Although CTSAMM noted the assertion by County officials that the houses in Lainya had been burned by a wildfire, they found that the remains of the burned residences was not consistent with this.[[401]](#footnote-402)

310. As a result of the widespread violations against civilians in Yei River State, the civilian population fled en masse, predominantly to Uganda beginning in July 2016.

311. OCHA visited Yei in September 2016 and found that most of the civilian population had fled. The team reported that “continued insecurity in Yei has resulted in the displacement of around 60-70 percent of the population. The team noticed the emptying of most neighbourhoods, with locked homes visible in all communities. Only those without the resources for transport or other means to leave town remain.”[[402]](#footnote-403)According to the most recent census, conducted in 2008, Yei town then had a population of 201,443.[[403]](#footnote-404) By September 2016, OCHA estimated that only 46,000 to 61,300 people remained in the town. Indeed, over 163,000 people had crossed to Uganda between 8 July and the first week in September 2016, with over 4,000 people arriving every day. Additionally, 15,700 refugees arrived in DRC in August and September 2016.[[404]](#footnote-405)

312. The journey of civilians who fled Central Equatoria was extremely difficult and fraught with peril. The vast majority of displaced people travelled on foot from village to village along bush paths often at night. Typically, the trek to the Uganda border lasted anywhere from five to ten days with many not making it. One witness described the devastating journey:

We started heading towards Uganda on 1 September 2016. We had remained in the bushes hiding until then. We met up with some other families who had also been hiding in various parts of the bush. There ended up being about 200 of us, including men, women and children. There were also some pregnant women amongst us, and some of them delivered their babies on the journey to Uganda. There was no vehicle. We had to trek. We did not travel along the main road because of the threat from the Government soldiers. We trekked through the bush paths. On one of the nights, we crossed the Lainya-Yei road, but we continued our journey through the bush paths. We were sleeping in the bush out in the open. This included the children. It was the rainy season and raining heavily throughout this period. It took us about eight days to get to the border with Uganda. Some of our group died along the way. Some died from hunger. Others fell ill and died of their illnesses. Some of the group also drowned when they were trying to cross some of the small rivers on the way. The rivers were flooded because of the heavy rain and some of them could not swim across. Some of us were carrying injuries that remained untreated, including gunshot wounds from Government soldiers when they were hiding in the bush. We had no choice but to leave the dead behind and continue the journey. There was nothing we could do for them. At least six of our group drowned on the way to Uganda. Four of them were women and two were children. One woman also delivered twins on the way, but died while delivering. The babies also died. We had to continue on our journey and leave their remains where they died. Around eight members of the group were already carrying injuries. Five men and three women. Two of these women and three of the men also died on the way to Uganda.[[405]](#footnote-406)

313. Witnesses also described how their abandoned homes and possessions were taken over by people from the Dinka community when civilians were forced out of Lainya. A Kakwa witness from Lainya who returned to the town to check on his home and possessions stated:

Some of the men organized ourselves and decided to go back to Lainya and check on our possessions. When we got to Lainya, I discovered that Dinka cattle herders had occupied my house and shop. The Dinka herders that were now in Lainya had mixed our cattle in with theirs. […] [t]he Dinka were also taking over the land and houses left behind by people who had fled Yei and the surrounding town and villages.[[406]](#footnote-407)

314. In its most recent two reports on Central Equatoria, CTSAMM has noted that the situation in Yei has been improving, but that “the population continues to be subjected to harassment and violence by SPLA military personnel.”[[407]](#footnote-408) When investigators for the Commission visited Yei and Lainya in November 2017, the security situation remained tense.

 3. Kajo Keji County, 11 July 2016 to December 2017

315. Kajo Keji County lies in the south eastern corner of Central Equatoria, near the Ugandan border, and had an estimated population of 200,000, predominantly from the Kuku sub-tribe of the Bari-speaking community.[[408]](#footnote-409) As the increasing instability and fighting spread southward through Central Equatoria in the second half of 2016, the civilian populations from Lainya, Yei and Morobo fled eastward into Kajo Keji County, and particularly to Liwolo *payam*, in the west of the County. In December 2016, OCHA reported that there were approximately 30,000 IDPs in Liwolo payam alone.[[409]](#footnote-410) Between October and December 2016, half of the population of Kajo Keji, including those displaced there, fled to Uganda.[[410]](#footnote-411)

316. The SPLA Battalion Commander in the Kajo Keji area had a base at Mundari barracks in Wudu town just to the north-east of Kajo Keji town.[[411]](#footnote-412) The forces there were reportedly supplemented by additional SPLA and Mathiang Anyoor forces from Juba.[[412]](#footnote-413)

317. There were already SPLA-IO forces in Kajo Keji, reportedly led by a senior SPLA-IO Commander, who had been appointed SPLA-IO Governor of Yei River state by Riek Machar in August 2015, as well as other senior IO commanders in the area.[[413]](#footnote-414) These forces generally stayed clear of populated areas, although they are alleged to have entered towns and villages occasionally and committed violations against civilians.[[414]](#footnote-415)

318. Although fighting occurred in the Kajo Keji area prior to January 2017, thereafter, clashes between the SPLA and the SPL-IO were characterized as “persistent” through to at least April 2017.[[415]](#footnote-416) Witnesses interviewed by the Commission attributed the violations committed in Kajo Keji from 11 July 2016 onwards to both the SPLA (and its allied militia forces) and the SPLA-IO. These included killing, rape, torture, arbitrary arrest and detention, beating and looting of property. Victims included the displaced civilian population in Kajo Keji and those fleeing through the county, on their way to refugee camps in Uganda.

319. When CTSAMM visited Kajo Keji in January 2017, it noted that: “Both parties commit infringements with the impact falling on civilians. Especially vulnerable groups such as women. children and the elderly.”[[416]](#footnote-417) It added that:

The civilian population fears both parties with good reason. The SPLM/A-IO is perceived to be a threat because they commit violations in particular the looting of food supplies and abducting of males of fighting age. The SPLA is perceived to be a threat because of the collateral damage it causes to civilians by its heavy handed reaction to SPLM/A-IO activity.[[417]](#footnote-418)

320. Attacks on civilians by SPLA and Mathiang Anyoor soldiers in Kajo Keji followed a similar pattern to those perpetrated in Yei and Lainya Counties.

321. For example, one witness told the Commission that when she arrived in her village Luikor, in Kajo Keji, from Juba in July 2016, she found the security situation to be just as bad.[[418]](#footnote-419) In August 2016, soldiers arrived in her village and“were going door to door and killing people, raping them.”[[419]](#footnote-420) She fled with her family and hid in the bush for four days. When they returned to their home, everything had been looted: “[w]e stayed four days in the bush and then came back home. There was nothing remaining in the house. Everything was taken.” She was certain that the attackers were government soldiers and “people from National Security”because she recognized the uniform they were wearing. She and her family decided that it was no longer safe in Kajo Keji and fled to the refugee camps in Uganda a few days later.[[420]](#footnote-421)

322. Similarly, a nineteen year-old woman from Nyapo village in Kajo Keji told the Commission that government soldiers attacked her village in August 2016:

The government soldiers were killing and taking people away. Many people were taken away including my brother who was only ten years old. I saw them taking my brother way. There were about seven men taking him away. They killed my father on the same day. I saw it happen. There’s nothing more to say about my father.[[421]](#footnote-422)

323. CTSAMM visited Kajo Keji between 16 and 20 January 2017, and reported that they received reports of the detention and torture of youths in Kajo Keji, allegedly because they were the children of SPLA-IO soldiers. They also received multiple first-hand accounts of killing, rape, abductions and destruction and looting of homes and medical facilities.[[422]](#footnote-423)

324. A few days after the patrol, on 22 January 2017, Government soldiers from the Mundari barracks shot and killed seven civilians a church service in Mondikolok, a town near Wudu.[[423]](#footnote-424) International observers visited Kajo Keji a few days after this incident and met civilians from Mondikolok, Romogi and Mogiri, who complained about the murders of friends and relatives accused of supporting SPLA-IO, as well as rape, physical mistreatment, robbery, theft, looting and abuse of power by SPLA soldiers.[[424]](#footnote-425)

325. International observers met with the local SPLA Commander, and asked him why civilians were abandoning their possessions and fleeing the county. He reportedly responded that he had received no orders to hurt or harass the civilian population and confirmed that he knew he had an obligation to protect civilians and their property. He said that if any of his troops did otherwise, they would be punished.[[425]](#footnote-426)

326. The shooting at the church in Mondikolok triggered a retaliatory attack by SPLA-IO forces on the police station in Mere, Kajo Keji two days later, prompting a mass exodus of civilians who feared that the situation would escalate into a larger scale armed clash between opposition and SPLA forces.[[426]](#footnote-427) Consequently, between 22 January and 21 February 2017, 84,640 refugees fled to Uganda, the majority being from Kajo Keji.[[427]](#footnote-428) According to UNHCR Uganda, between 1 January 2017 and December 2017, the total number of refugees entering Uganda was 115,812.[[428]](#footnote-429)

327. Human Rights Watch documented 47 cases of alleged killings of civilians by government forces in Kajo Keji County between June 2016 and May 2017, and suggested that the actual death toll was likely much higher.[[429]](#footnote-430) UNMISS documented multiple attacks by SPLA on civilians during this period including two separate incidents of refugees attempting to return to Uganda being attacked by SPLA soldiers in February 2017. In the first, three civilian men were reportedly killed and three women raped and in the second, twelve men were reportedly killed.[[430]](#footnote-431)

328. The situation was further complicated when SPLA Deputy Chief of General Staff for Logistics Lt. Gen. Thomas Cirillo, from Central Equatoria, resigned from the SPLA on 11 February 2017, accusing the SPLA and Mathiang Anyoor of atrocities against civilians, including in the Equatorias.[[431]](#footnote-432) Lt. Gen. Cirillo founded the opposition group the “National Salvation Front” (NAS) on 6 March 2017.[[432]](#footnote-433) A number of SPLA-IO Generals in Central Equatoria defected to join the NAS.[[433]](#footnote-434) Among those defections was the SPLA-IO commander for Central Equatoria who defected on 28 July 2017.[[434]](#footnote-435)

329. Following these defections, attacks by SPLA-IO against civilians reportedly intensified, particularly in the border area with Uganda. These defections also precipitated a number of confrontations in Kajo Keji between NAS forces loyal to the former SPLA IO Commander of Central Equatoria and the SPLA-IO. Although both sides blamed each other for these confrontations, the security situation in Kajo Keji further deteriorated after 1 August 2017, when the SPLA-IO-appointed governor for Yei River State, publicly declared the former Commander of Central Equatoria a wanted man.[[435]](#footnote-436)

330. The SPLA-IO targeted civilians they perceived to be supporters of NAS. The violations, which included detentions and torture, targeted mainly young men fleeing toward the Ugandan border or returning from to South Sudan from the refugee camps.

331. One witness explained to the Commission that following these defections, the:

[…] IO became very angry. They had now lost their base, and the IDP camps where they used to get food and other support had left the area […] As a result, IO started targeting supporters of NAS […]. When I refer to IO, I mean the Equatorians in the IO. They have been looting property from people crossing the border.[[436]](#footnote-437)

332. Against this backdrop, a witness told the Commission of an encounter he had with SPLA-IO soldiers in Kajo Keji in August 2017 when he was taking food items and other possessions to his family in Uganda. The SPLA-IO soldiers stopped him and some other men in Keriwa and accused them of being members of NAS:

They took us to a town in Kajo Keji called Bori, which was their base. In Bori, they already had a hole dug out in the ground. The IO forces detained us in this hole for eight days. They covered the top of the hole with logs of wood so that we could not escape. They detained us in this hole in Bori for eight days and then took us another location in a town called Ponyume, also in Kajo Keji. The IO soldiers stole all of our possessions, including our money and our motorcycles. The soldiers also raped one of the women who was travelling with us.[[437]](#footnote-438)

333. While they were detained in Bori, the men were whipped each morning. This account was corroborated by another witness.[[438]](#footnote-439)

 4. Violations / Alleged Crimes

 a) Killings, rape, abduction and arbitrary detention, destruction of property, looting and pillage, in Lainya, Yei and Kajo Keji Counties in 2016 and 2017

334. Although this section has focused on violations that occurred in Yei, Lainya, and Kajo Keji Counties from July 2016 to December 2017, the Commission heard of similar violations taking place across most of southern Central Equatoria. In this regard, the Commission notes that international observers were repeatedly denied access to Lainya, Yei and Kajo Keji and their surrounding areas by the SPLA, and occasionally the SPLA-IO.[[439]](#footnote-440) Indeed, the Commission was not able to visit Kajo Keji for more than a couple of hours. This has inevitably hampered access to information about the events in the area as well as investigations.

335. On the basis of the evidence collected as describe above, the Commission finds reasonable grounds to believe that the SPLA and its allied *Mathiang Anyoor* forces engaged in serious human rights violations in Central Equatoria including killings, rape, arbitrary detentions, torture, destruction of civilian property and looting in Lainya, Yei, and Kajo Keji counties between 11 July 2016 and December 2017.

336. These killings were alleged to have been committed by state agents and amount to serious violations of human rights law under the Transitional Constitution of the Republic of South Sudan, 2011, particularly the right to life and human dignity (Article 11), the rights of the child (Article 17), the right to freedom of movement and residence (Article 27), the right to education (Article 29), and the right to decent housing (Article 34). They also amount to violations of the African Charter on Human and Peoples’ Rights, including in particular the right to life and the integrity of the person (Article 4), to freedom of movement and residence within the borders of a State provided one abides by the law (Article 12), the right to enjoy the best attainable state of physical and mental health (Article 16) and the right to education (Article 17).

337. These acts constitute crimes under South Sudan’s Penal Code 2008, including, among others, murder (Article 206), rape (Article 247), theft (Article 293) and mischief with intent to destroy house (Article 324).

338. Moreover, the Government’s armed forces are also subject to the provisions of the SPLA Act 2009 and the SPLA’s Rules and Regulations, and particularly Section 57 which establishes the offences of destroying and damaging property, plunder and committing any offence against the property or person of any inhabitant or resident of a country in which he or she is serving.

339. The Commission also finds reasonable grounds to believe that the SPLA-IO, through its soldiers, committed serious human rights violations such as deprivation of physical liberty, rape, and torture in and around Kajo Keji County between 11 July 2016 and December 2017, crimes under South Sudan’s Penal Code.

340. Furthermore, the Commission finds reasonable grounds to believe that there was a nexus between the commission of these violations and the non-international armed conflict ongoing in South Sudan at the time in light of them occurring the context of ongoing fighting between the SPLA and the SPLA-IO. As such, they are violations of international humanitarian law under Common Article 3 to the Geneva Conventions and Additional Protocol II to which South Sudan is a party and which it has incorporated into its national law in its Geneva Conventions Act 2012. They may also amount to war crimes under Article 4 of the Draft Statute of the Hybrid Court for South Sudan.

341. The Commission also finds reasonable grounds to believe that these violations in Yei, Lainya, and Kajo Keji Counties were part of a widespread or systematic attack directed against the civilian population. The attacks covered numerous towns and villages across Lainya, Yei and Kajo Keji counties over the course of a year and a half causing significant numbers of deaths, rapes and destroyed and looted properties. The resultant physical and food insecurity left civilians with no alternative but to flee elsewhere.

342. As such, these crimes may also amount to crimes against humanity. They may amount to crimes against humanity under Article 3 of the Draft Statue of the Hybrid Court for South Sudan. Furthermore, the targeted nature of the attacks, along ethnic lines, and due to perceived support for the parties to the conflict, may amount to the crime of persecution under 3(h) of the Draft Statue of the Hybrid Court for South Sudan.

 b) Displacement of the Civilian Population

343. The evidence reviewed and collected by the Commission makes clear that the massive displacement of the civilian population of Lainya, Yei and Kajo Keji counties was a direct result of the widespread violations of international humanitarian law and human rights law committed by the SPLA forces. This included deliberate killings of civilians, rape, abduction, and destruction of civilian property and pillage. The resultant physical and food insecurity left the civilians with no option but to flee elsewhere.

344. This displacement, along ethnic lines, gave rise to serious violations of human rights law under the Bill of Rights in the Transitional Constitution of the Republic of South Sudan, 2011, including the rights of the child (Article 17), the right to privacy encompassing the right not to be subjected to interference with his or her private life, family, home or correspondence, (Article 22), the right to freedom of movement and residence (Article 27), the right to education (Article 29), and the right to decent housing (Article 34). They also amount to violations of the African Charter on Human and Peoples’ Rights including in particular the right to freedom of movement and residence within the borders of a State provided one abides by the law (Article 12), the right to enjoy the best attainable state of physical and mental health (Article 16), the right to education (Article 17).

 5. Responsibility

 a) Command Responsibility

* Government and Government Forces

345. During the period considered by the Commission of 11 July 2016 to December 2017, the Governor of Yei River State was the head of the executive and exercised considerable authority and control over the entire state apparatus,[[440]](#footnote-441) including for example, appointing County Commissioners for Yei, Lainya and Kajo Keji counties.[[441]](#footnote-442)

346. Conventionally Governors occupy civilian roles, but given his rank in the SPLA, there are reasonable grounds to believe that throughout this period, the Governor also wielded significant authority over the activities of the security forces within his state.[[442]](#footnote-443) As noted above, he requested the deployment of reinforcement troops to the state in mid-2016 and President Salva Kiir acceded to his request, duly deploying approximately 600 forces to the state.[[443]](#footnote-444) Moreover, there is no indication that the Governor took any steps to call the Mathiang Anyoor forces to order, or request their withdrawal in response to the well-publicised human rights violations, which commenced when they arrived in his state.

347. There are also reasonable grounds to believe that he knew that Mathiang Anyoor had a history of widespread human rights abuses from their prior use in the Juba conflict in December 2013 which was publicized by both the AU Commission of Inquiryand the United Nations.[[444]](#footnote-445) Furthermore, SPLA and Mathiang Anyoor forces are reported to have perpetrated human rights violations in the Yei River State over the course of a year and a half, a fact that could not have escaped his notice. At least one witness told the Commission that he had relayed to the Governor his concerns about the violations perpetrated by the Mathiang Anyoor and that the Governor was unsympathetic, and fueled the conflict through his inflammatory public statements, noted above, which intimidated the civilian population perceived to support the SPLA-IO.[[445]](#footnote-446)

348. To the contrary, the Commission notes that there are also reasonable grounds to believe that when the alleged crimes were committed in Kajo Keji, the SPLA Battalion Commander of Mundari barracks in Wudu town, the military hierarchy of the SPLA functioned properly and that the Commander exercised effective control over the SPLA troops deployed to Kajo Keji. He regularly met with international observers over the period that the alleged crimes were committed.[[446]](#footnote-447)

349. Notably, the SPLA Commander met international observers at his base in Mundari barracks within days of the alleged shooting of six civilians by SPLA soldiers in Mondikolok on 22 January 2017.[[447]](#footnote-448) His statement during that meeting, that his troops would be punished if they did not protect civilians, gives no indication that he did not have control over his troops and it confirms his awareness of his obligations, and that of troops under his command, to protection of civilians. More recently, on 24 November 2017, an Integrated UNMISS-CTSAMM Team met with him at Mundari Barracks following an Assessment Mission to Kajo Keji. He provided the team with a general update on the security situation in Kajo Keji.[[448]](#footnote-449) However, the ongoing attacks on civilians and violations perpetrated in the Kajo Keji area, including by SPLA soldiers indicates that insufficient measures have been taken to prevent or punish those responsible.

* Responsibility for Violations Attributed to SPLA-IO Forces in Kajo Keji

350. There are reasonable grounds to believe that between 11 July 2016 and December 2017, the SPLA-IO Commander for Kajo Keji, exercised effective control over his troops.[[449]](#footnote-450) In March and April 2017, he met with international observers and facilitated their communication with his superior commander and his operational command.[[450]](#footnote-451) Further, witnesses observed that the SPLA-IO appeared organised, disciplined and exercised command and control.[[451]](#footnote-452) Indeed, a journalist described the SPLA-IO forces as being organized with good communication.[[452]](#footnote-453)

351. One witness also identified the SPLA-IO leader in Kajo-Keji, noting that the Equatorian IO is the only force in total control of the area near the border. Their overall commander in the border area is from Keriwa in Kajo Keji and was formerly a police sergeant in Juba and has a deputy. Two other IO commanders are known to be present in the area, as well as a Commissioner. The IO also have their own Governor for Yei River State, who spends most of his time in Kampala.[[453]](#footnote-454)

352. In light of the pervasive violations perpetrated by SPLA-IO soldiers against civilians in Kajo Keji County since July 2016 as well as the SPLA-IO’s intelligence and communication system, the Commission finds that there are reasonable grounds to believe that the SPLA-IO Commander responsible for Kajo Keji County, knew or had reason to know of the acts of his soldiers. Yet the continuing nature of the violations indicates that insufficient measures have been taken to prevent or punish such acts.

 b) State responsibility

353. In addition to any individual criminal liability that may arise in relation to these crimes, as the SPLA are government forces, the State is responsible for the violations of human rights and international humanitarian law committed by its forces. Furthermore, the Government of South Sudan has an obligation to investigate these incidents and prosecute those responsible (whether they be government forces or individuals forming part of the opposition), for alleged violations of international human rights and international humanitarian law, as well as crimes committed in Lainya, Yei and Kajo Keji counties since July 2016.

354. The Commission notes that President Kiir established an Investigative Committee in October 2016 to investigate violations occurring in Yei. It also notes that the Yei River State established an Investigative Committee in December 2016 to investigate the alleged killing of eleven people in Central Equatoria in 2016. Despite requesting copies of these reports, the Commission has not received copies.[[454]](#footnote-455)

355. Despite the establishment of these investigative committees, the Commission has not received any information that the Government has undertaken systematic investigations and prosecutions of soldiers involved in the gross violations perpetrated against the civilians of Central Equatoria.

356. Further, as South Sudan is a party to the CRC, CEDAW, as well as regional instruments such as the African Charter on Human and Peoples’ Rights and the Maputo Protocol, the State maintains the responsibility of ensuring the progressive realization of other economic, social and cultural rights that may have been threatened during the Government offensive, namely the rights to food, education, work, water, healthcare, and the protection of the family, among others.

357. The Commission finds that State action or lack thereof in relation to the destruction of whole towns and villages and essential infrastructure, coupled with widespread security hazards which impeded emergency relief for the civilian population negatively impacted upon individuals’ abilities to enjoy their rights, particularly the masses who were displaced to other parts of South Sudan or outside of the country.

 B. Pajok, Eastern Equatoria State, 2017

 1. Background

358. The SPLA-IO’s expansionist campaign in the Greater Equatoria region led the Government to deploy hundreds of *Mathiang Anyoor* from the Dinka community to operate alongside the SPLA. This exacerbated pre-existing tensions between local populations and the Dinka community.

359. Inhabited by approximately 60,000 people, largely from the Acholi community, Pajok (also called Parajok) was a quiet payamin Ayaci County in Eastern Equatoria State.[[455]](#footnote-456) Pajok *payam* is divided into five *bomas*, four of which make up Pajok town,[[456]](#footnote-457) with the fifth being the less heavily populated Pugee boma, lying south of the town down to the Ugandan border.[[457]](#footnote-458)

360. Although other parts of the Equatorias saw significant fighting and international humanitarian law and human rights violations in 2016, Pajok payam remained relatively peaceful. Nonetheless pre-existing local conflicts within the Acholi clans dating back to the liberation became embroiled in the broader conflict: the Acholi-Pajok clan are seen to be supportive of the SPLA-IO while the other Acholi clans support the SPLA. Increasing SPLA-IO activity and SPLA crackdowns in neighbouring Magwi county and the existence of an SPLA-IO base in the proximity of Pajok also led to growing insecurity.[[458]](#footnote-459)

 2. Attack on Pajok on 3 April 2017

361. Significant troop deployment was observed in the area in the days leading up to the attack on Pajok on 3 April 2017. On 31 March 2017, three trucks filled with SPLA soldiers moved from Magwi county to Ayaci county.[[459]](#footnote-460) On 1 April, an estimated 1,000 SPLA soldiers and Mathiang Anyoor militia were transported to the area.[[460]](#footnote-461) On 2 April, SPLA deployed two “armoured tanks” at Ayaci junction to reinforce Tiger Battalion troops and militia.[[461]](#footnote-462) A local community chief told the Commission that residents of Palawar village (which lay close to an SPLA-IO camp to the northeast of Pajok) had also reported an increased military presence there over those couple of days.[[462]](#footnote-463) These were all signs of an intention to attack the area.

362. Human Rights Watch reported that amidst rumours of an attack on the SPLA-IO base, witnesses did not think that the town would be attacked.[[463]](#footnote-464) Nevertheless, at least 30 people fled to Lawaci boma, south of the river. One of them was a 26 year-old woman who told the Commission that on Sunday, 2April 2017, her father told her to flee to safety across the river after an uncle in nearby Obo reported having seen many soldiers – two trucks and others on foot – going towards Pajok. She went with her mother and three children to a relative’s house and slept there.[[464]](#footnote-465)

363. On the morning of 3 April 2017, SPLA soldiers attacked the town of Pajok, killed significant number of civilians and looted the town. CTSAMM reported that: “Government forces used vehicles to tell civilians that they were there to fight the rebels only and to return to their homes. Several of those who obeyed this instruction were subsequently shot and killed.”[[465]](#footnote-466)

364. A 31 year-old former resident of Pajok boma told the Commission that on the morning of 3 April, around the time that his child left for school, he heard gunfire to the east, in the direction of the SPLA-IO base. Five minutes later, he heard more gunshots from the north (near the main road) and west.[[466]](#footnote-467) The witness said, “these were much closer, within our community… I started to receive phone calls of people being shot.”[[467]](#footnote-468) The Commission has received documents that corroborate his testimony and confirm that “SPLA Tiger forces deployed at Ayaci Junction advanced and attacked SPLA-IO position in Pajok County” at around 08:20 on 3 April.[[468]](#footnote-469) Some soldiers followed the main road to Pajok while the others moved around to the east of Pajok towards the SPLA-IO base.[[469]](#footnote-470)

365. The Commission also received documents reporting that the shooting and killing of civilians began in nearby Iyele village in Pajok boma.[[470]](#footnote-471) CTSAMM reported that during the attack “soldiers had dragged men from houses, robbed and beat them, before shooting them in cold blood.”[[471]](#footnote-472) It further found “clear evidence that government forces had deliberately, and in cold blood killed a number of civilians.”[[472]](#footnote-473)

366. The soldiers later reportedly crossed the river by the main road and then fanned out in the southern parts of the town. A resident of Caigon boma told the Commission that having heard gunfire to the north, he had time to flee with his family to community farmland three to four kilometres away.[[473]](#footnote-474) Nearly 1,000 people had already fled to that area. However, he went back to try and get his father who, being too old to run, had been left behind. By this time, the gunfire had become heavy, and his father urged him to leave him behind and run. The witness told the Commission that subsequently: “Soldiers found him in the house and shot him. It was a grass house, and after shooting him they burnt the house. I was told this by my brother who was left behind.”[[474]](#footnote-475) The Commission interviewed the witness’ cousin, who had buried the man’s body, one of thirteen that he had found in the town.[[475]](#footnote-476)

367. Another witness from Pajok boma told the Commission that her husband was killed that morning. She heard this in the afternoon from a relative who had also stayed behind.[[476]](#footnote-477) Both deaths were confirmed by a report prepared for the Governor by a Member of Parliament from the county.[[477]](#footnote-478)

368. Human Rights Watch also reported on civilians being killed by soldiers, “often at close range.”[[478]](#footnote-479) One witness is quoted as having seen soldiers shoot at five civilians, four of whom were killed.[[479]](#footnote-480) In another statement, a mother confirmed that soldiers had shot her 34 year-old son who suffered from “psychosocial disabilities.”[[480]](#footnote-481) Other reported killings were confirmed by the corpses that were subsequently found, including for example, the body of Ojok Peter who was found hanged in a house. His brother-in-law told Human Rights Watch that he had been shot and injured while fleeing, and despite having crawled to a house to hide must have been found by his killers.[[481]](#footnote-482)

369. The investigation by local Members of Parliament indicated a final death toll of fifteen.[[482]](#footnote-483) CTSAMM concluded that government forces killed at least sixteen civilians in Pajok.[[483]](#footnote-484) Human Rights Watch was able to confirm fourteen civilian deaths, but noted that the total toll could be much higher.[[484]](#footnote-485) One community leader also told the Commission that sixteen civilians were killed.[[485]](#footnote-486) However, UNMISS noted: “66 documented deaths of civilians of Acholi ethnicity, including eight women, five children and two men with disabilities, and the wounding of three others.”[[486]](#footnote-487) Witnesses told UNMISS of mass graves in Pajok and Lawaci, and UNMISS found three newly dug graves and two sites with freshly turned soil.[[487]](#footnote-488) The Commission also received credible information about a decomposing body lying out in the open on 12 April 2017.[[488]](#footnote-489)

370. While the Commission could not corroborate the UNMISS figure or arrive at a final number of civilians killed, a comparison of the names in the various reports discussed above indicates at least 22-25 civilians deaths.

371. In addition to those killed, many more were injured. Amongst those wounded was a 45 year-old man from Odwele village in Caigon boma, whose shinbone was broken by a bullet deliberately fired at him. He saw the soldiers coming from the east shooting in the air, but when they saw him and others running away, they shot at them: “I could no longer walk, I had to leave all my luggage… I begged people to help me, but everyone was running for their lives, so I hopped. I would hop and stop, hop and stop.”[[489]](#footnote-490)

372. The killing of civilians was then followed by the systematic looting of the town. CTSAMM noted that government forces “looted Pajok thoroughly. Houses, shops, schools and the clinic had all been looted… all goods had been taken from the shops, that the school had been looted and its safe forcibly opened and the contents taken.”[[490]](#footnote-491)

373. On 12 April, CTSAMM visited Pajok.[[491]](#footnote-492) Although witnesses from amongst the few remaining residents appeared, they appeared to be fearful of saying much. Soldiers had reportedly “moved from house to house collecting civilian properties and food from the granaries.”[[492]](#footnote-493) The investigation by Members of Parliament also documented damage and looting in the more remote Pogee boma, which was by then also virtually empty. This included the removal of all the furniture from the South Sudan Revenue Office and solar panels from the MTN (phone company) station.[[493]](#footnote-494) The health centre and houses were also looted.

374. The looting by the SPLA was brazen. The CTSAMM team, which visited Pajok on 12 April 2017, saw soldiers removing civilian property including bedding, solar panels, and cooking utensils and then transporting everything to a well-guarded house in Pajok. A large quantity of looted items were subsequently seen being loaded onto military trucks and taken to Magwi, under military escort.[[494]](#footnote-495) The looting continued and information received by the Commission indicates that trucks continued to transport looted items out of the town for at least one more week.[[495]](#footnote-496) Human Rights Watch also documented similar testimonies about soldiers taking away looted goods in lorries.[[496]](#footnote-497) The investigation done by local Members of Parliament confirmed this information and found “very serious destruction relating to the breaking of doors and windows and looting of properties”. It noted that the “ferrying of [looted] properties to Magwi, Juba, and other nearby payams was still going on with the knowledge of the Military leadership.”[[497]](#footnote-498)

375. UNMISS also received reports of three incidents of sexual violence involving six women in the attack on Pajok.[[498]](#footnote-499) In one incident in Caigon on 3 April, SPLA soldiers reportedly gang-raped four women, who subsequently reportedly fled to Uganda. The Commission interviewed one woman in a refugee camp in Uganda, who witnessed some of the same incident.[[499]](#footnote-500) She had just crossed the river from Pajok boma and was trying to escape with her three children when they were captured by soldiers and taken to a deserted village, along with three other women. The soldiers then assaulted and beat her and threatened to kill her if she did not give them all her money. One soldier tried to cut her with a knife but she managed to deflect the blow with her hand. The soldier did eventually find her money when he started to pull up her clothes, revealing the money hidden in her underwear. In his anger, he pulled her away, placed the gun on the top of her head and fired three times into the wall of the house. As she was being led away, fully expecting to be killed, she saw one of the other soldiers take a 16 year-old girl into another hut. Shortly thereafter a sudden burst of firing nearby distracted the soldiers giving them all the opportunity to escape. The witness said that the 16 year-old girl had been raped: “We saw that she came out of the room with all her clothes torn. She also fled to Uganda with us, so she told her story when she reached and she was given medicine.”[[500]](#footnote-501)

376. The number of incidents of sexual assault committed during the attack on Pajok may be much higher than reported, given the stigma attached to speaking about rape in Acholi communities.[[501]](#footnote-502) An elderly woman who had remained behind in Pajok asked international observers to intervene and stop the rapes of girls.[[502]](#footnote-503) A local SPLA officer told CTSAMM that he was aware of one incident of an attempted rape and that the soldier concerned had been arrested; he admitted however that solders got drunk and were difficult to control.[[503]](#footnote-504) The Commission also received information that two SPLA soldiers who attempted to rape a woman on 11 April 2017 in Lawaci, were arrested and detained.[[504]](#footnote-505)

377. At the time of the Commission’s visit to Pajok on 5 September 2017 there were just 1,200 residents remaining.[[505]](#footnote-506) The April attack had resulted in virtually all of the civilian population fleeing the town. Approximately 30,000 residents fled to Palabek refugee settlement in northern Uganda: most were still there when the Commission visited on 18 December 2017.[[506]](#footnote-507) CTSAMM reported that as a result of the attack, which happened during the day, and the displacement of civilians, children who went to school were separated from their families and most of them have since disappeared.[[507]](#footnote-508) The Commission believes they are at risk of being recruited into armed groups or the armed forces.

378. Finally, the Commission finds that there are reasonable grounds to believe that the SPLA deliberately attempted to prevent information about the events from Pajok from becoming public and used road check-points to prevent international observers from accessing Pajok immediately after the killings.[[508]](#footnote-509) International observers reached Pajok on 12 April 2017, but were denied full access to the town and not permitted to visit the more-remote Pugee boma.[[509]](#footnote-510)

379. Neither the SPLA nor the Government have provided any rational explanation for the killings. When explanations have been provided, they are totally inconsistent with each other. On 5 April, the SPLA deputy spokesman called the incident “a manufactured campaign against the SPLA”, claiming instead that “the bandits are looting and killing the population in Pajok, starting on Friday, Saturday.”[[510]](#footnote-511) The SPLA commander in Pajok, however, claimed that soldiers were attacked by SPLA-IO seven kilometers away from Pajok and that firing happened in the town when the SPLA chased their attackers into Pajok.[[511]](#footnote-512) On another occasion, he did not mention this to his interlocutors.[[512]](#footnote-513) At a third occasion, when meeting local Members of Parliament sometime between 18-22 April, he gave a different explanation, saying:

SPLA-IO from different tribes of South Sudan were available in Pajok and they constructed an Airstrip and Training Centre in an Area between Pajok and Lobone and still the community of Pajok are saying no IO in Pajok while over 3,000 men were trained at only a distance of seven kilometres from Pajok.[[513]](#footnote-514)

380. CTSAMM concluded that “the actions of Government Forces were directed against citizens of minority ethnic groups.”[[514]](#footnote-515) Further, the Commander’s statement suggests that the SPLA operation was carried out in order to punish the local population for their suspected support of the SPLA-IO. UNMISS suggests a more specific, but nonetheless punitive trigger; that the violence erupted after armed individuals attacked an SPLA military convoy nearby.[[515]](#footnote-516) This would be consistent with the pattern of retaliatory attacks by the SPLA after suffering an ambush, which the Commission has noted elsewhere, for example in Wau town in 2016 and 2017.

 3. Violations and alleged crimes

 a) Killings of Civilians, Looting and Pillage

381. On the basis of the evidence collected and reviewed, the Commission finds reasonable grounds to believe that SPLA soldiers fired at, and deliberately and arbitrarily killed civilians in Pajok. It also finds reasonable grounds to believe that there was widespread and systematic looting and theft of private property by SPLA soldiers, either for personal or organizational use.

382. These killings and looting were allegedly committed by state agents and amount to serious violations of human rights law under the Transitional Constitution of the Republic of South Sudan, 2011, particularly the right to life and human dignity (Article 11) and the right to property (Article 28). They also amount to violations of the African Charter on Human and Peoples’ Rights, including in particular the right to life and the integrity of the person (Article 4) and the right to property (Article 14).

383. Such acts amount to crimes under South Sudan’s Penal Code 2008, including murder (Article 206) and theft (Article 293). Moreover, the Government’s armed forces are also subject to the provisions of the SPLA Act (2009) and the SPLA’s Rules and Regulations, and particularly Section 57 which establishes the offence of committing any offence against the property or person of any inhabitant or resident of a country in which he or she is serving.

384. Furthermore, the Commission finds reasonable grounds to believe that there was a nexus between the commission of these crimes and the non-international armed conflict that was ongoing in South Sudan at the time, because they occurred in the context of SPLA clashes with SPLA-IO at locations in the vicinity, and the ongoing SPLA military campaign against SPLA-IO in the (former) Magwi county. As such, they are violations of international humanitarian law under Common Article 3 to the Geneva Conventions and Additional Protocol II to which South Sudan is a party and which it has implemented in its Geneva Convention Act (2012). They may also amount to war crimes under Article 4(a) (Violence to life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment) and Article 4(f) (pillage) of the Draft Statute of the Hybrid Court for South Sudan.

385. The Commission also finds reasonable grounds to believe that the killing of civilians and looting in Pajok village was part of a widespread or systematic attack directed against a civilian population. The attacks were systematic as they appear to have formed part of a planned attack against the civilian population of Pajok. Additionally, of all the occurrences of looting reviewed by the Commission, the looting of Pajok appears to have been by far the most organized and systematic. As such, these crimes may also amount to crimes against humanity, including murder under Article 3 of the Draft Statue of the Hybrid Court for South Sudan. The Commission notes that the targeted nature of the attacks against civilians predominantly from the Acholi community on the basis of their perceived support for the opposition may also amount to the crime of persecution under Article 3(h) of the Draft Statue of the Hybrid Court for South Sudan.

 b) Intentionally Directing Attacks against the Civilian Population

386. Based on the evidence collected and reviewed, the Commission finds reasonable grounds to believe that the SPLA intentionally directed attacks against the civilian population. There is no evidence of there having been an SPLA-IO base, nor of any SPLA-IO activity inside the urban areas of Pajok. In fact, no such claim was ever made by SPLA commanders to justify the attack on Pajok. Nonetheless, a substantial contingent of SPLA soldiers did attack Pajok town in what was clearly a planned operation, during which they opened fire on civilians.

387. Intentionally directing attacks against the civilian population or against individual civilians is prohibited by Article 13(2) of Additional Protocol II and Article 7 of the Geneva Convention Act (2012). If proven in a court of law this would amount to a crime under Article 5(a) of the Draft Statute of the Hybrid Court for South Sudan.

388. Even if this was not a planned attack on civilians but a legitimate military operation against an SPLA-IO presence in Pajok town, the evidence reviewed and collected by the Commission provides reasonable grounds to believe that there was an utter failure to adhere to the fundamental international humanitarian law principle of distinction, such that the attack amounts to a violation of the customary prohibition of indiscriminate attacks.[[516]](#footnote-517)

 c) Displacement of the Civilian Population

389. The SPLA attack on civilians in Pajok in 2017 led to the displacement of nearly the entire population of the town, estimated to be 60,000 – half of whom now live in one refugee settlement in Uganda. Evidence reviewed and collected by the Commission makes clear that the civilian population fled as a direct result of the attack.

390. This displacement gave rise to serious violations of human rights law under the Bill of Rights in the Transitional Constitution of the Republic of South Sudan, 2011, including the right to freedom of movement and residence (Article 27) and the right to privacy encompassing the right not to be subjected to interference with his or her private life, family, home or correspondence, save in accordance with the law (Article 22). They also amount to violations of the African Charter on Human and Peoples’ Rights including in particular the right to freedom of movement and residence within the borders of a State provided one abides by the law (Article 12).

 4. Responsibility for Violations and Alleged Crimes

 a) Command Responsibility

391. The Pajok operation was led by the Commander of SPLA forces in Magwi, reporting directly to Juba.[[517]](#footnote-518) These were largely Tiger Division soldiers supplemented by soldiers from 3rd Division and 2nd Division. A composite battalion of these soldiers, under the control of this Commander , has been based in Pajok since the attack.[[518]](#footnote-519)

392. There are reasonable grounds to believe that the attack on Pajok was a planned, systematic attack. According to CTSAMM, an estimated 1,000 soldiers were involved in this operation,[[519]](#footnote-520) They reportedly were from 2nd Battalion of the Tiger Division with reinforcements from the Mathiang Anyoor.[[520]](#footnote-521) The soldiers had moved from Magwi into Ayaci county, and eventually to Pajok, in a planned and phased operation over three days. The attack itself on 3 April 2017 was two-pronged; one targeted the suspected SPLA-IO base while the second attacked civilians in Pajok town. Multiple sources have reported that the attack was supported by armoured personnel carriers.[[521]](#footnote-522)

393. During the period when the alleged crimes were committed, there are reasonable grounds to believe that the SPLA’s military hierarchy functioned properly, and that the overall Commander had knowledge of the ongoing operation and exercised effective control over the troops deployed. For example, when the issue of the widespread looting was discussed with the commander, he acknowledged the looting by SPLA soldiers and claimed that action was being taken to end it. Furthermore, the systematic manner in which the looting was carried out, the fact that it continued for well over a week, and that looted property was subsequently taken to military facilities in Magwi is persuasive and suggests that these were not random isolated incidents by individual soldiers, but part of a deliberate and organized strategy to attack and pillage the town by the whole military force, of which the Commander must have been aware.

394. Similarly, the Battalion Commander of the SPLA would have had knowledge of the actions and conduct of the soldiers under his command, and exercised effective control over them.

395. There are also indications that the military operation was closely followed by the political leadership in Imatong State, as the State Governor had to give clearances or authorize clearances for vehicles to pass checkpoints.[[522]](#footnote-523) The Governor reportedly acknowledged the looting by SPLA soldiers, but defended the operation as legitimate.

396. Furthermore, the Commission has not received any information to show that those in superior or command positions took any steps to prevent or punish these violations and alleged crimes. Despite the acknowledgement of the ongoing looting in the town by the SPLA commander for Magwi, and his claims that the SPLA were taking steps to deal with it,[[523]](#footnote-524) the looting reportedly continued in broad daylight, even in the presence of international observers and aid workers.[[524]](#footnote-525) This indicates that despite his knowledge of the looting he did not take sufficient steps to prevent it.

397. The Governor and SPLA commanders also repeatedly stated their commitment to support investigations into the Pajok killings, with the Governor himself subsequently requesting that a report on the incident be made by Members of Parliament from Ayaci and Magwi communities. However, the sole accountability measure appears to have been the reported arrest of two soldiers for an attempted rape in Pajok on 11 April, although no further information on this case is available.

 b) State responsibility

398. As the SPLA are government forces, their violations of human rights give rise to state responsibility on the part of the Republic of South Sudan. Furthermore, the Government has a duty to investigate and prosecute these alleged violations of international human rights and international humanitarian law, as well as criminal acts committed in Pajok in April 2017.

399. The Commission notes that the Imatong, Torit State Legislative Assembly ordered an investigation into the events in Pajok in April 2017 whose terms of reference included to “assess the situation in Pogee, Pajok and other Areas and come up with the Findings/ Observations and Recommendations.” The Report which was duly submitted on 1 May 2017 made a number of findings and recommendations, including that “The SPLA Army to follow their constitutional mandate for the protection of civilians and their properties but not to cause destruction”.[[525]](#footnote-526) However, the Commission has received no information regarding steps taken by the Government to criminally investigate and prosecute those responsible for the events in Pajok.

 C. Wau, Western Bahr el Ghazal State, 2016 and 2017

 1. Background

400. Wau was the capital of Western Bahr el Ghazal State. However, under the Establishment Order No. 36/2015 of October 2015 (hereafter “Order 36/2015”) increasing the number of states from 10 to 28, it was made the capital of Wau state. Since the beginning of the conflict in South Sudan, it has been consistently under the control of the Government. However, the presence of other armed groups, sometimes identified as the SPLA-IO, in the areas to the south and west of Wau town, referred to by UNMISS as the Wau Triangle, has led to skirmishes and fighting between the SPLA and the SPLA-IO since late 2015.[[526]](#footnote-527) This has resulted in ongoing instability in the area.

401. Wau is an ethnically mixed town which includes the Fertit and Dinka communities who have a history of conflict stretching back to the struggle for South Sudanese independence.[[527]](#footnote-528) These tensions increased in 2012 when the then State Governor of Western Bahr el Ghazal, Brigadier General Rizik Zarkaria Hassan, transferred the headquarters of Wau county to Baggari which was perceived as a move to transfer land and power to the Dinka.[[528]](#footnote-529) The division of Western Bahr el Ghazal into two states under Order 36/2015, further exacerbated tensions.[[529]](#footnote-530)

402. In October 2015, the arrival in the area of armed Dinka cattle herders created tension with the existing farmers who were concerned by the “invasion” of their farmland and destruction of their crops.[[530]](#footnote-531) This led to localized armed incidents, which in turn caused the SPLA to intervene.[[531]](#footnote-532) This intervention was not seen as a neutral peacekeeping initiative by local inhabitants, but rather as a pro-Dinka action aimed at establishing Dinka hegemony in the Wau Triangle.[[532]](#footnote-533)

403. From November 2015, large scale recruitment into opposition groups was reported, and armed groups started attacking government forces in the Wau Triangle area.[[533]](#footnote-534)

404. In mid-December 2015, a new commander of the SPLA 5th Division Commander based in Wau, was appointed under the SPLA’s Sector 1.[[534]](#footnote-535)

405. Also in December 2015, additional, mostly Dinka SPLA soldiers and Mathiang Anyoor were deployed to Wau from the neighbouring states of Northern Bahr el-Ghazal and Warrap.[[535]](#footnote-536) This deployment coincided with an increase in attacks on Fertit villages in the Wau Triangle and on Fertit neighbourhoods of Wau town.[[536]](#footnote-537) A pattern developed in Wau town and the Wau Triangle of opposition forces ambushing SPLA forces and then SPLA forces retaliating for their losses against the civilian population which was perceived as supporting the opposition.[[537]](#footnote-538) The killing, rape, looting and burning of houses allegedly by SPLA soldiers based in the Wau Triangle led to thousands of displaced civilians.[[538]](#footnote-539) One witness from Bussere who was able to speak Dinka explained that:

[T]he SPLA since they talked to me, they also warned me ahead that tension will soon rise in our area. Since they were always looting and threatening the villagers, the people in our area started running away to Wau, including those villagers living in Bagarri, Tado, Ngisa, Berenge, Ngo Alima… People actually started leaving their dwellings since the presence of SPLA and militias in January 2016. When SPLA and militias were killing and started shooting people they were doing it sporadically and randomly that they were just shooting everyone.[[539]](#footnote-540)

406. Since December 2015, there have been a number of major outbreaks of violence against civilians in Wau town including 17‑18 February 2016, early April 2016, 24-25 June 2016, and 10 April 2017, in addition to the ongoing military skirmishes in the Wau Triangle.[[540]](#footnote-541)

407. From early February 2016, there were significant SPLA operations in the Wau Triangle and particularly along the Moi Moi-Bazia road, south of Wau town, to flush out rebels which resulted in significant displacement of the civilian population.[[541]](#footnote-542) Having been repulsed in their operations, and following an ambush on 17 February 2016, which resulted in the killing of two SPLA soldiers, on 17 and 18 February, the SPLA are reported to have attacked people in the neighbourhoods of Hai Falata, Hai Kalavario, and Lokoloko and killed at least a dozen civilians and looted in Wau town.[[542]](#footnote-543) This is another example of the pattern of the SPLA retaliating against the civilian population for its battlefield losses.

408. Witnesses told the Commission that in mid-April 2016, SPLA soldiers attacked civilians in the neighbourhoods of Lokoloko, Hai Kalavario, Baggari Jadid, and Hai Jezeera of Wau town.[[543]](#footnote-544) One Fertit witness from Lokoloko recounted how the soldiers were “accusing us of hiding some rebel-men in our house. They were pointing their weapons at us and shot us from behind as we ran away from them.”[[544]](#footnote-545) Another Fertit witness from Hai Kalavario, who was pregnant at the time of the attack, told the Commission how SPLA soldiers from the Dinka community took her husband away, never to be seen again, and then four SPLA soldiers raped her as the others looked on.[[545]](#footnote-546)

409. Two other witnesses told the Commission that they saw two brothers and a sister be killed by soldiers during an attack in the Baggari Jedid area of Wau town on 9 April 2016.[[546]](#footnote-547) The witnesses stated that “the SPLA soldiers were drinking local wine in our area at Baggari Jedid. When they were drunk already they started attacking our village by shooting indiscriminately to anyone and looting our properties. […] I know they were SPLA soldiers, the people who attacked us, because they were frequent in our area prior to the incident.”[[547]](#footnote-548) This incident was also referred to in the Report of the Investigation Committee established to look into the June 2016 events[[548]](#footnote-549) and the witnesses indicated that the police and the Governor of Wau State came to inquire into the incident;[[549]](#footnote-550) however, the witnesses reported that “they did not really do anything to stop the SPLA from attacking our village, threatening the civilians, randomly shooting at us, and even looting our food stuff.”[[550]](#footnote-551)

 2. Events of 24-25 June 2016 in Wau town

410. In the two weeks preceding the 24-25 June 2016 events, there had been escalating hostilities in Western Bahr el Ghazal. On 14-15 June 2016, an unknown armed group attacked SPLA and government offices in Raja town resulting in fighting with the SPLA.[[551]](#footnote-552) On 15 June 2016, fighting also broke out in Bazia, south of Wau, between the SPLA and the SPLA-IO, which allegedly resulted in the killing of SPLA soldiers and civilians.[[552]](#footnote-553) A number of SPLA soldiers from the 5th Division were also killed when ambushed along the Bazia-Wau road.[[553]](#footnote-554) During this period, there were a number of other ambushes resulting in the deaths of SPLA soldiers and a policeman, including in Bisselia and Moi Moi, as well as Jebel Rabah in Wau town.[[554]](#footnote-555) Indeed, the SPLA reported on 19 May 2016 that 22 SPLA soldiers had already been killed in the Wau area within the past few months.[[555]](#footnote-556) The events in Raja and Bazia forced the civil population to flee in droves with some people going to Wau and Aweil while others hid in the bush.[[556]](#footnote-557)

411. These incidents of fighting and ambushes resulting in the deaths of SPLA soldiers were assessed by both the Government’s Investigation Committee and UNMISS and found to have been the triggers for the massive attacks on civilians which took place on 24-25 June 2016 in Wau town which occurred in retaliation for the killings of the SPLA soldiers and a policeman.[[557]](#footnote-558) In the two weeks prior to the 24-25 June 2016 events, there was a build-up of additional SPLA forces in Wau town.[[558]](#footnote-559)

412. In the midst of this deteriorating security situation, on 24 June 2016, the Governor of Wau state, was dismissed from his post by Presidential Decree and replaced.[[559]](#footnote-560) This was reportedly due to an openly deteriorating relationship between the former Governor and the security organs including his public criticism of the newly appointed SPLA Commander, particularly in relation to the February 2016 attacks.[[560]](#footnote-561)

413. On 24 June 2016 at around 18:00, armed Dinka groups with small arms launched attacks from the eastern side of the Jur river on residents in the neighbourhoods of Hai Kosti, Hai Nazareth, and Bazia-Jedid along the south and south eastern parts of Wau town which have large Fertit populations.[[561]](#footnote-562) The police initially responded but SPLA and NSS forces became involved and took over. Severe fighting broke out between two “youth armed groups” and later government forces including SPLA got involved. An SPLA representative confirmed that the SPLA was conducting military operations in Wau town and attributed the fighting to a clash between armed youth groups and governmental forces, including the SPLA.[[562]](#footnote-563)Heavy fighting involving heavy calibre machine guns and mortars lasted into the night and the next day before the SPLA regained control of the town.[[563]](#footnote-564) The Police Commissioner, the Director of the NSS and the Mayor of Wau were notified of the attacks.[[564]](#footnote-565)

414. Witnesses told how they expected the NSS and SPLA forces to disarm and control to the attackers but that instead they joined and supported the armed Dinka youth and provided them with weapons.[[565]](#footnote-566) In particular, one witness recounted how a number of Fertit people had gathered in a cemetery near the Catholic University when a group of 300-400 Dinka youth gathered armed principally with spears and pangas. A vehicle carrying what the witness believed to be NSS personnel arrived and guns and ammunition were distributed to the Dinka youth. The witness saw a number of SPLA soldiers also approaching the Dinka youth; however, when they reached the group, they turned and started firing in the direction of the Fertit youth who were hiding and running away. The men whom the witness believed to be NSS also started shooting at those who were running away.[[566]](#footnote-567)

415. Indeed, multiple witnesses recounted SPLA soldiers intentionally shooting at and killing civilians.[[567]](#footnote-568) One witness from the Nazareth neighbourhood told of SPLA soldiers killing his two brothers as well as a neighbour who “was brushing his teeth outside their house, he was suddenly shot and fell down. Then one soldier went close to him and further fire[d] a single shot to him probably to make sure he was dead.”[[568]](#footnote-569) He explained that the group of soldiers comprised seven Military Intelligence, three Military Police, and six ordinary SPLA soldiers and was able to specifically name two Military Intelligence officers who participated in killing his brothers and his neighbour.[[569]](#footnote-570)

416. Another witness from the Lokoloko neighbourhood recounted how her husband, a pastor, was shot in the chest by an SPLA soldier in front of her and her two children, aged two years and one and a half months, after the soldiers had stolen all their money.[[570]](#footnote-571) Multiple witnesses also told of SPLA soldiers killing civilians as they fled toward the UNMISS base for protection.[[571]](#footnote-572)

417. Between 39 and 69 bodies were collected and recorded by the police as having been killed, including at least fifteen women and ten children.[[572]](#footnote-573) Looting and burning of huts by SPLA soldiers was also reported.[[573]](#footnote-574) The Government’s Investigation Committee found that over 100 shops had been looted.[[574]](#footnote-575)

418. The fighting and attacks on civilians on 24-25 June 2016 resulted in massive displacement of the population with between 26,000 and 36,000 people taking refuge in the UNMISS PoC, the Catholic Cathedral, the Nazareth, Lokoloko, and St. Joseph Churches, and the South Sudan Red Cross compounds by 29 June 2016.[[575]](#footnote-576)

 3. Events of April 2017 in Wau town

419. Regular armed incidents and clashes continued to occur in the area around Wau after the June 2016 events. The area around Baggari was particularly volatile. In late March 2017, the area was under control of the SPLA-IO. On 24 March 2017, there was an SPLA-IO attack on the SPLA outpost at Natabu, seven kilometers south-west of Wau, which injured four SPLA soldiers and was only repelled when reinforcements arrived from the 5th Division Headquarters in Wau.[[576]](#footnote-577)

420. On 2-5 April 2017, it was reported that there was a significant clash between unknown armed men and the SPLA in the vicinity of Mapel, 30 kilometers south of Wau, which resulted in the killing of one SPLA officer and lead to a deterioration of the security situation on the Wau-Tonj road.[[577]](#footnote-578) In the course of the fighting in Mapel, six Luo civilians were reportedly killed by SPLA soldiers who suspected them of sympathizing with the armed group and as a result, all Luo civilians had fled the Mapel area for fear of being similarly suspected.[[578]](#footnote-579)

421. A source in Wau reported on 5 April that “[t]he situation in [Western Bahr el Ghazal] is deteriorating day by day. The skirmishes between the government forces, as well as [unidentified armed groups] are getting closer to the town.”[[579]](#footnote-580)

422. There was a considerable reinforcement of SPLA forces in Wau during this period. There were reports of an impending major offensive for which the SPLA was “waiting for reinforcement from Juba” but which would be launched before the declaration of the unilateral ceasefire by the President, which was expected imminently.[[580]](#footnote-581) On 7 April 2017, five SPLA troop carrying vehicles were observed transporting troops toward the Griniti barracks, the headquarters of SPLA 5th Division.[[581]](#footnote-582) Later the same day, a massive mobilization of troops with artillery guns and tanks moving toward the outskirts of town was also reported, which an SPLA official stated were reinforcements for Natabu, south of Wau.[[582]](#footnote-583)

423. On 8 April 2017, the SPLA mounted a new offensive against SPLA-IO forces who were in control of the Bazia area to the south and west of Wau.[[583]](#footnote-584) A large SPLA convoy consisting of six Land Cruisers and four trucks fully loaded with armed troops was seen leaving Wau heading south on the Baggari road. Subsequently, the sounds of battle were heard in the direction of Baggari/Bringi, south of Wau.[[584]](#footnote-585)

424. In the course of this operation, at around 17:00 on 9 April 2017, a convoy of SPLA vehicles was caught in an SPLA-IO ambush near Karukia, ten kilometres south of Wau on the road to Bazia. Two high-ranking SPLA officers, Brigadier General Peter Par Jiek (Chief of Operations, 5th Division) and Major Bol Chut Dhoal (Chief of Logistics, 5th Division) and three other SPLA soldiers were killed in the ambush. Maj. Dhoal, a Dinka, was the brother of the Governor of Rumbek in neighbouring Lakes State.[[585]](#footnote-586)

425. This incident appears to have been the specific catalyst for the subsequent outbreak of violence against non-Dinka civilians in Wau town, which began, overnight on 9-10 April 2017.[[586]](#footnote-587) This was confirmed by an SPLA officer at the time.[[587]](#footnote-588) Indeed, the Commission received information that the Commander of 5th Division, “has not been in a very good mood since the loss of his officers on Sunday [9 April 2017].”[[588]](#footnote-589) This is consistent with the apparent pattern in the Wau Triangle area of opposition forces ambushing SPLA forces and then SPLA forces attacking the civilian population in retaliation for the deaths of the SPLA soldiers.

426. Starting at about 06:00 on 10 April 2017, there was heavy shooting in the south and south-west areas of Wau town and SPLA soldiers and groups of armed men allegedly launched attacks on civilians in the Nazareth, Hai Kosti, Baggari Jedid, Aweil Jedid, and Hai Bafra neighbourhoods of Wau town.[[589]](#footnote-590) Witnesses recounted how the attackers went from house to house targeting Luo and Fertit communities and asking people’s ethnicity or checking whether they could speak Dinka prior to shooting them.[[590]](#footnote-591) One witness from the Zande community in Nazareth told how soldiers surrounded their house and asked for her husband’s identification before shooting him as she stood next to him.[[591]](#footnote-592)

427. Between 24 and 29 deaths were reported to the police as a result of the violence[[592]](#footnote-593) and based on multiple testimonies, the almost exclusively male victims appear to have been targeted on the basis of their Lou and Fertit ethnicity.[[593]](#footnote-594)

428. The International Organization for Migration (IOM) estimated that between 22,000 and 25,000 people were displaced from their homes in Wau town as a result of the violence on 10 April 2017. This included more than 16,400 new arrivals at the UNMISS PoC site, bringing the site’s total population to 41,700 which was already the most crowded PoC site in South Sudan, and an estimated 5,000-7,000 new arrivals to the Cathedral.[[594]](#footnote-595) All the IDP sites reported a large influx of IDPs during the night of 10/11 April.[[595]](#footnote-596)

429. Also on 10 April 2017, two national WFP staff members were arrested and detained by NSS personnel while driving a WFP vehicle in Wau. One of the staff members was held until 2 May 2017.[[596]](#footnote-597)

430. An UNMISS patrol was prevented from following their normal patrol route through Wau town by NSS checkpoints on 10 April.[[597]](#footnote-598)

431. On 13 April, a reinforced SPLA unit dug-in at the village of Natabu was observed. The reinforced SPLA presence was interpreted as potentially being “in anticipation of a reprisal attack” by the SPLA-IO.[[598]](#footnote-599)

 4. Events of 16 April to October 2017 in Bazia / Taban area

432. Following the violence in Wau town on 10 April 2017, the SPLA redeployed troops to launch an offensive against SPLA-IO forces south of Wau toward Bazia.

433. On 14 April 2017, the SPLA Chief of Staff, was reportedly in Wau town, having apparently arrived mid-afternoon by military helicopter. A surveillance plane was also seen refuelling at Wau airport and this was interpreted by observers as probably performing reconnaissance for the increased SPLA deployments south of Wau town in the Natabu area.[[599]](#footnote-600)

434. An Ilyushin transport aircraft landed at Wau airport on 19 April 2017 delivering armed NSS personnel who were subsequently deployed onto the streets around the town.[[600]](#footnote-601) As well as providing additional security, the arrival of NSS allowed for the withdrawal of SPLA troops from Wau town and freed them to be redeployed for combat operations south of town. Two APCs, five pick-up vehicles with mounted machine guns, and around 50 soldiers were reportedly seen by local civilians moving towards Bazia in the morning hours on 21 April. Sources also observed troop movements along the Wau-Bussere and Wau-Baggari roads south of Wau on 26 April[[601]](#footnote-602) and there were reports on 12 May of recent incidents of violence in Kuajena, Raja, and the “Triangle area” (Bazia, Baggari, Bisselia).[[602]](#footnote-603)

435. Between mid-April and June 2017, there were a number of clashes between the SPLA and the SPLA-IO in the Bazia area. Bazia was held by the SPLA-IO, then captured by the SPLA who held it for two months before withdrawing in June to Taban, mid-way between Wau and Bazia. Since then, the area south of Taban including Bazia has been once again held by the SPLA-IO.[[603]](#footnote-604)

436. The Taban checkpoint was reportedly occupied by a company of 150-200 SPLA soldiers, well equipped including with rocket launchers, heavy mortars, and military vehicles including APCs, under the command of a senior SPLA officer.[[604]](#footnote-605) The Commander of SPLA 5th Division, confirmed the Colonel’s command to the Commission in October 2017, and stated that there was a battalion of 300 SPLA soldiers in the Taban/Bazia area with tanks and artillery.[[605]](#footnote-606)

437. The Commission also received information that a child, about fifteen years old, was observed at the Taban SPLA checkpoint[[606]](#footnote-607) and that children were among the SPLA near Bussere.[[607]](#footnote-608)

438. In June, the security situation south of Wau reportedly remained fragile with active engagement between SPLA and unidentified armed groups in general area of Bazia.[[608]](#footnote-609) On 30 June, Baggari, south-west of Wau, was observed to be totally abandoned (deserted schools, police stations and houses), reportedly due to lack of security.[[609]](#footnote-610)

439. A woman who fled Bazia on 8 August 2017 because it had been attacked by the SPLA, stated that there had been several civilian casualties. She confirmed that the attack was carried out by SPLA soldiers and not by unidentified armed groups.[[610]](#footnote-611)

440. A witness recounted to the Commission having been displaced in June 2016 from Wau to Gedi, on the road to Bussere; however, the SPLA soldiers arrived there in May 2017 and they looted whatever they could. The witness and her family were therefore once again displaced to Moi Moi where they were attacked by soldiers in early August 2017 during which her husband was shot and killed.[[611]](#footnote-612) She recounted:

We reached Moimoi around 19:00 where some soldiers saw us and started shooting. We did not even see the soldiers – they were hiding. The first sign was the shooting. There were many of us trying to escape – no idea how many people were shot and killed. Only when we reached Wau, one person called me and told me that my husband [had] been shot and killed. I tried to call on his phone, but someone replied in Dinka.[[612]](#footnote-613)

441. Twenty-eight households, consisting of 119 individual IDPs, arrived at the Nazareth IDP site in Wau from the Bazia area in the first two weeks of August.[[613]](#footnote-614) In August and September 2017, an additional 499 individuals had reportedly arrived at the Hai Masna IDP site in in Wau from the villages of Akanda and Gedi in Bazia County. The new arrivals reportedly cited insecurity and hunger for leaving their villages.[[614]](#footnote-615)

442. Skirmishes between the SPLA and the SPLA-IO (RM) continued in the Taban area into late September 2017 and no civilians were observed remaining in the area.[[615]](#footnote-616)

443. By December 2017, Bazia was largely deserted and the school, health clinic, and public administration buildings had reportedly been destroyed by the SPLA during the clashes, while water points were reportedly destroyed when the SPLA left the town in June 2017. As a result neither the school nor the clinic are currently functional and those remaining in the village lack food, water, medicine and other basic requirements. One hundred people were reportedly killed and eight women were raped, including girls under the age of 10, during clashes on 16 April 2017. Houses in Taban and Bazia and along the road in between were burnt. By December 2017, NGOs had still not been to the Bazia area to provide the humanitarian assistance of which the civilians were in dire need.[[616]](#footnote-617)

 5. Violations and Alleged Crimes

 a) Killings, Rapes, Looting and Pillage in Wau town on 17-18 February and mid-April 2016 and Killings, Rapes, Looting and Pillage, and Attacks on Civilian Objects from 16 April to October 2017

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

445. In this regard, it notes that monitoring of the situation was hampered as the SPLA denied access to the Bazia/Taban area during the fighting. A United Nations convoy was prevented from reaching Bazia on 15 June 2017, due to fighting between the SPLA and an unidentified armed group.[[617]](#footnote-618) Indeed, UNMISS and CTSAMM only gained access to the Bazia area in December 2017.

 b) Killings, Destruction of houses, Looting and Pillage in Wau town on 24-25 June 2016 and Killings in Wau town on 10 April 2017

446. On the basis of the evidence collected as describe above, the Commission finds reasonable grounds to believe that SPLA soldiers killed civilians, and destroyed and looted property in Wau town on 24-25 June 2016 and killed civilians in Wau town on 10 April 2017.

447. The Commission further finds reasonable grounds to believe NSS personnel arbitrarily detained a United Nations staff member on 10 April 2017 for almost a month.

448. As these acts were committed by state agents, they amount to serious violations of human rights law under the Transitional Constitution of the Republic of South Sudan, 2011, particularly the right to life and human dignity (Article 11), in relation to events of 24-25 June 2016, the right to property (Article 28), and in relation to the detention of United Nations personnel on 10 April 2017, the right to personal liberty (Article 12).

449. These acts are crimes under South Sudan’s Penal Code 2008, including murder (Article 206), and, in relation to the events of 24-25 June 2016, theft (Article 293) and mischief with intent to destroy house (Article 324). Moreover, the Government’s armed forces are also subject to the provisions of the SPLA Act (2009) and the SPLA’s Rules and Regulations, particularly Section 57 which establishes the offences of destroying and damaging property, plunder and committing any offence against the property or person of any inhabitant or resident of a country in which he or she is serving.

450. Furthermore, the Commission finds reasonable grounds to believe that there was a nexus between the commission of these crimes and the ongoing non-international armed conflict ongoing in South Sudan at the time in light of the SPLA committing them in retaliation for battle field losses and ambushes. As such, they are violations of international humanitarian law under Common Article 3 to the Geneva Conventions and Additional Protocol II to which South Sudan is a party and which it has incorporated into its law with its Geneva Convention Act (2012). They may also amount to war crimes under Article 4(a) (Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment) and, in relation to the events of 24-25 June 2016, 4(f) (pillage) of the Draft Statute of the Hybrid Court for South Sudan.

451. The Commission also finds reasonable grounds to believe that the attacks on civilians of 24‑25 June 2017 and 10 April 2017 in Wau town were part of a widespread and systematic attack against a civilian population. Both attacks covered a number of neighbourhoods in the southern and western parts of Wau town, resulting in significant numbers of deaths and, in the case of the 24-25 June 2016 attacks, looted and destroyed properties. Furthermore, the retaliatory nature of the attack following the ambush killings of SPLA soldiers triggering the attacks is a notable pattern in the Wau Triangle area. Additionally, the door-to-door nature of the 10 April 2017 attacks identifying non-Dinka victims appears to have been systematic.

452. As such, these crimes may also amount to crimes against humanity. In this regard, the Commission notes that in addition to other crimes against humanity which may be established, including murder, the targeted nature of the attacks predominantly against civilians from the Fertit community on the basis of their perceived support for the opposition may amount to the crime of persecution under Article 3(h) of the Draft Statue of the Hybrid Court for South Sudan.

 6. Responsibility for Violations and Alleged Crimes

 a) Command responsibility

453. From mid-December 2015 until August 2017, the SPLA 5th Division Commander deployed to operate in Wau was under the command of the SPLA’s Sector 1.[[618]](#footnote-619)

* 24-25 June 2016

454. At the time the alleged crimes were committed on 24-25 June 2016, there are reasonable grounds to believe that the SPLA’s military hierarchy functioned properly and that senior SPLA officers exercised effective control over the SPLA 5th Division troops deployed in Wau town. In this regard, the Commission notes that senior SPLA officers were involved in providing clearances for road missions and flight safety assurances issued in the days immediately before and after the events of 24 and 25 June 2016.[[619]](#footnote-620) Furthermore, SPLA soldiers manning checkpoints in the Wau area would reportedly request approval from the 5th Division headquarters before letting vehicles of pass.[[620]](#footnote-621) This shows troops were in regular contact with headquarters of 5th Division and acting pursuant to their orders.

455. The Commission also notes that in the context of a functioning military hierarchy there are reasonable grounds to believe that the SPLA commanders knew or ought to have known of the likelihood of their soldiers retaliating for the killing of their comrades. In this regard, the Commission notes that on 19 May 2016, the Deputy Commander of 5th Division warned that some aggrieved SPLA soldiers might mobilise and retaliate against the community in Wau town where a SPLA soldier was killed and his body mutilated, and yet took no action to prevent such actions.[[621]](#footnote-622) This illustrates knowledge and awareness of the likelihood of soldiers retaliating and engages the duty to prevent and punish. The fact that the pattern of attacking civilians in retaliation for soldiers killed persisted in Wau town and provides reasonable grounds for believing that the SPLA Commanders in Wau did not take reasonable measures to prevent the recurrence of such crimes, despite being aware that this could happen. Further, as discussed below, the Commission has received no evidence that the perpetrators of the June 2016 events were punished.

* 10 April 2017

456. At the time the alleged crimes were committed on 10 April 2017, there are reasonable grounds to believe that throughout this period, the SPLA’s military hierarchy functioned properly and exercised effective control over the 5th Division troops deployed in Wau town. As discussed above, the SPLA 5th Division was engaged in organized operations at the time of the April 2017 events. Additionally, the commanders of the SPLA 5th Division were engaged in the area and regularly approved clearances for road missions.[[622]](#footnote-623) The commanders gave no indication that they lacked control over their troops, but rather interacted at several occasions with international observers, briefing them on the activities of armed elements and explaining the deployment of the SPLA.

 b) State responsibility

457. As the SPLA are government forces, their acts are attributable to the Government of South Sudan and constitute violations of the Republic of South Sudan’s international obligations under human rights law and international humanitarian law. Furthermore, the Government has a duty to investigate and prosecute those suspected of committing these violations of international human rights and international humanitarian law, as well as the other criminal acts committed in Wau.

* 24-25 June 2016

458. The Commission notes that, in relation to the 24-25 June 2016 events, an Investigation Committee was appointed by President Salva Kiir pursuant to Republican Order No. 15/2016 on 28 June 2016 in accordance with the Investigation Committees Act of 2006.[[623]](#footnote-624) The Committee duly undertook investigations and filed its report on 1 August 2016. The Report made multiple findings and recommendations, including recommending ordering the SPLA Command to apprehend and present to military justice those soldiers accused of committing atrocities against civilians or looting property and undertaking a number of preventative steps in relation to the security organs to prevent future occurrences.[[624]](#footnote-625)

459. The Commission observes, however, that while the investigation is a welcome measure, which was also undertaken in relation to the events in February 2016 in Wau town, investigations undertaken pursuant to the Investigations Committees Act of 2006 do not have the power to order criminal prosecutions, but only to undertake investigations, make findings, and make recommendations.[[625]](#footnote-626) Further, such investigations are specifically prohibited from making determinations of criminal or civil liability.[[626]](#footnote-627) When the Commission met with the Wau Police Commissioner in October 2017, he indicated that unfortunately these measures could not be implemented due to police resource limitations.[[627]](#footnote-628) The fact that further, similar events have recurred since indicates that the Government has not done enough to punish these violations or to prevent such violations in the future.

460. Furthermore, the Commission was informed by the commander of SPLA 5th Division who took over in August 2017, that some SPLA soldiers were arrested for killings during the June 2016 crisis and handed over to the Attorney General for further action in the civilian criminal justice system.[[628]](#footnote-629) Despite a formal request by the Commission for details of these prosecutions sent on 30 October 2017, it received no response.[[629]](#footnote-630) In this regard, the Commission notes that two soldiers of SPLA 5th Division were court martialled and sentenced to death on 17 July 2016 in relation to involvement in the killings of civilians in Wau town in preceding months; however, while this may be a signal that that the SPLA was trying to improve discipline and prevent atrocities, it should also be noted that this was the first such execution in Western Bahr el Ghazal in years.[[630]](#footnote-631)

* 10 April 2017

461. The Commission notes that the Governor of Wau established a fact-finding committee into the events of 10 April 2017 pursuant to Order No. 8 of 12 April 2017 and thanks the Governor for providing the Commission with the Committee’s notes setting out its findings.[[631]](#footnote-632) The Committee was tasked with investigating what happened, who the perpetrators were, and the reasons for the attack.[[632]](#footnote-633)

462. The Police Commissioner of Wau informed the Commission in October 2017 that fourteen cases of killings had been opened for investigation in relation to the April 2017 crisis and that the investigations were still open. He was not able to provide the Commission with an update on the cases but indicated that such information would be provided if a formal request were submitted.[[633]](#footnote-634) The Commission submitted a formal request on 30 October 2017 but at the time of writing had not yet received a response.[[634]](#footnote-635)

 D. West Bank Offensive, Upper Nile State, 2017

 1. Background

463. Historical land disputes between the Shilluk and the Dinka Padang over claims to Malakal and other lands on the East Bank of the river Nile evolved into a significant dispute from the 1980s onwards.[[635]](#footnote-636) Nonetheless, the grievances were put aside in the initial years of the civil war.[[636]](#footnote-637) From June 2013 to April 2015, the Shilluk Agwelek forces led by Major General Johnson Olony, a former leader of the SSDM/A, were aligned with the SPLA. Shilluk soldiers were also part of the SPLA targeting of Nuer civilians when Malakal repeatedly changed hands from December 2013 to April 2014, while Shilluk residents of the town were conversely targeted by SPLA-IO forces.[[637]](#footnote-638)

464. Johnson Olony defected to the SPLA-IO in April/May 2015 which brought the long-standing grievances back to the surface and the fighting that followed led to significant displacement of both Shilluk and Dinka, including to the UNMISS PoC site.[[638]](#footnote-639)

465. When the ARCSS was signed in August 2015, the Government held Malakal and virtually the entire East Bank of the White Nile, while the SPLA-IO/Agwelek controlled the West Bank of the river with General Olony designated as the SPLA-IO Special Division Commander for Upper Nile. As the OHCHR Assessment Mission has highlighted, in the course of 2015, Shilluk and Dinka communities targeted attacks against each other based on their ethnicity and presumed allegiances.[[639]](#footnote-640)

466. The ethnic divide was further exacerbated by Order No. 36/2015 which divided Upper Nile State into three: Eastern Nile State (predominantly Dinka), Western Nile (predominantly Shilluk, later renamed Fashoda state), and Latjoor (predominantly Nuer). The contested parts of the East Bank were included in the Eastern Nile state, which had Malakal as its capital. The largely-Shilluk Malakal County was also included in the Eastern Nile state.

467. On 14 January 2017, President Kiir issued another decree creating two additional states in Upper Nile, by dividing Eastern Nile State into Central Upper Nile (with Malakal as its capital) and Northern Upper Nile (Renk).[[640]](#footnote-641) Another largely Shilluk-populated county – Panyinkang – was added to the Dinka dominated Central Upper Nile.[[641]](#footnote-642) These changes sparked further unrest in both the Dinka and Shilluk communities.

 2. The West Bank Offensive in late January-early February 2017

468. In late January 2017, fighting broke out on the West Bank near Malakal. By early February, the SPLA launched a coordinated offensive to capture the Shilluk-populated Wau Shilluk and surrounding areas on the west bank of the White Nile, approximately ten kilometres north of Malakal.

469. The fighting began early on 25 January 2017 when the SPLA started firing and shelling on the villages of Awarjok and Ditang on the West Bank opposite Malakal airport.[[642]](#footnote-643) Shelling and rapid fire, including heavy machine gun exchanges, took place over the next few days in the areas south of Wau Shilluk.[[643]](#footnote-644)

470. The village of Wau Shilluk hosted approximately 23,000 Shilluk IDPs in an informal settlement site who had fled the violence in Malakal and surrounding areas in late 2013-early 2014.[[644]](#footnote-645) Most of this population reportedly fled to nearby bush when the shelling began.[[645]](#footnote-646) Nonetheless, a 62 year-old witness from Wau Shilluk told the Commission that although they could hear the fighting and shelling, they “did not expect it to reach our area because shooting seemed to be concentrating only between SPLA-IO and the SPLA government-side”.[[646]](#footnote-647)

471. Heavy fighting continued on 27-28 January 2017. With the SPLA still holding their positions on both the eastern and western bank, the SPLA-IO/Agwelek began to retreat northwards and the shelling began to gradually advance towards Wau Shilluk. On 28 January, the SPLA fired at least 32 shells from the East Bank towards Wau Shilluk, using mortars and reportedly, multi-barreled rocket launchers.[[647]](#footnote-648)

472. Local sources told CTSAMM that SPLA shelling of Wau Shilluk caused civilian casualties.[[648]](#footnote-649) Witness estimates ranged from five to seven fatalities.[[649]](#footnote-650) According to Médecins sans frontières (MSF) which operated a local health facility, the town’s market was hit by mortar fire on the same day, resulting in the rest of the town’s population fleeing.[[650]](#footnote-651) At least two civilians were reported killed and another four injured by a mortar shell that landed in Ogod.[[651]](#footnote-652)

473. Whether the fighting in January was planned and who initiated it, remains contested.[[652]](#footnote-653) However, by 1 February 2017, the SPLA had brought in significant reinforcements: reportedly 3,000 SPLA soldiers from the Bahr El Ghazal and Equatoria regions in addition to huge quantities of combat supplies.[[653]](#footnote-654)

474. After a four-day lull in the fighting, heavy firing and shelling resumed early on 3 February 2017 around Makal Shilluk Island and Ogod, to the south of Wau Shilluk. A number of shells also appear to have hit Wau Shilluk that afternoon. A witness told the Commission that approximately ten shells fell in the village that day from the south and the east-across the river.[[654]](#footnote-655) She told investigators that she fled into the bush, along with most of the IDPs but when she returned later in the evening, she learnt that three people had been killed. At least two other witnesses also referred to three civilian deaths.[[655]](#footnote-656)

475. The shelling of Wau Shilluk took place despite the fact that there were no SPLA-IO/Agwelek forces there at the time. A Shilluk man recalls three shells falling close to his house in the village: “I’m not sure about why the shells were fired at those area – the Agwelek were on the other side of the water”.[[656]](#footnote-657) He said that although there were normally about 200 SPLA-IO/Agwelek soldiers stationed there, at that time most of the fighters and big weapons were near the Bokenj area, a few kilometers to the south, where the fighting was taking place.[[657]](#footnote-658) The absence of soldiers is corroborated by another woman, a then resident of the Dikich area, across the water, who said that there were no SPLA-IO/Agwelek there at that time.[[658]](#footnote-659)

476. By 16:00 on 3 February 2017, Wau Shilluk was reportedly largely empty, except for those who were unable to flee due to age or infirmity.[[659]](#footnote-660) Some had run into the bush while others had started to flee northwards, along with residents of other villages to the south of Wau Shilluk, who were also passing through. Amongst them was a 63 year-old from Pamat village, who had fled his village when he saw the SPLA-IO soldiers retreating, and survived the shelling in Ogod and Wau Shilluk while on his way to Fathau.[[660]](#footnote-661) Another witness also said that he saw SPLA soldiers arrive at Wau Shilluk and shoot into the village later that evening, before they moved back towards Ogod.[[661]](#footnote-662)

477. In addition to the shelling, there were a number of reports of bombing by SPLA aircraft. A local NGO claimed that an aircraft bombed Wau Shilluk on the night of 27 January 2017 killing at least five people, and again on 29 January 2017.[[662]](#footnote-663) An SPLA-IO spokesman claimed 25 civilians were killed.[[663]](#footnote-664) The National Democratic Movement spokesman also claimed that an Antonov plane dropped bombs “on the civil population in Choll (Shilluk) villages of Pamath, Ogod and Wau. Large number of civilians were wounded, some of them very seriously.”[[664]](#footnote-665)

478. Neither the bombing of Wau Shilluk village nor the casualty claims could be corroborated by the Commission, but there are reasonable grounds to believe that an aircraft was used to bomb in the area nearby. The Commission received credible information that a fixed-wing aircraft was seen flying towards Wau Shilluk at 20:37 on 27 January 2017, after which two loud explosions were heard from the same direction.[[665]](#footnote-666) The Commission also received information that the SPLA had deployed an Antonov aircraft that evening, while local sources reported that an Antonov dropped two bombs on the West Bank between Pamat and Ogod.[[666]](#footnote-667) This information is also corroborated by a resident of Pamat who told the Commission:

That night, there were bombs in the air. It was around 19:40 and dark, but we could see the light and hear the sounds of the bomb. It was an Antonov – not a helicopter. It dropped three bombs, near the streams near Pamat. No one was injured, since it was a marsh-swamp area.[[667]](#footnote-668)

479. Witnesses from the nearby village of Ogod also told Amnesty International that an airplane dropped several bombs on the village in late January.[[668]](#footnote-669)

480. There was more heavy firing and shelling the next day as the SPLA ground offensive neared Wau Shilluk. Virtually all the remaining residents fled northwards. A witness who had returned from the bush the first day and stayed in the village overnight to collect the family’s belongings, fled with her husband and eight children as the shelling started.[[669]](#footnote-670) Another witness, told the Commission:

The next day many Agwelek were running to Wau. The people started running away. The Agwelek were also telling people to move away because the SPLA was advancing. I had heard that the SPLA had reached Ogod… While the SPLA was advancing towards Wau, there was shelling from across the river – there were three shells fired. One was near the market, two on the other side near the forest, beyond the village area.[[670]](#footnote-671)

481. The few civilian residents remaining in Wau Shilluk when the SPLA ground offensive reached the village recounted that the soldiers shot civilians as they fled. A 65 year-old man who was in the village when the SPLA arrived, told the Commission that there was a convoy of about twenty different vehicles including some with “big barreled weapons” (tanks). Before he ran and hid in a ditch, he saw the soldiers firing rifles at the remaining villagers: “we had no armies or weapons to fight with them – so why attack us and shoot?”[[671]](#footnote-672) A witness who also saw “military vehicles with huge weapons mounted on top” said that SPLA soldiers on foot were aiming their rifles at people and shooting at them as they were fleeing.[[672]](#footnote-673)

482. The villagers who remained witnessed SPLA soldiers burning and looting houses. Amongst those who stayed behind and hid was an 85 year-old man who told the Commission: “the soldiers were shooting their weapons to the villagers when they arrived.” He saw that:

The SPLA that came on foot created a line formation before firing their Kalash[nikov rifles] to the scared villagers and then to all houses, NGO offices and other infrastructure in the village. When the villagers were gone, they looted the properties in some of the houses including the humanitarian hubs. They took and loaded to their trucks all the goods they could take, including some of our cattle, goats, sheep and chickens we raised. Then they burned most of the houses of our village before they left.[[673]](#footnote-674)

483. Another witness was a 70 year-old man who was left behind by his family because he was elderly and unable to run. He said that the soldiers arrived at around 15:00 and started burning the tukuls:

I sensed there was a fire and come outside. The soldiers saw me and spared my tukul. I saw soldiers walking around and setting fire to tukuls. They took over the village and they are still there – as if they own it.[[674]](#footnote-675)

484. Amnesty International documented a number instances where older residents were burned to death in their tukuls.[[675]](#footnote-676)

485. Civilian and humanitarian objects including schools, churches, medical clinics and the market were damaged or destroyed in the course of the offensive on Wau Shilluk. Commission investigators met a 62 year-old man during their mission to Wau Shilluk in November 2017. He said that when the attack happened:

Everything that was built in our area were destroyed. Schools, churches, houses, humanitarian and NGO offices… since the SPLA soldiers that came to our village were shooting at it, if not intentionally demolished through burning. The schools were not burned but you can see that that there are a lot of bullet holes in the walls.[[676]](#footnote-677)

486. This is corroborated by testimony of two other witnesses. The two men, who had been held by the SPLA for four days in a local school before being brought to Malakal, said that the SPLA had been conducting house-to-house searches, looting, and setting tukuls on fire. They confirmed that the entire market area, NGO compound area and two main health facilities had been looted and burnt, along with several tukuls and shelters.[[677]](#footnote-678) A thirty-bed medical facility operated by MSF was ransacked and “all medicines including life-saving drugs and essential supplies” were looted.[[678]](#footnote-679)

487. The widespread burning of Wau Shilluk is visible in satellite images taken before and after the offensive and is consistent with intentional fires rather than accidental fires caused by shelling.[[679]](#footnote-680) CTSAMM also reported:

There is compelling evidence from a range of witnesses that the dwellings were set on fire deliberately by Government forces. The overhead imagery and photographs taken on the ground also indicate that specific areas and buildings in Wau-Shilluk have been targeted rather than destroyed [in] an out-of-control fire.[[680]](#footnote-681)

488. The looting and burning of Wau Shilluk was also noted by a CTSAMM visit on 3 March 2017.[[681]](#footnote-682) An assessment by a humanitarian organization confirmed that all humanitarian offices in Wau Shilluk were vandalized and looted.[[682]](#footnote-683)

489. A similar pattern of destruction and looting also is evident in other villages. A resident of Padit told the Commission that when he returned to Padit in April, houses, including his own, had been burnt and all property including sorghum and cattle were stolen.[[683]](#footnote-684) An elder from Fathau, similarly found his whole village, including his house, burnt and no food remaining.[[684]](#footnote-685) Their testimony is corroborated by a woman who fled southwards from Fashoda County to Malakal PoC crossing on the way the burnt villages of Fathau, Both, Padit.[[685]](#footnote-686)

490. Widespread looting by SPLA soldiers and civilians was also observed. One witness, an 82 year-old man who stayed in Wau Shilluk told the Commission that a few days after the attack, a group of Dinka-Akoka people arrived by boat and took all the remaining possessions in the village, including animals and livestock.[[686]](#footnote-687) The Commission has received information and seen photographs of an unusually large motorised boat (estimated 40m long) carrying approximately 135 civilian passengers and five uniformed and armed SPLA soldiers from Wau Shilluk fully-loaded with building/ household items. Two further boats carrying 40-45 SPLA soldiers each were seen later in the day also carrying similar goods “likely to have been looted from Wau Shilluk and which the soldiers are taking back to their cantonments for their own use”.[[687]](#footnote-688) Similarly, boats laden with household items carrying approximately 80 SPLA soldiers and another carrying 20 soldiers were seen on 16 February.[[688]](#footnote-689)

491. The SPLA-IO forces appear to have attempted a counter-offensive to retake Wau Shilluk on 9 February but were beaten back after heavy fighting, including at least 80 shells fired at Wau Shilluk from an SPLA base across the river, north of Malakal Airport.[[689]](#footnote-690) Around the same time, fighting also took place in Wunkur, to the southeast, Owachi, to the south, and Kaka, to the north, of Wau Shilluk leaving little doubt that regardless of why it began, this was now a coordinated SPLA offensive to establish control throughout the West Bank of the Nile in the (former) Upper Nile state.[[690]](#footnote-691)

492. Although MSF was allowed access to Wau Shilluk on two occasions to facilitate movement of elderly residents left behind by their fleeing families, access to the area for UNMISS, CTSAMM and NGOs was denied by the SPLA in the aftermath of the fighting. UNMISS requests to visit – including by the Special Representative of the Secretary General – were denied by the SPLA on 16 February 2017,[[691]](#footnote-692) and on 2 March.[[692]](#footnote-693) CTSAMM were also reportedly “persistently obstructed” from visiting the town.[[693]](#footnote-694) The first CTSAMM visit to Wau Shilluk took place on 3 March 2017 approximately a one month after it had been captured by the SPLA; at that time the IDP camps were cleared.[[694]](#footnote-695) A scheduled visit to Wau Shilluk by fifteen NGOs on 23 March was also cancelled after the SPLA reported a clash with SPLA-IO forces that morning.[[695]](#footnote-696) Another United Nations mission to Wau Shilluk on 28 March was blocked by SPLA soldiers at Ogod.[[696]](#footnote-697) The persistent limitations on access to the area by the SPLA, raises suspicion that the delayed access was to allow for removal of incriminating material.

493. During this period, Government aircraft from Juba began bringing largely-Dinka IDPs from Central and Eastern Equatoria to Malakal. Three flights on 9-10 February brought the first 225 IDPs. According to a Government official they were part of what would be a total of 15,000 IDPs to be resettled in the region.[[697]](#footnote-698) Further flights on 14-16 2017 February increased the number of IDPs to approximately 2,000. Most of these IDPs were reported to be resettled in and around Malakal.[[698]](#footnote-699)

494. The SPLA offensive continued to push north throughout early February 2017. Many of the IDPs from the Wau Shilluk region had initially fled north to Padit, Fathau, Lul and Kodok and the surrounding areas. When SPLA started shelling these areas from across the river at Akoka in early February, many continued northwards to Aburoc.[[699]](#footnote-700) By 10 February 2017, an estimated 13,000 IDPs had arrived in Aburoc. Over 90 per cent were from Wau Shilluk, Ogod, and Pamat areas of Malakal county, while the remaining were from Lul-Kodok.[[700]](#footnote-701) By the end of March, the number had increased to approximately 21,000.[[701]](#footnote-702) Conditions were poor and 90 per cent of the IDPs lived outdoors using only trees as shelter.[[702]](#footnote-703) An unknown number of IDPs were also living in the bush around Wau Shilluk, or had fled further afield to Fashoda and Panyikang Counties and Sudan. Many died on the way. One such victim was the eleven year-old son of Witness 438, who died due to starvation and thirst while the family was fleeing from Bol village, near Lul, to Aburoc.[[703]](#footnote-704)

 3. SPLA Offensive on Lul-Kodok, April-May 2017

495. After the capture of Wau Shilluk, the SPLA focused on the Tonga area in Panyinkang county, south-west of Malakal. However, minor skirmishes continued north of Wau Shilluk. The SPLA attack on Tonga in mid-April 2017 forced 3,000 civilians to flee in the direction of Kodok.[[704]](#footnote-705) Some, who eventually reached the PoC site in Malakal, told UNMISS that many others had died while fleeing the fighting, mostly of hunger and thirst as they had to keep away from the White Nile river to avoid SPLA forces.[[705]](#footnote-706)

496. On 25 April 2017, the northward offensive along the West Bank resumed, reportedly with a massive reinforcement of approximately 5,000 soldiers from the SPLA 3rd and 4th Divisions and SPLA-IO (TD) forces advancing from Fathau. The area between Padit and Lul saw extensive fighting including heavy artillery fire. Lul was captured by the SPLA on the morning of 25 April after a minor battle with SPLA-IO fighters who only tried to delay the offensive to enable the withdrawal of the main SPLA-IO force to Kodok.[[706]](#footnote-707) On the morning of 26 April 2017, the SPLA shelled Ywani and Fashoda.

497. The offensive along the West Bank reached Kodok by the late afternoon on 26 April resulting in the displacement of large numbers of civilians north to Aburoc.[[707]](#footnote-708) At this time, approximately 30,000 civilians, mostly aged, women, and children were in Aburoc.[[708]](#footnote-709) A further 20,000 fled across the border into Sudan between 29 April and 6 May.[[709]](#footnote-710) The fighting in Kodok forced humanitarian organizations including MSF and ICRC to suspend operations and to evacuate 28-32 staff to Aburoc, with most relocated to Juba the next day.[[710]](#footnote-711)

498. A woman who fled Lul when the shelling started told the Commission that many shells hit the village and at least three people died, including one woman from her church.[[711]](#footnote-712) She said that although there were Agwelek forces based near the Catholic Mission, “the shells went everywhere in the village, they were random.”[[712]](#footnote-713)

499. Another witness from Kodok told the Commission that when the town was being shelled, she ran to the bush with her two children: “after the shelling, we could see the tukuls burning from where we were hiding in the bush. The shelling happened on the same day before the soldiers came.”[[713]](#footnote-714) She said that the men, including her husband, had previously fled: “I don’t know where he fled and have no news about him”. After ten days in the bush and struggling to find food, she eventually decided to go Malakal with her two children. Five of her other children had run into the bush when the shelling initially started. She was unable to find them, but they had fled with some other people to the Sudan border where her brother found them.[[714]](#footnote-715)

500. As the SPLA-IO/ Agwelek often retreated as soon as the shelling started, there were rarely any significant infantry presence or engagements. According to a resident of Lul, there was one Agwelek company in Lul of approximately 95 soldiers who were lightly armed with only one RPG and no heavy weapons or vehicles. However, they fled into the bush and the government forces continued their advance through the village without delay.[[715]](#footnote-716)

501. Witnesses reported that despite the lack of armed resistance, SPLA soldiers continued to fire at civilians and villages. A man from Pabor village saw a large SPLA force that included six tanks/armoured vehicles, twelve Land Cruisers (some with RPG or multi-barreled weapons), four large trucks and two tanker-trucks.[[716]](#footnote-717) There were also a large number of soldiers on foot carrying rifles and shooting at the houses in the village as well as civilians who were trying to run away. A witness observed: “they were shooting everything they were passing by including our cows, goats and sheep. Everything. They were shooting at everything.”[[717]](#footnote-718) He told the Commission that the soldiers only stopped to steal food supplies and the farm animals, and after the looting, they burned every house in the village. Very similar accounts were given by two witnesses from Bol village as well as witnesses from Bot and Oteng villages.[[718]](#footnote-719)

502. A 40 year-old woman from Kwom village told the Commission that although there was no shelling or fighting in her village, it was nonetheless looted.[[719]](#footnote-720) When the soldiers reached the village, they said: “‘we are not targeting you’ but people did not believe them and ran into the bush.” She returned to the village after nearly two weeks in the bush: “The soldiers had gone ahead but there was nothing left in the village, everything was looted. My house was standing, but all the clothes and food were taken by the soldiers.”[[720]](#footnote-721) The newly appointed Governor of Fashoda state reportedly acknowledged the looting of civilian properties and cattle by SPLA but said that his Government stopped it when they took control of the town.[[721]](#footnote-722) He also accused the SPLA-IO of looting cattle.

503. CTSAMM and UNMISS visited Kodok town on 9 May 2017 and observed the complete absence of civilians.[[722]](#footnote-723) By June 2017, some had returned; however, people were lacking food as soldiers from both sides had reportedly looted the supplies.[[723]](#footnote-724) Women reportedly raised concerns that the situation was unsafe, mentioning specific incidents of rape as well as more general fears.[[724]](#footnote-725) While the ICRC hospital in Kodok had not been looted, it was occupied by the Government[[725]](#footnote-726), staff were reduced to only five nurses (no physician and no laboratory technicians) and the hospital had reportedly not received new supplies of medicine.[[726]](#footnote-727)

 4. SPLA-IO (TD) capture of Aburoc, September 2017

504. As SPLA-IO/Agwelek forces had largely withdrawn from their positions along the West Bank of the White Nile and retreated north towards Aburoc, there was significant concern that it would become the next target for the SPLA. The United Nations High Commissioner for Human Rights raised his concern that “SPLM/A-IO has positioned itself in close proximity to civilian areas, placing civilians clearly in harm’s way in the event of an attack by the SPLA and affiliated forces.”[[727]](#footnote-728) In May 2017, the Governor of Fashoda wanted the IDPs in Aburoc to return to their residential areas and he had told them to leave the area within three days.[[728]](#footnote-729)

505. Aburoc was eventually demilitarised; after SPLA-IO forces withdrew, a small contingent of UNMISS soldiers was temporarily deployed there on 6 May 2017 to facilitate humanitarian support.[[729]](#footnote-730)

506. Meanwhile, the SPLA military offensive moved on. The SPLA force, consisting of 3rd and 4th Division troops headed further along the river towards Kaka while 2nd Division held Kodok and additional SPLA forces from Sector 2 attacked from the north (1st Division) and east (6th Division). Kaka was captured by 6 May and the majority of SLPA-IO/Agwelek forces reportedly fled to Sudan.

507. The SPLA offensive from January to May 2017 along the West Bank resulted in Government forces taking control of the entire stretch of the White Nile river from Malakal north to Renk.

508. On 20 June, UNMISS closed its operations in Aburoc and withdrew all troops and equipment, while humanitarian agencies stayed behind,[[730]](#footnote-731) and the SPLA-IO/Agwelek once again took control of the village. No significant military action in the area over the next couple of months was reported, although minor clashes between SPLA and SPLA-IO/Agwelek forces in areas ten to fifteen kilometres from the camp continued, particularly near Karaganyi village.[[731]](#footnote-732)

509. There were also intra-Agwelek clashes as a group of Shilluk-Gar under the command of Major General Wadeng were attacked by the Agwelek militia, leading eventually to the defection of approximately thirty Agwelek fighters to SPLA-IO (TD).[[732]](#footnote-733)

510. SPLA-IO (TD) forces subsequently made two attempts to capture Aburoc. The first, in Adout Nyiworo on 8 September 2017 was unsuccessful. However, following a second attack on 11 September 2017, SPLA-IO/Agwelek forces reportedly withdrew from Aburoc, allowing SPLA-IO (TD) forces from Kodok to take control of the area on 12 September 2017 after a round of shelling. Three women were reportedly killed “in crossfire.”[[733]](#footnote-734) There were allegations of looting, and up to 10,000 civilians were displaced.[[734]](#footnote-735) 32 humanitarian workers were evacuated to Malakal, but most of the people who fled returned and the humanitarian operations resumed shortly after.[[735]](#footnote-736)

511. The IDP site in Aburoc was peaceful when the Commission visited it on 22 November 2017. A 43 year-old woman whose neighbourhood near the market area was unaffected, said “There was some fighting here two months ago, but that was between brothers, so there was no problem… It is the Dinkas that are a problem.”[[736]](#footnote-737) Although both SPLA-IO (TD) officials and SPLA commanders claim that the SPLA-IO (TD) is not under the control of the Government, this appears unlikely.

512. On 14 September, the Governor of Fashoda had reportedly again issued an ultimatum to civilians and humanitarian actors to leave Aburoc and move to Kodok within the coming seven days.[[737]](#footnote-738) Although this does not appear to have been implemented, the IDP camp at Aburoc remains a significant political issue.

 5. Violations / Alleged Crimes

513. Reporting and documenting of the violations was affected by the movement restrictions being placed by the SPLA.[[738]](#footnote-739) Nonetheless, witness interviews conducted by the Commission in Malakal, Wau Shilluk and Aburoc in November 2017, along with confidential documents obtained and relevant secondary material, provide reasonable grounds to believe that significant violations of human rights and international humanitarian law took place during the SPLA offensive along the West Bank in 2017. Some of the major ones are listed below. However, this is not an exhaustive list. For instance, allegations of rape noted by CTSAMM could not be properly investigated in the short time period available to the Commission; the Commission recommends that these allegations be thoroughly investigated as soon as possible.

 a) Killings of civilians/ protected persons, destruction of property and looting and pillage

514. On the basis of the evidence collected, the Commission finds reasonable grounds to believe that SPLA soldiers fired at villagers and into the tukuls as they entered the villages during their ground offensive. There is also evidence collected by the UNMISS and Amnesty International that SPLA soldiers committed extrajudicial killings or murder of men whom they suspected of supporting the SPLA-IO/Agwelek.[[739]](#footnote-740)

515. Similarly, the evidence collected and reviewed by the Commission provides reasonable grounds to believe that SPLA forces deliberately burnt tukuls and other residential areas and villages in the course of their 2017 offensive on Wau Shilluk and the areas of West Bank of the Nile. There is no information before the Commission to suggest that the destruction of private property carried out by the SPLA was due to military necessity.

516. The evidence collected by the Commission also provides a consistent account of widespread looting and theft of private property by SPLA soldiers for their own use.

517. Furthermore, there are also credible allegations that SPLA-IO soldiers looted and stole from humanitarian organizations and UNMISS. It was reported that approximately 50 armed SPLA-IO soldiers stole tools and other equipment from a warehouse in an NGO compound in Kodok on 23 April 2017.[[740]](#footnote-741) The Commission received credible information that the SPLA-IO Special Division Commander for Upper Nile himself was present outside the same compound. Five UNMISS vehicles were also commandeered by SPLA-IO authorities in Kodok on 9 February 2017 allegedly “to facilitate the movement of IDPs displaced from Wau Shilluk.”[[741]](#footnote-742)

518. In relation to those acts committed by state agents, they amount to serious violations of human rights law under the Bill of Rights in the Transitional Constitution of the Republic of South Sudan, 2011, particularly the right to life and human dignity (Article 11) and the right to property (Article 28). They also amount to violations of the African Charter on Human and Peoples’ Rights, including in particular the right to life and the integrity of the person (Article 4) and to property (Article 14).

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

520. Furthermore, the Commission finds reasonable grounds to believe that there was a nexus between the commission of these crimes and the non-international armed conflict ongoing in South Sudan at the time as they occurred in the context of an SPLA offensive along the West Bank of the Nile. As such, they are violations of international humanitarian law under Common Article 3 to the Geneva Conventions and Additional Protocol II to which South Sudan is a party and which it has incorporated into its law by the Geneva Convention Act (2012). They may also amount to war crimes under Article 4(a) (Violence to life, health and physical or mental well-being of persons, in particular murder, as well as cruel treatment such as torture, mutilation or any form of corporal punishment) and Article 4(f) (pillage) of the Draft Statute of the Hybrid Court for South Sudan.

521. The Commission also finds reasonable grounds to believe that the killing of civilians as well as the destruction of property, looting and pillage in the villages along the West Bank of the Nile in 2017 was part of a widespread or systematic attack directed against a civilian population. The attacks were widespread as they occurred in a number of villages in the area over a period of months. As such, these crimes may also amount to crimes against humanity, including murder under Article 3 of the Draft Statue of the Hybrid Court for South Sudan.

 b) Intentionally Directing Attacks against the Civilian Population

522. The evidence provides reasonable grounds to believe that the SPLA directed attacks against the civilian population which is prohibited by Article 13(2) of Additional Protocol II and Article 7 of the Geneva Convention Act (2012). This may amount to a war crime under Article 5(a) of the Draft Statute of the Hybrid Court for South Sudan.

523. In most instances, SPLA attacks began with a sustained artillery/ mortar barrage of towns and villages before the subsequent ground offensive either later the same day or the next day. Such delays imply that the bombardment was not designed as covering fire for an infantry assault, which under normal circumstances, immediately follows the bombardment in order to take advantage of the “shock effect” on the defenders caused by the shelling.

524. Furthermore, information collected by the Commission does not indicate the presence of significant military targets in the villages and towns north of Wau Shilluk, particularly given that the SPLA-IO/Agwelek forces usually retreated immediately. The use of indirect fire weapons in such circumstances gives reasonable ground to believe that attacks were indiscriminate.

525. Even if there were military targets in the villages at the time of attack, witness testimony indicates that the shells fell randomly and were not limited to any particular areas within the villages/towns. With respect to the shelling of Wau Shilluk, the presence of two Mortar Fire Controllers was observed near the BANFMU base on the river on 28 January. The Commission has received information indicating that the SPLA forces had the ability to direct their mortar fire towards any appropriate military objectives. The failure to do so therefore provides reasonable grounds to believe that SPLA commanders did not adhere to the fundamental international humanitarian law principle of distinction, amounting to a violation of the customary international law prohibition of indiscriminate attacks.[[742]](#footnote-743)

 c) Displacement of the Civilian Population

526. The SPLA offensive along the West Bank of the White Nile in 2017 led to significant displacement of Shilluk civilians. The initial capture by the SPLA of Wau Shilluk and nearby areas by early February 2017 forced over 20,000 members of the Shilluk community to flee to safety.[[743]](#footnote-744) The subsequent capture of Lul and Kodok in late April-early May again led to massive displacement. Many Shilluk IDPs, mainly women, children and the aged, initially settled in Aburoc. A smaller number moved to Malakal PoC or lived locally in the bush. Most were amongst the 86,297 refugees who fled to Sudan between 1 January and 15 October 2017.[[744]](#footnote-745)

527. According to the United Nations Panel of Experts on South Sudan, by the end of August 2017 only an estimated 17,000 Shilluks remained in Upper Nile (other than at the Malakal PoC site), concentrated in IDP camps in and around Aburoc.[[745]](#footnote-746)

528. The evidence makes clear that the massive displacement of Shilluk civilians along the West Bank of the White Nile river, often virtually the entire population of towns and villages, was a direct result of the widespread violations of international humanitarian law and human rights law committed by the SPLA forces. This included intentional attacks against civilians and civilian property; deliberate killings of civilians; indiscriminate attacks; destruction of civilian property; and pillage. The resultant physical and food insecurity left the civilians with no option but to flee elsewhere.

529. This displacement gave rise to serious violations of human rights law under the Bill of Rights in the Transitional Constitution of the Republic of South Sudan (2011), including the right to freedom of movement and residence (Article 27) and the right to privacy encompassing the right not to be subjected to interference with his or her private life, family, home or correspondence, save in accordance with the law (Article 22). They also amount to violations of the African Charter on Human and Peoples’ Rights including in particular the right to freedom of movement and residence within the borders of a State provided one abides by the law (Article 12).

530. In March 2017, the traditional Shilluk King claimed that his people were “in dire risk of cultural and physical extinction” after “The Dinka, in the guise of government army, have razed down Chollo [Shilluk] villages...”[[746]](#footnote-747) The claims were dismissed by the Presidential spokesperson.[[747]](#footnote-748)

531. The Governor of Central Upper Nile State acknowledged the planned nature of the campaign when he told CTSAMM on 18 May 2017 that the SPLA were conducting operations along the western Nile to “liberate the area from rebels”. However, he and the SPLA have often claimed that the displacement of civilians was due to the actions of the SPLA-IO/Agwelek who used the civilians as “human shields”. While the possibility of the SPLA-IO/ Agwelek placing their encampments in proximity of civilian areas cannot be entirely ruled out, there can be little doubt that the cause of the massive displacement was the direct attacks on the civilian population by the SPLA.

532. The backdrop to the SPLA offensive was the 2015 redrawing of the map by Presidential decree that gave not only the disputed capital of Malakal, but also Shilluk areas of Malakal county, to the Dinka-dominated Eastern Nile state. Furthermore, only a few days after the assault on Wau Shilluk, the Government began to fly Dinka IDPs from Juba to Malakal where they were to be resettled. Such steps, along with the relocation of civil servants on the basis of their ethnicity has previously led the Commission to raise concerns of “a pattern of ethnic cleansing and population engineering”.[[748]](#footnote-749)

533. According to CTSAMM, “there was an ethnic dimension to the violence [around Wau Shilluk]. Shilluk people felt [they] were being deliberately targeted.”[[749]](#footnote-750) They further noted that, by mounting operations like the advance to Kodok, the Government continues to alienate the Shilluk community and furthers the perception that there is an ethnic agenda to the violence in Upper Nile State. While it is unclear “whether or not there was an official policy of ‘forced displacement and relocation of ethnic minorities’” there, observers concluded that “the SPLA offensive operations in Upper Nile resulted in that outcome.”[[750]](#footnote-751)

 6. Responsibility for Violations and Alleged Crimes

 a) Command responsibility

534. The West Bank offensive was a significant military operation, involving soldiers from a number of Divisions across SPLA Sector 1 and Sector 2. According to CTSAMM, the attack was part of a larger SPLA campaign to secure the White Nile,[[751]](#footnote-752) a strategic line of communication, before the start of the rainy season.[[752]](#footnote-753) Regardless of the objective, the military campaign carried out over approximately 70 kilometers, in three distinct phases, would have undoubtedly required extensive logistic and operational planning, particularly as it appeared to involve soldiers from a number of divisions from two different SPLA military sectors.

535. According to sources from within the SPLA and NSS, the Sector 1 Commander[[753]](#footnote-754) was who was brought in to lead the operation as the overall commander of the West Bank campaign, sometime after the Sector 2 Commander was appointed as Akobo State Governor in mid-January 2017.[[754]](#footnote-755)

536. The Sector 1 Commander, along with SPLA 3rd and 4th Division commanders and a commander of the SPLA-IO (TD) forces visited the frontline in Wau Shilluk on 24 April 2017.[[755]](#footnote-756) The Commission infers that this was a reconnaissance visit to synchronise plans for the coming offensive on Koko and Kaka that began one day later. The Sector 1 Commander also reportedly visited Kodok on 1 May 2017, one day before the attack on Kaka was launched, with the new Sector 2 Commander.[[756]](#footnote-757)

537. As the overall commander, the Sector 1 Commander would have overseen all command aspects of the operation, including its planning.

538. During the period when the alleged crimes were committed, there are reasonable grounds to believe that the SPLA’s military hierarchy functioned regularly, and that sector and field commanders had knowledge of the ongoing operations carried out by the soldiers under their command, and exercised effective control over the troops deployed, particularly in light of their presence in the area described above.

539. Information from SPLA and NSS sources confirms that SPLA troops and Dinka militia looted all the humanitarian stores and properties of the Shilluk community in Wau Shilluk after its capture and brought them to Malakal.[[757]](#footnote-758) According to these sources, after the capture of Kodok, the NSS attempted to keep the SPLA soldiers on the outskirts of the town in an attempt to limit the looting.[[758]](#footnote-759) This suggests that senior commanders were aware of the issue of looting. Furthermore, the deployment of the NSS, which is not under the control of the SPLA, suggests that the decision was taken at a higher political level, indicating that the political authorities knew of the looting. This was also allegedly confirmed by the Governor of Fashoda state.[[759]](#footnote-760)

540. The Commission also received documentary evidence indicating that the military operation was closely followed by the military and political leadership in Juba. According to these documents, the SPLA 2nd Division Commander consulted with the SPLA General Chief of Staff from Juba and all brigade commanders within his division before granting access to aid agencies and other outside missions.[[760]](#footnote-761) SPLA Headquarters in Juba had to give final approvals[[761]](#footnote-762) and could on occasion cancel previously granted authorisations.[[762]](#footnote-763) The use of aircraft for bombing, albeit limited, also suggests high-level decision-making at Juba level.

541. The political leadership in Juba also does not appear to have taken the concerns of population displacement seriously. In a meeting in Juba on 5 May 2017, with the President of South Sudan and the Minister of Information and Broadcasting, the Minister told the United Nations Panel of Experts that the internally displaced persons in Wau Shilluk “are not civilians, they are rebels”.[[763]](#footnote-764) The Panel of Experts observed: “There was no indication during the meeting, from either Makuei or the President, that they viewed the situation on the West Bank in Upper Nile as concerning or as a priority for the Government in terms of humanitarian operations.”

542. The September 2017 report of the Panel of Experts concluded, “This depopulation has occurred with the full knowledge of the President, Cabinet ministers and senior military officers and has been a clearly foreseeable consequence of the Government’s military operations.”[[764]](#footnote-765) Such mindset also invariably permeated down: in the context of the IDP population in Aburoc, an SPLA officer is reported to have stated that “the civilians should be responsible for their fate for deciding to move along with the Opposition,”[[765]](#footnote-766) indicating a complete disregard for the fundamental principle of distinction.

543. The Commission has received no information that those in superior or command positions took steps to prevent or punish these violations and alleged crimes.

 b) State responsibility

544. As the SPLA are Government forces, their acts amounting to violations of human rights give rise to state responsibility for violations of international law by the Republic of South Sudan. Furthermore, the Government has a duty to investigate and prosecute these alleged violations of international human rights and international humanitarian law, as well as criminal acts committed during the course of its offensive through West Bank of the Nile in 2017. The Commission has not been informed of any steps taken by the Government to investigate and prosecute these crimes.

545. Further, as South Sudan is a party to the CRC, CEDAW, as well as regional instruments such as the African Charter on Human and Peoples’ Rights and the Maputo Protocol, the State maintains the responsibility for ensuring the progressive realisation of social, economic and cultural rights that may have been threatened during the Government offensive, namely the rights to food and education, work, water, and healthcare, among others.

546. The Commission finds that State action or lack thereof in relation to the destruction of whole towns and villages and essential infrastructure, coupled with widespread security hazards which impeded emergency relief for the civilian population negatively impacted upon individuals’ abilities to enjoy their rights, particularly the masses who were displaced to other parts of South Sudan or outside of the country.

 E. Pagak Offensive, Upper Nile State, 2017

 1. Introduction

547. The south-eastern corridor of Upper Nile State, bordering Ethiopia, has been under SPLA-IO control since the conflict began in late 2013, with the main SPLA-IO headquarters[[766]](#footnote-767) situated in the border town of Pagak. A key commercial route from Ethiopia enters South Sudan at Pagak and continues inland through the towns of Maiwut and Mathiang, eventually connecting with the oil fields near Palouch and Adar, approximately 150 kilometres northwest of Mathiang.[[767]](#footnote-768)

548. Mathiang, with an estimated population of 26,000, lies in the very south of Longechuk County and is the seat of the county. Maiwut, with an estimated population of 15,500, and Pagak, with an estimated population of 25,000, are situated to the southeast of Mathiang in neighbouring Maiwut County.[[768]](#footnote-769) Longechuk and Maiwut Counties are primarily inhabited by the Nuer community, Jikany sub-clan.

549. Upper Nile State has been in a perpetual state of armed conflict since the civil war began in December 2013, with parts of Longechuk County being engulfed in the hostilities.[[769]](#footnote-770) This has resulted in IDPs fleeing the area due to recurrent skirmishes between the SPLA, SPLA-IO and their allied forces, as well as chronic food insecurity. The remoteness of the area, combined with the absence of a reliable communications network, imply that the security and humanitarian situations are often left underreported.[[770]](#footnote-771) As the ongoing war results in South Sudan’s economy declining drastically, the significance of the Upper Nile oil fields has increased, given their status as one of the main sources of the country’s income and GDP.[[771]](#footnote-772)

 2. Background to the Pagak Offensive

550. On 14 January 2017, President Salva Kiir announced the country’s expansion from 28 to 32 States.[[772]](#footnote-773) A member of the SPLA-IO faction loyal to the current First Vice President Taban Deng Gai, was subsequently appointed as the Governor of the newly-created Maiwut State.[[773]](#footnote-774)

551. In Spring 2017, President Kiir mandated that the Governor and his other newly-appointed governors assume their positions in order to receive the State budgets which had been suspended.[[774]](#footnote-775) The Governor reportedly worked with the local Commander of SPLA 6th Division in Guelguk to plan a military operation which involved SPLA forces[[775]](#footnote-776) traversing over three hundred kilometres in difficult terrain to dislodge the SPLA-IO (RM) from Pagak.[[776]](#footnote-777) The Government of South Sudan endorsed the military plan in clear violation of its unilateral ceasefire.[[777]](#footnote-778)

552. By many accounts, the Pagak Offensive to “liberate”[[778]](#footnote-779) the area from the SPLA-IO (RM), coupled with the reconfiguration of the Northern Upper Nile State on 6 July 2017, was the government’s attempt to safeguard the Palouch oil fields, and their associated economic benefits, for the Dinka community.[[779]](#footnote-780) Although they were fighting on behalf of the Government, both the Governor and the Commander of SPLA 6th Division in Guelguk, as well as the majority of the SPLA troops involved in the campaign, were from the Nuer community.[[780]](#footnote-781) This led several witnesses to voice their concerns about further intra-ethnic fragmentation and a wider Government strategy to “eradicate”[[781]](#footnote-782) the Nuer community in a “tribal war”.[[782]](#footnote-783)

553. The Government operation reportedly began in June 2017 with the main axis of the SPLA advance lying along the road which joins Mathiang, Maiwut and Pagak.[[783]](#footnote-784) The subsequent campaign involved weeks of heavy shelling and intense fighting between the SPLA and SPLA-IO (RM) and allied forces that displaced over 29,000 persons[[784]](#footnote-785) to Gambella, Ethiopia in August and September 2017 alone,[[785]](#footnote-786) precipitating another humanitarian crisis.

554. On 20 July and 24 August 2017, the United Nations Assistant Secretary-General for Peacekeeping Operations El Ghassim Wane briefed the Security Council on the Government’s Pagak Offensive. He expressed concern that fighting continued even after the SPLA had captured Pagak, which hampered the delivery of humanitarian aid to the affected communities, with “catastrophic”[[786]](#footnote-787) consequences for the civilian population.[[787]](#footnote-788) At the time of writing this report, Pagak remains a contested area. The Cessation of Hostilities Agreement (2017) has quelled the intensity of fighting, but not ended it. Since July 2017, an estimated 40,000 South Sudanese, have reportedly been displaced to Gambella, Ethiopia as a result of the Government offensive.[[788]](#footnote-789)

 3. The SPLA capture of Mathiang

555. In June 2017, SPLA forces reportedly set out from the SPLA 6th Division barracks in Guelguk near Palouch or “Bir #4 Petroleum” and began their advance towards Mathiang.[[789]](#footnote-790) When the SPLA forces reached Mangok, they encountered strong resistance from SPLA-IO (RM) and had to request reinforcement troops from “Bir #4 Petroleum.”[[790]](#footnote-791) Upon their arrival, the SPLA forces divided into two groups with one advancing towards Wichluakjak, whilst the second advanced straight down the main road to Mathiang.[[791]](#footnote-792)

556. When SPLA-IO (RM) elements positioned on the main road prevented the SPLA advance to Mathiang, those SPLA forces headed towards Wichluakjak reportedly directed their attack on civilians in Mangok, where they also began looting.[[792]](#footnote-793) After two to three weeks of intense fighting in Mangok,[[793]](#footnote-794) SPLA forces continued on towards Mathiang, passing through Belwang and Jangok villages.[[794]](#footnote-795) Witnesses told the Commission they could hear the sounds of heavy shooting as the SPLA attacked villagers in Belwang.[[795]](#footnote-796)

557. The government forces then entered Malow and Mayan, two villages on the outskirts of Mathiang where the skies became filled with “blue gas smoke” from “morning until [the] evening”[[796]](#footnote-797) as the SPLA continued to attack civilians, this time also crushing civilians under the tracks of their tanks.[[797]](#footnote-798) A witness from Malow, told the Commission:

In Malow, the government [army was] just shooting randomly the villagers… many of us ran away and left our respective [homes]. The SPLA seemed to be everywhere. There were so many of them and they were just shooting. Some were using rifles, while those in vehicles used their huge weapons and opened fire [on] us, civilians. I ran, along with my two children and other villagers, until we reached Wunkir.[[798]](#footnote-799)

558. By 2 July 2017, after having captured most of Longechuk County, SPLA forces continued the advance towards Mathiang. The SPLA again divided its forces so that it could attack Mathiang from multiple directions. Witnesses told the Commission the SPLA entered the town down three paths: along the main road from the north, as well as from two other points to the north and south of the main road.[[799]](#footnote-800) The SPLA-IO (RM)’s 5th Division and Tiger Battalion[[800]](#footnote-801) fighting together resisted the SPLA initially, with support from the White Army militia.[[801]](#footnote-802) However, once confronted by SPLA tanks and other armoured vehicles, as well as from AK-47s, 12.7 machine guns, RPGs, ZSUs[[802]](#footnote-803) and mortar fire, they were overpowered and outnumbered.[[803]](#footnote-804) The White Army retreated almost immediately.[[804]](#footnote-805) By most accounts, the SPLA-IO (RM) also started to withdraw once faced with the SPLA’s heavy artillery; there were only an estimated 50-100 SPLA-IO (RM) soldiers in Mathiang on the day of the attack, relying on AK-47s, RPGs, 12.7 machine guns, and other light weapons.[[805]](#footnote-806) The Government forces reportedly hoped to capitalize on the knowledge of its soldiers from the Nuer community about the SPLA-IO (RM)’s lack of presence in Mathiang to make the town a base for its advance towards Maiwut and Pagak.[[806]](#footnote-807)

559. Several witnesses told the Commission that at the first indications of an advance by government troops, civilians began to flee the town, owing to their previous experiences with a deadly campaign mounted by the same SPLA Commander[[807]](#footnote-808) through the area in Spring 2014, which resulted in substantial civilian casualties.[[808]](#footnote-809) Witnesses also told the Commission that the thunderous sounds of shelling and heavy artillery terrified the population causing civilians to flee to Udier, Chotbera, Panomdejop swamp and Pamach forest[[809]](#footnote-810) rather than endure the attack. Even then, SPLA forces continued to pursue them toward Maiwut and/or eventually chased them across the Ethiopian border.[[810]](#footnote-811)

560. A 23 year-old woman from Madig village, Upper Nile told the Commission:

My brother was a civilian, but the SPLA soldiers “graded” him down with their tank. [He] had left Nguenyyiel for Mathiang before the attack because he missed his mother and he sometimes did business in Longechuk. At the time the SPLA soldiers killed him, [he] was fleeing Mathiang for Maiwut.[[811]](#footnote-812)

561. In August 2017, an assessment team reported ten child casualties in Mathiang (four girls and six boys) during the SPLA offensive.[[812]](#footnote-813) A United Nations source also documented at least 18 civilians, including two children, who were killed in Mathiang between 3 and 5 July 2017.[[813]](#footnote-814) In December 2017, another United Nations agency documented at least 26 civilians who were killed in Mathiang during the government offensive.[[814]](#footnote-815) While the Commission has not been able to verify these cases against those it documented, this information is consistent with other information the Commission received about attacks on civilians in Mathiang during the Pagak Offensive.

562. The Commission also received reports of SPLA soldiers allegedly raping women and killing or injuring other civilians as they fled Mathiang.[[815]](#footnote-816) Upon arriving in Mathiang, SPLA soldiers reportedly entered the Presbyterian Church at approximately 15:00 and dragged civilians who were there for a prayer meeting outside onto the church grounds. Three women were raped and another two women were shot and killed for resisting the soldiers’ advances. A church elder was also beaten with a stick and then hung by the neck from a nearby tree.[[816]](#footnote-817) In another case, a teacher was reportedly shot as he fled the town with his family.[[817]](#footnote-818)

563. As the situation in Mathiang intensified, the local SPLA-IO (RM) authorities called a meeting with NGO staff to brief them on the deteriorating security situation, reassuring them there was no cause for concern. However, the Commission received information that in the following days, SPLA-IO (RM) soldiers allegedly detained three contractors who were conducting an educational assessment for a United Nations agency for suspected involvement with the SPLA.[[818]](#footnote-819) The contractors have reportedly not yet been released.[[819]](#footnote-820)

564. By 6 July 2017, SPLA forces were in control of Mathiang. Whilst in Mathiang, they reportedly occupied, looted, and vandalized schools, in addition to destroying approximately 80 per cent of water points in Longechuk County and/or placing UXOs in them.[[820]](#footnote-821) Those lying on the supply route to Maiwut were particularly targeted.[[821]](#footnote-822) The SPLA also systematically destroyed medical and humanitarian assets, including at least 15,000 caseloads of food rations, in addition to the food for nine school feeding programmes delivered by a United Nations agency 26 to 30 June 2017.[[822]](#footnote-823) Witnesses indicated the SPLA soldiers not only looted the food, but also opened the sacks and left remaining rations to spoil in the rain.[[823]](#footnote-824) The Commission also received reports that damage caused to the local hospital was deliberate vandalism, with SPLA forces reportedly leaving a stockpile of UXOs behind.[[824]](#footnote-825)

565. According to UNHCR, by mid-July 2017, an estimated 5,000 people had already fled Mathiang.[[825]](#footnote-826) At its peak, 500 people per hour were arriving in Ethiopia.[[826]](#footnote-827) With the hostilities progressing, at least 25 humanitarians were evacuated from Maiwut and Pagak, including the staff of hospitals in both towns.[[827]](#footnote-828)

 4. The SPLA capture of Maiwut

566. Thereafter, the SPLA forces continued their advance towards Maiwut, a strategic axis in the operation given its position on a dirt road leading directly to Pagak. The SPLA again divided into two groups, with one group of soldiers advancing through Wunkir village, while the other headed towards Galgok.[[828]](#footnote-829) As the Government offensive occurred during rainy season, the SPLA’s tanks experienced difficulty in manoeuvring, and often got stuck in the mud. This delayed the overall advance and it took nineteen days to reach Maiwut.[[829]](#footnote-830)

567. In the light of this delay, the operational plan was reportedly reviewed at a meeting at SPLA General Headquarters on 14 July 2017, confirming the urgency that the senior command attached to the operation.[[830]](#footnote-831) The SPLA ground forces were reportedly reinforced by two helicopter gunships on 21 July 2017, although they were beaten off by SPLA-IO (RM) anti-aircraft weapons.[[831]](#footnote-832) The two gunships withdrew, but not before firing upon nearby villages, including Wichluakjak, Jotoma, and Thochdeng, which were believed to contain SPLA-IO (RM) troops in defensive positions.[[832]](#footnote-833)

568. SPLA then continued its advance, and even though the SPLA-IO (RM) base camp was reportedly located two kilometres outside of Maiwut town, to the east, SPLA ground forces nevertheless still reportedly stormed Maiwut and the surrounding villages, firing from many different directions.[[833]](#footnote-834)

569. A man from Thochdeng told the Commission:

When I got to the open area/compound near the airstrip is when the situation found me. I could not see anything because the soldiers were shooting big guns. I knew because I heard them and some of the shots fell into the town. We [all of the people] in the town were scared. [...] I called home immediately looking for my [five] children. [...] I wasn’t able to find any of my children when I called home because they had already fled.[[834]](#footnote-835)

570. SPLA soldiers reportedly massacred and raped civilians in Maiwut and neighbouring Tiandow, Thochdeng, Malek and Nyankuich villages.[[835]](#footnote-836) A man from Malek village told the Commission that his father was killed when SPLA forces began shelling Maiwut. The man returned from seeking shelter in the bush to find that his mother had been blinded by SPLA soldiers who gouged her eyes out with spears as she unsuccessfully tried to defend her seventeen year-old daughter from being raped by fourteen soldiers. Seventeen SPLA soldiers then raped the man’s blind mother, while his father was found beheaded with his castrated penis stuffed in his mouth.[[836]](#footnote-837)

571. A 25 year-old mother described being raped by SPLA soldiers in front of her children in a separate incident:

I told them they could rape me if that was what they wanted but [I] begged them not to kill me for my children sake. […] One of the soldiers pushed me to the ground while the other was ripping apart the clothes I was wearing. […] While the other was raping me, one of them was holding me [by] my arms. [...] Those soldiers were so rough [to] me and threatened to kill me. [...] The saddest part is the fact that while those uniformed and armed […] soldiers raped me, my two […] sons were watching the whole scene while crying.[[837]](#footnote-838)

572. Other witnesses who later returned to these areas described seeing the decomposing bodies of dead civilians’ on the road.[[838]](#footnote-839) Some of the dead had clearly died of gunshot wounds in the chest, back, and legs. In some cases, both of the victims’ legs were broken as if the assailant had intended to prevent the victim from running.[[839]](#footnote-840) One witness told the Commission:

573. I went back to live again in Thoch near Maiwut. When I arrived at the town, I saw many dead bodies of civilians lying on the ground in different areas. They were mostly children, the elderly, and persons with disabilities [who] were unable to run when their respective family members fled away during the attack. Some of them sustained gunshot wounds and the others were slaughtered, if not burned […] The [hospital] was destroyed and its outside vicinity was burned[[840]](#footnote-841)

574. Multiple witnesses told the Commission of a 70 year-old man from Maiwut who had remained in the town after the SPLA arrived, because he was too old to run.[[841]](#footnote-842) After SPLA soldiers reportedly shot him in the knees, he begged his wife to drag him into their tukul and take their three children to Pagak for safety.[[842]](#footnote-843) When the victim’s wife and teenage son returned to Maiwut the following week, the man was found lying next to another tukul in his compound, beheaded.[[843]](#footnote-844)

575. Several witnesses told the Commission that SPLA soldiers allegedly looted and burned down a local hospital, schools, homes, NGO facilities, as well as the SPLA-IO (RM) Commissioner’s Office.[[844]](#footnote-845) Through satellite imagery provided by UNOSAT, as well as photographs,[[845]](#footnote-846) the Commission was able to corroborate testimonies describing the systematic destruction of towns and villages in and around Maiwut where more than 100 structures were razed between May and December of 2017.[[846]](#footnote-847) The Commission also received information about SPLA forces looting or burning government and private solar panels and generators in the marketplace and at other locations around Maiwut.[[847]](#footnote-848)

576. By 25 July 2017, even though the SPLA forces had continued their advance into Maiwut, the SPLA-IO (RM) launched a strong counterattack from behind to regain control of Mathiang.[[848]](#footnote-849) In the following days, however, the SPLA captured Maiwut, and were advancing towards Pagak, only a few kilometers away.[[849]](#footnote-850) Spokesman for First Vice President Taban Deng Gai’s SPLA-IO (TD) forces confirmed that SPLA forces captured Maiwut on 28 July 2017 where they found “thousands of civilians” seeking shelter.[[850]](#footnote-851)

577. A witness from Mayom, Unity State told the Commission:

The situation was terrible. The people were walking [from Mathiang to Maiwut] without any food or water. If you had anything, you wanted to give it to them because the situation was so bad. They looked weak, like death was around the corner. The soldiers were even killing women and children… It terrified the people. They were walking such far distances just to get away... all that matters is that if you are Nuer, you have to be killed, regardless of whether you are a woman or child.[[851]](#footnote-852)

578. As the SPLA neared Pagak, the SPLA-IO (RM) allowed their forces to advance before opening fire and capitalizing on their superior knowledge of the terrain to mount ground attacks, which contained the SPLA advances.[[852]](#footnote-853) Control of Maiwut remained contested until a force of 3,000 SPLA-IO (RM) troops from Sudan reportedly regained control of the area by 7 August 2017.[[853]](#footnote-854)

 5. The SPLA capture of Pagak

579. In early July 2017, as the SPLA forces neared Pagak, the SPLA-IO (RM) 5th Division reportedly sent a message to the community and NGOs to evacuate the area.[[854]](#footnote-855) The Commission also received reports that around 10 July 2017, SPLA-IO (RM) forces detained 17 individuals for allegedly sharing information with the Government and SPLA-IO officials loyal to First Vice President Taban Deng Gai in Pagak.[[855]](#footnote-856) The SPLA-IO (RM) also reportedly abducted a pastor while trying to steal a church’s vehicle.[[856]](#footnote-857)

580. Upon their arrival in Pagak, SPLA soldiers continued to systematically attack civilians and civilian objects, looting and burning schools, the hospital, NGO facilities, as well as homes. SPLA soldiers also reportedly looted livestock and wheat and maize crops that civilians had harvested. They also cut down trees and crops in order to have a clear view of their military targets.[[857]](#footnote-858)

581. A 25 year-old mother described the morning that SPLA soldiers came to her compound in Pagak:

The SPLA soldiers saw when we ran into the house. They followed us and one of the soldiers ordered us to come outside. When we came out, I saw about 30-35 SPLA soldiers at my home… When my [60-year-old] father-in-law heard the noise, he came outside of his tukul to see what was going on. He saw that the soldiers were about to kill us. He started calling on God and talking a lot. One of the SPLA soldiers took something like a spear and struck him with it through the back of his neck up into his head to silence him. He died instantly. After that, the soldiers ordered us not to move.[[858]](#footnote-859)

582. The soldiers reportedly proceeded to set fire to the woman’s tukul in front of her and stripped her and her three children (aged six, four and two) of their clothes before ordering them to “leave and run” until they caught up to the other villagers who had fled.[[859]](#footnote-860)

583. The Commission was able to corroborate the systematic destruction of Pagak and its surrounding areas with UNOSAT imagery which indicates that at least 196 structures were razed in the vicinity between 31 May and 16 August 2017, and an additional 270 structures destroyed between 16 August and 24 November 2017.[[860]](#footnote-861)

584. A witness from Nassir, Upper Nile, told the Commission:

I witnessed when SPLA soldiers arrived in the area […] with huge army carrier[s] and other types of military vehicles such as armoured tanks with big weapons mounted on top. They positioned themselves in the area and suddenly they (SPLA) were shooting at the civilians in the village that were mostly runaways coming from Mathiang and Maiwut. Most of the civilians sustained gunshot wounds and had difficulty moving. […] I [eventually] tried to take injured civilians to [the medical clinic] but the […] compound was already destroyed and partially burned while [the] staff were already evacuated.[[861]](#footnote-862)

585. Meanwhile, civilians who had fled earlier in the Government offensive described walking for four to five days without food or water to reach Pagak through Uleng, Panomdejop, Pilual, and Mading with family members becoming separated or children dying along the journey from starvation or thirst.[[862]](#footnote-863) A 34 year-old woman from Tiandow told the Commission:

At some point while running away and crossing at the swamps and muddy areas between Maiwut and Pagak towards Gambella, I realized I lost my three younger children (ages 6, 4 and 3) so I came back to find them [and] failed. I searched for them at the muddy swamps where we were passing because they might have been stuck there yet I failed to find them. I wanted to stay looking for my children yet the sounds of gunshots were coming closer so I had to leave area to make sure my other two children [would] be safe… I did not have the chance to see my other three children again. I do not know also whether they are still alive or not.[[863]](#footnote-864)

586. Fierce fighting between SPLA and SPLA-IO (RM) continued for several days, with control of Pagak changing hands several times.[[864]](#footnote-865) Although accounts vary about the exact date, the SPLA forces reportedly captured Pagak by 7 August 2017.[[865]](#footnote-866) In the following days, with the SPLA gaining an advantage, the SPLA-IO (RM) withdrew to Turu, fifteen kilometres west of Pagak. Meanwhile, the SPLA established itself in town and around the airstrip.[[866]](#footnote-867) Further SPLA-IO (RM) efforts to recapture Pagak were unsuccessful and the SPLA remained in control of Pagak town, whilst the SPLA-IO (RM) held Turu and Jekow and maintained a presence in the surrounding villages.[[867]](#footnote-868)

587. The Government of South Sudan was at all times aware of the civilian crisis and progress on the SPLA operations, as evidenced by statements by the Minister of Defence and Veterans’ Affairs, supported by his Deputy Minister of Defence. The Minister of Defence uncompromisingly declared that the Government would “‘crush’ all remaining ‘rebels’ in South Sudan after 30 days had passed” confirming plans for future military operations.[[868]](#footnote-869)

588. Civilians who fled from all areas affected by the SPLA offensive reported having sought sanctuary for several days near Joko, Urieng and Jekow before crossing Jekow bridge into Ethiopia where they registered as refugees, primarily in the Gambella region of Ethiopia.[[869]](#footnote-870)

589. A woman from Nassir, Upper Nile, told the Commission:

Since I didn’t find my family, particularly my children, I decided to get back to Ethiopia because all I saw in Upper Nile was pain and suffering of the people who were left behind.[[870]](#footnote-871)

590. Several witnesses indicated that women who had returned to Pagak in search of food after delays in refugee registration on the Pagak side of the border were then raped by SPLA soldiers or held in captivity as sexual slaves.[[871]](#footnote-872) In one particularly egregious case, SPLA soldiers reportedly raped a woman using a rifle barrel before shooting her dead for resisting.[[872]](#footnote-873) The Commission was able to verify two such rape cases through forensic examination.[[873]](#footnote-874)

591. The intense fighting resulted in the evacuation of NGO staff which consequently resulted in a dearth of aid for an estimated 50,000 civilians in an already dire humanitarian situation.[[874]](#footnote-875) Once NGOs relocated to Pagak or Gambella, Ethiopia they lacked the capacity to respond to the needs of those displaced.[[875]](#footnote-876) The Commission also received multiple reports of SPLA and SPLA-IO (RM) forces and authorities raiding humanitarian compounds and confiscating NGO assets.[[876]](#footnote-877)

592. Intermittent fighting has continued in Pagak up until the time of the present report. Meanwhile, SPLA-IO (RM) has remained in control of Mathiang, Wunkir, and Maiwut.

 6. Violations and Alleged Crimes

 a) Deliberate Killings of Civilians, Rape and Other Forms of Conflict-Related Sexual Violence, and Looting and Pillage

593. On the basis of the evidence collected and reviewed, as described above, the Commission finds reasonable grounds to believe that SPLA soldiers deliberately targeted and intentionally killed civilians in Mathiang, Maiwut, and Pagak and the surrounding villages and areas during its Pagak Offensive in 2017.

594. The Commission also finds reasonable grounds to believe that the SPLA committed rape and other forms of conflict-related sexual violence. It documented multiple cases of rape, two cases of castration, and one forced abortion committed during the SPLA offensive.[[877]](#footnote-878) The Commission received information regarding at least three older women who were abducted and forced to cook for the SPLA soldiers in Mathiang in July 2017; it is unclear whether the women were raped.[[878]](#footnote-879) The Commission received reports of an additional eight women who were held as sexual slaves in the SPLA barracks in Pagak in August 2017;[[879]](#footnote-880) however, further investigations are necessary. Other regional and inter-governmental bodies also documented a number of rapes which the Commission was not in a position to verify.[[880]](#footnote-881)

595. Further, there are reasonable grounds to believe that the SPLA engaged in widespread looting and destruction of civilian and humanitarian objects, including household items and crops, homes, schools, and medical and NGO facilities and assets.

596. These acts of the SPLA constitute serious violations of domestic human rights law under the Bill of Rights in the Transitional Constitution of the Republic of South Sudan, 2011, particularly the right to life and human dignity (Article 11), freedom from slavery (Article 13), and the right to property (Article 28). They also amount to violations by the Republic of South Sudan of the African Charter on Human and Peoples’ Rights, namely the right to life and the integrity of the person (Article 4), the right to the respect of the dignity inherent in a human being (Article 5) and the right to property (Article 14).

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

598. There are reasonable grounds to believe that the SPLA-IO committed serious violations of human rights such including the abduction of a pastor, arbitrary detention of civilians, and looting of food supplies intended for schools between July and December 2017.

599. Furthermore, the Commission finds reasonable grounds to believe that there was a nexus between the commission of these violations and the non-international armed conflict ongoing in South Sudan at the time, given that they occurred in the context of a deliberate orchestrated military operation to expel opposition forces from the area. Accordingly, they are violations of international humanitarian law under Common Article 3 to the Geneva Conventions and Additional Protocol II to which South Sudan is a party and which it has incorporated into its national law in its Geneva Convention Act (2012). They may also amount to war crimes under Article 4(a) (Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment), 4(d) (Outrages on upon dignity) and 4(f) (pillage) of the Draft Statute of the Hybrid Court for South Sudan.

600. The Commission also finds reasonable grounds to believe that the attacks on civilians in the Pagak Offensive since June 2017 was part of a widespread or systematic attack directed against a civilian population. They occurred across multiple villages over the course of the organized military operation. As such, these crimes may also amount to crimes against humanity. In this regard, in addition to other crimes against humanity which may be established, including murder and rape, the Commission heard evidence of the targeted nature of the attacks against civilians and entire villages, predominantly from the Nuer community, on the basis of their perceived support for SPLA-IO (RM). SPLA soldiers went door-to-door in groups of 20-70 soldiers, surrounding civilians in their homes, fields, churches and hospitals before attacking them.[[881]](#footnote-882) The targeted nature of the attacks may amount to the crime of persecution under Article 3(h) of the Draft Statue of the Hybrid Court for South Sudan.

 b) Intentionally Directing Attacks against the Civilian Population

601. There are therefore reasonable grounds to believe that the SPLA deliberately and intentionally directed attacks against the civilian population. In Mathiang and Maiwut in particular, several witnesses indicated that the White Army and SPLA-IO (RM) fled early on in the battle but that SPLA forces nonetheless continued to advance into the towns and the surrounding villages, firing from many different directions.[[882]](#footnote-883) Others noted that this was despite the fact that the SPLA soldiers knew that SPLA-IO (RM) military formations were not located in Mathiang[[883]](#footnote-884) and the SPLA-IO (RM) base camp was reportedly located two kilometres outside of Maiwut town.[[884]](#footnote-885)

602. Intentionally directing attacks against the civilian population or against individual civilians is prohibited by Article 13(2) of Additional Protocol II and the Geneva Convention Act (2012). These acts would amount to war crimes under Article 5(a) of the Draft Statute of the Hybrid Court for South Sudan.

603. Even if this was not an attack directed against the civilian population but a legitimate military operation against the SPLA-IO (RM), the evidence reviewed and collected by the Commission provides reasonable grounds to believe that there was an absolute failure to adhere to the cardinal international humanitarian law principle of distinction, such that the attack amounts to a violation of the customary prohibition of indiscriminate attacks.[[885]](#footnote-886)

 c) Displacement of the civilian population

604. The evidence reviewed and collected by the Commission makes clear that the massive displacement of the civilian population of Longechuk and Maiwut Counties – approximately 40,000 people, was a direct result of the widespread violations of international humanitarian law and human rights law committed by the SPLA forces. This included intentional attacks against civilians and civilian property; deliberate killings of civilians; destruction of civilian and humanitarian property; and pillage. The resultant physical and food insecurity left the civilians with no option but to flee and remain elsewhere.

605. This displacement gave rise to serious violations of human rights law under the Bill of Rights in the Transitional Constitution of the Republic of South Sudan, 2011, including the rights of the child (Article 17), the right to privacy encompassing the right not to be subjected to interference with his or her private life, family, home or correspondence, (Article 22), the right to freedom of movement and residence (Article 27), the right to education (Article 29), and the right to decent housing (Article 34). They also amount to violations of the African Charter on Human and Peoples’ Rights, including in particular the right to freedom of movement and residence within the borders of a State provided one abides by the law (Article 12), the right to enjoy the best attainable state of physical and mental health (Article 16), the right to education (Article 17).

 7. Responsibility

 a) Command Responsibility

606. The Commission finds reasonable grounds to believe that the SPLA offensive through Longechuk and Maiwut Counties in 2017 was conducted in furtherance of the Government policy requiring State Governors to take full control of their state territory. It has collected evidence, that the Governor of Maiwut State, was allegedly involved in planning the operations. He reportedly stated that he had “submitted his plans to the Government about how Pagak could be ‘liberated’”.[[886]](#footnote-887) As well as indicating that the Governor was involved in planning the operation, this also indicates that the senior SPLA leadership may have had prior knowledge of what was planned.

607. The meeting held on 14 July 2017, after the SPLA offensive had stalled due to tanks being unable to move because of the mud,[[887]](#footnote-888) indicates that the senior SPLA leadership had knowledge of the Government forces’ progress on the battlefield. Furthermore, the subsequent deployment of the attack helicopters to reinvigorate the advance would have required high-level authorization, likely at the Chief of General Staff level.

608. There are also reasonable grounds to believe that the Governor allegedly exercised battlefield command during the operation. The Commission received several first-hand accounts of witnesses who knew the Governor “as a son of Maiwut” and saw him on the battlefield “giving commands to the soldiers and carrying an AK-47 during the attack.”[[888]](#footnote-889)

609. Furthermore, another witness recounted that in September 2017, the Governor and the Commander of 6th Division troops in Palouch were seen together in Gambella town, Ethiopia with officials from Juba, trying in vain to convince people from the Nuer community who were in the camps there to return to their homes in the affected areas, particularly Mathiang, Maiwut and Pagak.[[889]](#footnote-890)

610. The Deputy Governor of Maiwut State was also seen on the battlefield. One witness told the Commission that:

They were all wearing their military uniforms when they arrived in Mayan. […] Among them I recognized […] the Deputy Governor of Maiwut in 2017. […] [They] carried AK-47 rifles during the attack and seemed to me as the ones giving command to the SPLA soldiers on the ground. [The Deputy Governor] had one star and a scissor [major general] and [another] General […] had one eagle and 3 stars [brigadier].[[890]](#footnote-891)

611. The main body of troops involved in the operation were alleged to be from SPLA 6th Division. The Commander of 6th Division troops in Palouch was reportedly also seen on the battlefield, alongside the Governor, both in uniform with guns “motioning commands to … subordinates operating [those] huge guns.”[[891]](#footnote-892) The Commission received reports that the Commander of 6th Division in Palouch also explained the main combat formation and how the operation was executed.[[892]](#footnote-893) Witnesses who saw the Commander of 6th Division in Palouch during the 2017 offensive recognized him and feared him from 2014 when he had been the commander of the Palouch Brigade which had allegedly killed civilians in the Mathiang area.[[893]](#footnote-894)

612. When the offensive stalled with the tanks stuck in the mud, reinforcements were sent from 1st Division in Renk.[[894]](#footnote-895)

613. The decision to deploy troops from 1st Division to reinforce the 6th Division troops who were already deployed in the offensive could not have been made on the authority of the Commander of 1st Division alone. Such a decision could only be made at the next level up the chain of command, the Sector, and given that both 1st and 6th Divisions were subordinate to Sector 2 in Malakal, there are reasonable grounds to believe that that is where the decision must have been made. Furthermore, the reinforcement was made around 15 July 2017 which is the date after the meeting where the attack helicopters were deployed. Hence, the decision may even have been made at the Chief of General Staff level.

614. The fact that the offensive was conducted over an extended time period and across such great distance provides reasonable grounds to believe that the SPLA’s military hierarchy was functional and able to exercise effective control over the SPLA troops deployed in the offensive. Furthermore, the fact that reinforcements were requested and received and Commanders were seen on the battlefield further reinforces the view this was a planned offensive and organised and that those involved in requesting and deploying reinforcements, as well as supervising activity on the battlefield knew or had reason to know of the acts of their subordinates. In this regard, the fact that alleged crimes were widespread and committed over the course of months in different locations supports such an inference. Despite this, the Commission has found no evidence that superiors took reasonable steps to prevent or punish the crimes committed by their subordinates. Indeed, the recurrence of these crimes provides reasonable grounds to believe no such preventative steps were taken.

 b) State responsibility

615. As the SPLA are government forces, violations of human rights committed by them give rise to state responsibility on the part of the Republic of South Sudan. Furthermore, the Government of South Sudan has an obligation to investigate and prosecute both State and non-actors actors for the alleged violations of international human rights and international humanitarian law, as well as other criminal acts committed during the course of its Pagak Offensive in 2017.

616. Despite the Government’s role in planning, funding and executing the SPLA’s operations, the Commission has not received any information indicating that the State has opened investigations into any of the violations that Government authorities or military personnel may have committed during its offensive between Guelguk and Pagak in 2017.

617. The Commission has also not received information that the Government has opened investigations into reported attacks on humanitarians by SPLA-IO (RM) representatives in Mathiang and Pagak during its counter-offensive.

618. Further, as South Sudan is a party to the CRC, CEDAW, as well as regional instruments such as the African Charter on Human and Peoples’ Rights and the Maputo Protocol, the State maintains the responsibility of ensuring the progressive realization of other economic, social and cultural rights that may have been threatened during the Government offensive, namely the rights to food, education, work, water, and healthcare, among others.

619. The Commission finds that State action or lack thereof in relation to the destruction of whole towns and villages and essential infrastructure, coupled with widespread security hazards which impeded emergency relief for the civilian population negatively impacted upon individuals’ abilities to enjoy their rights, particularly the masses who were displaced to other parts of South Sudan or outside of the country.

 IX. Accountability and Transitional Justice

 A. Transitional Justice

620. Accountability for human rights violations and abuses in South Sudan has been a huge concern for the Human Rights Council and the African Union since the eruption of conflict in December 2013, and underpins the rationale for the establishment of this Commission.

621. In March 2017, the Council adopted resolution 34/25 which requested the Commission among other things to “collect and preserve evidence of alleged gross violations and abuses of human rights and related crimes including sexual and gender based violence and ethnic violence, and to make this information available to all transitional justice mechanisms including the Hybrid Court of South Sudan to be established pursuant to chapter V of the Agreement for the Resolution of the Conflict of South Sudan (ARCSS)”[[895]](#footnote-896).

 1. Background

622. The grave lack of accountability for gross human rights violations and serious violations of international humanitarian law perpetrated by all parties since 2013 is the foremost factor in perpetuating the current conflict. Life for millions of South Sudanese is quite literally unspeakable: killings go unpunished, along with brutal gang rapes, detentions, and the forced recruitment of children who are then used in battle. While all the parties to the conflict are responsible for violations, worryingly the Commission finds that it is government forces that bear the greatest responsibility for the majority of the violations.

623. While impunity is now normalised in South Sudan, there have been rare exceptions where perpetrators have been prosecuted, but this has been before military courts. For example, after the Juba violence in July 2016 a General Court Martial was set up to prosecute SPLA soldiers allegedly responsible for crimes against civilians. The government reported that 77 soldiers were convicted for various offences including murder, rape, theft and looting. One of the accused was reportedly sentenced to death by firing squad[[896]](#footnote-897). The Government also reported that 24 soldiers were tried for crimes committed in Wau and Juba in July and August 2016, with two soldiers allegedly executed in late July 2016 following their conviction by a military court for murder in Wau. The Commission is very concerned that it cannot verify the details of any of these reports from the government regarding the trials. Civil society actors say the proceedings did not meet international fair trial standards; significantly it is impossible to know if the accused who stood trial were the ones convicted and sentenced because the proceedings took place in camera. Civil society groups indicate that the military judge read the names of the convicted persons while issuing the judgement without producing them in court.

624. The Commission has not been able to establish whether the SPLA/IO and other opposition groups have investigated or punished any forces within their ranks who have committed serious violations of international humanitarian law.

 2. Transitional Justice

625. South Sudan presents one of the most complex and challenging environments for ensuring accountability and promoting transitional justice as even discussing transitional justice in South Sudan while a conflict rages is a massive problem. If the international community and the Government of South Sudan do not enforce compliance with ARCSS as well as the recent Cessation of Hostilities agreement, any transitional justice process will be compromised.[[897]](#footnote-898)

626. Ideally, Transitional Justice processes should entrench the right to truth, justice, reparations and the guarantee of non-recurrence, and provide recognition to victims as rights holders[[898]](#footnote-899), promote civic trust[[899]](#footnote-900), strengthen the rule of law[[900]](#footnote-901), further social integration and reconciliation[[901]](#footnote-902), and promote the adoption of measures to guarantee the non-recurrence of violations[[902]](#footnote-903). This is simply not possible in the current situation given the lack of political will and national ownership. South Sudan also suffers from a weak and dysfunctional criminal justice system. In most instances the key players in these conflicts are themselves implicated in the atrocities and therefore oppose or obstruct any justice mechanisms.

 a) Chapter V of ARCSS

627. In August 2015, when the parties to the conflict and other stakeholders signed the ARCSS, Chapter V of the agreement, which deals with accountability and addressing the legacy of past atrocities through a transitional justice framework, was seen as a major achievement.[[903]](#footnote-904) Chapter V provides for the establishment of three key national institutions, namely, a Hybrid Court to investigate and prosecute individuals bearing responsibility for violations of international law, a Commission on Truth, Reconciliation and Healing to inquire into all aspects of human rights violations and abuses, breaches of the rule of law and excessive abuses of power, and a Compensation and Reparation Authority to address the needs of victims.

628. While the African Union, IGAD and the international community remain committed to Chapter V as the only viable option to address impunity, the overall implementation of the peace agreement has largely stalled despite recent initiatives to revitalize it.

 b) Hybrid Court for South Sudan

629. The ARCSS entrusts the AU with the responsibility of establishing a hybrid court for South Sudan which will investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law, committed from 15 December 2013.[[904]](#footnote-905)

630. After more than 18 months of inaction, a delegation of the African Union Commission finally met with the Government of South Sudan in July 2017 to discuss the establishment of the court. In a follow up meeting held in Addis Ababa, both sides agreed on the legal instruments for establishing the court, including a draft court statute and a draft Memorandum of Understanding. The draft statute sets out the criminal jurisdiction of the court, defining the crimes that the court has the jurisdiction to investigate and prosecute, and also lays out the structure and composition of the court and the appointment procedure for the court’s staff.

631. Discussion on where the Hybrid Court should be located are still ongoing. The Government of South Sudan has indicated in meetings with UNMISS that it would like the court to be located in South Sudan to enable the national justice sector to benefit from its infrastructure and expertise. The Commission however believes that it would be prudent to establish the seat of the court outside South Sudan so as to ensure the security of witnesses and accused persons. ARCSS enables the chairperson of the AU Commission to decide the court’s location.[[905]](#footnote-906)

631. The draft statute together with the Memorandum of Understanding between the AU and the Government was approved by the South Sudan Council of Ministers in December 2017.[[906]](#footnote-907) The Commission deeply regrets the government’s delay in signing the Memorandum of Understanding and its failure to domesticate the crimes in the draft statute. This delay sends a clear signal to the perpetrators that they may never be held accountable because the government has no real intention of establishing the Hybrid Court.

632. Significant for this Commission, is the ARCSS provision that the court should be able to draw on relevant reports, documents and materials, including the report of the AU Commission of Inquiry on South Sudan, in order to facilitate its work. The mandate of this Commission is to collect and preserve evidence, and ensure its availability to the Hybrid Court and other transitional justice mechanisms. This Commission has in the short time available to it, made considerable progress in collecting evidence and has established that the collection and preservation of evidence can be done. This aspect of the Commission’s work is critical for the successful operation of any potential Hybrid Court in the future.

633. The Hybrid Court will not be able to try all those responsible for lesser crimes linked to the conflict, potentially creating an impunity gap. The AU designed the Hybrid Court with the intention that it will strengthen and complement the national justice system which will address this impunity gap. However, South Sudan’s national courts suffer tremendous deficits and the rule of law institutions have been very weakened. Prosecutions will require a strengthened and independent judiciary, independent prosecutors and investigators capable of operating without political interference. South Sudan also has a pluralistic justice system, with most people turning to the customary justice system to resolve disputes, particularly during conflict periods, which will also need to be taken into account[[907]](#footnote-908).

634. Furthermore, to ensure the court’s success, its activities would have to be coordinated with the other transitional justice mechanisms such as the Commission on Truth, Healing and Reconciliation and the Compensation and Reparations Authority as well as with the national justice system to avoid any impunity gap.

 c) Commission on Truth, Reconciliation and Healing

635. Unfortunately, the Government of South Sudan has failed to establish the Commission on Truth, Reconciliation and Healing (CTHR) which is mandated to conduct investigations into human rights violations, and investigate, document and report on the root causes of the conflict and recommend processes for victims to receive reparation and compensation. A survey conducted by UNDP and the South Sudan Law Society in 2015, found that seventy-six percent of respondents did not know what a Truth Commission was.Of those who knew, 96% supported the establishment of one. Yet in spite of the lack of knowledge of the mechanisms, the same survey revealed an overwhelming demand from respondents for truth, justice and reconciliation and healing as well as criminal prosecutions[[908]](#footnote-909). The Government of South Sudan and the international community have an obligation to meet the expectations of victims.

636. The ARCSS also requires that the government conduct national consultations to inform legislation establishing the CTHR. The government established a Technical committee to support preliminary sensitization activities and media broadcasts to raise awareness about the mandate of the CTHR.[[909]](#footnote-910). The Technical Committee completed a mapping of conflict patterns and identified areas of national consultations to inform the drafting of legislation. However, the decision by the President of South Sudan to embark on a National Dialogue, one day prior to the launch by the Transitional Justice Working Group of their five year plan on the CTHR, on 15 December 2016, is clearly an attempt to obstruct the CTHR and shows the government is not serious about implementing Chapter V.

637. The CTHR should have been established six months after the establishment of the TGNU but no such steps have been taken. Establishing the Technical Committee gives the appearance of progress but is not a substitute for genuine progress.

638. Given the sharp political divisions in South Sudan it is key to ensure the CTHR is transparent and inclusive, and that members include opposition groups, civil society organizations, women’s groups and religious organisations.

 d) Compensation and Reparations Authority

639. The ARCSS provides for the establishment of a Compensation and Reparation Authority to provide “material and financial support to citizens whose property was destroyed by the conflict.”[[910]](#footnote-911) The agreement, surprisingly, does not mention reparation for physical injury, sexual violence or losses arising from death. The Commission has been informed that work on establishing the reparations body has not begun due to lack of funds.[[911]](#footnote-912) This is problematic.

640. Experiences on the African continent demonstrate that reparations are critical in assisting victims and addressing socio-economic inequalities that otherwise may lead to further violence. Yet despite the potential to redress generations of economic disparity and inequality, reparations are usually the most neglected element of transitional justice. 81 percent of respondents in the South Sudan Law Society survey were adamant that the Government should provide compensation to victims for human rights violations and abuses.[[912]](#footnote-913) Establishing a decent functional and fair reparations programme will require enormous commitment by the Government of South Sudan, which at the time of signing the ARCSS expressed its reservations about the establishment of reparations authority.

641. Any compensation and reparations programme will need to be informed by cases filed before the Hybrid Court and the CTHR in order to determine the nature and scope of remedies, as well as the potential number of victims in South Sudan. The need for reparation is also likely to grow if the conflict continues and victims continue to be displaced in enormous numbers. Nevertheless, priority should immediately be given to building the institutional and policy frameworks required for the smooth implementation of a long term reparations programme, as well as an interim reparations programme.

642. With almost one third of the population displaced, there is a huge risk that victims and communities living in the diaspora may be excluded from the reparation process. Consultations with the IDP and refugee communities is critical to ensure that reparations programmes reflect their needs. Given the staggering scale of sexual and gender based violence in the current conflict and the lack of attention it has received so far, gender sensitivity must be built into the design and implementation of the reparations programme to ensure the needs of male and female victims are met.

643. Funding for reparations will require that the government of South Sudan reprioritize its spending on the military and security to assist victims. Successful reparations programmes across the world owe their success to the early identification of sustainable funding mechanisms, which include the establishment of a Victims Trust Fund drawn from a national budget on an annual basis. This requires political commitment as well as national ownership. If funding is not secured or appropriated at the outset of any transitional justice programme, any discussion of reparations risks raising expectations and undermining reconciliation amongst victims and survivors.

 e) National Dialogue

644. Amidst continuing violence and insecurity, the TGNU has continued to prioritize healing and reconciliation efforts through a National Dialogue which is scheduled to conclude by April 2018. The Government is moving forward with its National Dialogue process while at the same time selectively implementing parts of the peace agreement to keep international pressure at bay. This is not a tactic that can continue. It is time the Government of South Sudan stops tinkering at the edges of a transitional justice process and demonstrate a serious commitment to the implementation of Chapter V.

645. In October 2017, the Steering Committee of the National Dialogue submitted a preliminary report to the President outlining the root causes of the current conflict and the reforms needed to consolidate peace and stability. Thereafter subcommittees of the Steering Committee commenced local dialogue forums, which have been limited to government-controlled areas. While the discussions have largely been frank and open, numerous participants expressed concerns about the timing of the whole exercise while implementation of key aspects of the peace agreement is still outstanding. They also expressed fear regarding the presence of government security forces at the consultations.

646. The Steering Committee has endeavoured to consult opposition groups within and outside the country. However, opposition figures outside the country are reluctant to engage in the National Dialogue, arguing that conditions are not ripe for genuine dialogue. The SPLA/IO for example welcomed a national dialogue process in principle, but raised concerns regarding the political context and implementation modalities, in particular Kiir’s credibility to lead the process. The group asserted that a national dialogue must be anchored in accountability and justice through the Hybrid Court for South Sudan and be complementary to the peace agreement. Others have stressed the need for inclusivity and a bottom up approach and for a National Dialogue conference to be held outside the country facilitated by a neutral entity. Joint statements issued in April 2017 by a new grouping of 6 prominent opposition entities condemned President Kiir’s plans for the National Dialogue as “unilateral” and not genuinely inclusive[[913]](#footnote-914).

647. So far the National Dialogue has been largely a government owned process with limited participation from opposition groups and affected communities. Civil Society and faith communities have also expressed reservations about the current composition of the Steering Committee.[[914]](#footnote-915)

648. Holding National Dialogue fora at a time when the conflict is ongoing and has spread to the Greater Equatorias also makes the process extremely precarious. There is also the question of the participation of millions of refugees from South Sudan in the dialogue process. Most of these refugees have rejected the National Dialogue with some commenting on the appropriateness and timing of the exercise when asked by this Commission in Ethiopia and Uganda. Members of the National Dialogue Steering Committee who visited refugee camps themselves confirmed to the Commission that refugees had refused to entertain their visit[[915]](#footnote-916).

649. UNMISS conducted nationwide consultations between May and July 2017 on the right of freedom of opinion and expression as a means of promoting advocacy towards enhanced compliance with international human rights standards. During these discussions, a number of participants raised concerns about expressing views critical of the Government. They also raised the issue of threats and intimidation as well as the surveillance of personal communication by the National Security Service, all done under the pretext of maintaining law and public order. UNMISS also noted the chilling effect on free speech as defamation is still a criminal offence under the Penal Code of South Sudan in breach of international legal norms and which is being used to silence dissenting voices.

650. The Commission is deeply concerned that the Government is indeed using the National Dialogue to avoid implementing the Chapter V provisions of the peace agreement. Any national dialogue must be anchored in Chapter V of ARCSS if it is to be meaningful and must be led by an independent person who is perceived as credible by most South Sudanese.

 f) The way forward – ensuring a holistic and realistic transitional justice process in South Sudan

651. A recent survey conducted by Norwegian Peoples Aid suggests that a large segment of the South Sudanese have a limited understanding of the transitional justice mechanisms in the ARCSS, with 60% of the respondents surveyed indicating that they were either “a little informed” or “not at all informed”. This is disturbing in revealing the lack of impact this process has had so far on the lives of the beleaguered people of South Sudan.

652. The Commission takes the view that, if the transitional justice mechanisms proposed in the ARCSS are ever to be established, the TGNU together with civil society and other stakeholders should initiate a comprehensive outreach programme (beyond the national dialogue) to consult widely with the South Sudan population to educate and inform them and obtain their input. This will require a concerted civic engagement and dialogue involving civil society, NGOs and community leaders. Any initiative will also require the support of the United Nations and the international community. Good practices can be drawn from examples of transitional justice processes with successful outreach programmes like South Africa, Sierra Leone and Tunisia.

653. The Commission is concerned that the ongoing conflict and delayed peace process may result in millions of refugees and IDPs being excluded from any consultation process. Given that those displaced amount to almost one third of the population, there is a great risk that victims and communities living in the diaspora may be left out of consultations on the reparation process. Their participation is critical to ensure that reparations programmes are designed in a targeted manner that reflects the needs and priorities of victims and communities who have suffered violence. Furthermore, given the scale of sexual and gender based violence in the current conflict and the lack of attention it has received from the authorities so far, it may be important to factor a gender sensitive approach into all aspects of the design and implementation of the reparations programme, including ensuring that women are well represented in the executive body of the Compensation and Reparations Authority.

654. Pablo de Greiff, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, has noted that the most important advance in transitional justice is the “visibilization” of victims, who are typically among the most marginal and vulnerable people in a society. Through different means, transitional justice helps victims occupy a space in the public sphere that they lacked before.[[916]](#footnote-917)

 3. Collection and Preservation of Evidence

655. Documentation of violations during this period is critical. It should be done taking into consideration the need to respect the “do no harm” principle and protecting the security of victims and witnesses. The United Nations and the international community should also assist victims and survivors to obtain prompt medical services including psycho-social support. Documentation initiatives should also incorporate a gender sensitive approach and address the widespread prevalence of sexual violence arising out of conflict.

656. This Commission has demonstrated that, given the time and resources, evidence can be effectively collected and preserved before it degrades and is destroyed. Ensuring that the mechanism for collection and preservation of evidence continues is critical to future accountability for South Sudan.

 4. Amnesties

657. South Sudan has a history of blanket amnesties, which the Government has used over the years to lure armed opposition groups back into their fold. As a result, armed groups have the tendency to use conflicts as a means of gaining political capital and securing a place at the negotiating table. As recently as March 2017, President Kiir proclaimed a unilateral ceasefire and granted a general amnesty to those who renounced violence in order to promote inclusive participation in the National Dialogue. Public surveys show the people of South Sudan do not support amnesties and instead believe that those responsible for committing atrocities should be held accountable. It is important to note that the ARCSS provides specifically that the Hybrid Court shall not be impeded or constrained by any statute of limitations or the granting of pardons, immunities or amnesties[[917]](#footnote-918).

 5. Sanctions

658. On 21 December 2017, the U.S Treasury Department imposed sanctions on 13 alleged human rights abusers and corrupt actors together with 39 affiliated individuals and entities. Among them is the President of a Thai-South Sudan construction company who also serves as principal financial adviser to President Kiir. This followed the targeted sanctions imposed in September 2017, against the SPLA Deputy Chief of Defence Force and Inspector General of Police, the Minister of Information and the former Chief of General Staff, for their roles in threatening peace, security and stability in South Sudan. The United Nations, EU and the United States previously imposed sanctions (travel ban and asset freeze) on six persons from the SPLA and SPLA IO. Canada also imposed financial sanctions on two key commanders from both sides whilst the EU has imposed an overall arms embargo on South Sudan.

659. In March 2015, the Security Council adopted a resolution that established a sanctions regime for South Sudan. Within this a sanctions committee was established with the authority to impose travel bans and assets freezes on individuals and entities found responsible for human rights abuses, violations of international humanitarian law, or the recruitment of child soldiers. Since then, sanctions have been imposed on six South Sudanese commanders from both government and opposition forces, by the Security Council. Whilst the Council failed in its attempt in March 2017 to impose an arms embargo on South Sudan, it expressed its “intent to impose” any measures “appropriate to respond to the situation,” including an arms embargo.

660. There has been a great deal of outrage at the violations by the Government and warring parties of the recent cessation of hostilities agreement signed on 24 December 2017. Not unsurprisingly, the Chairperson of the AU and the Secretary-General released a statement on 12 January 2018, “strongly condemning” the violations of the agreement by the warring parties, and calling for sanctions if the parties continued to delay the full implementation of the August 2015 peace agreement.

 6. Conclusion

661. South Sudan is a young country tragically devouring itself. Millions of its citizens are now refugees abroad or displaced in United Nations sites across the country. The Government has cynically sub-contracted its own responsibility for taking care of its people to the international community. The ARCSS has been violated more than it has been observed – sparking a new effort by the African Union and IGAD to try and bring the peace process back on track. Even this has already been undermined by recent ceasefire violations, clearly demonstrating a lack of commitment to peace.

662. It has been more than two years since the ARCSS was signed. Yet neither the draft statute for the hybrid court nor the cooperation agreement for establishing it has been adopted and passed into law. Furthermore, the incorporation of the ARCSS into the Transitional Constitution has not happened. The penal law has also not been amended to incorporate the relevant international crimes in the domestic law.

663. For millions of victims, the notion of accountability presents an extraordinary disconnect while the conflict continues to rage, and everyone including the Government is reneging on the peace deal. Justice remains a distant prospect when the Government repeatedly uses blanket amnesties to protect leaders accused of atrocities, and more so when the domestic legal system is so dysfunctional that it lacks the ability to address serious crimes and gross violations of human rights and international humanitarian law. Legal descriptions obscure the senseless cruelty of the violations that target the very vulnerable with an intensity and scale that’s hard to capture and document in a report like this one.

664. Besides sanctions, the only leverage the international community still has over the leaders of South Sudan is the threat of prosecutions. The AU Commission has the authority to establish the court with or without the cooperation of the Government of South Sudan. It should proceed with this task if the transitional government continues to ignore its obligations under Chapter V.

 B. Criminal Justice context

665. The recent history of South Sudan demonstrates that the failure to adequately address violations of human rights and serious crimes has had profound long-term consequences. Historical injustice perpetuated by the use of blanket amnesties in peace processes to protect those responsible for violent crimes have contributed to a culture of impunity and have restricted victims’ rights to obtain an effective remedy or reparations.[[918]](#footnote-919) Instead of being held criminally accountable, individuals implicated in attacks on civilian populations in South Sudan have been rewarded with promotions and government appointments. This approach undermines the legitimacy of the Government and further erodes the rule of law.

666. Since the outbreak of the civil war, retaliation for past grievances has further fueled ethnic and communal violence between communities, marked by widespread targeted killings, rape, torture and destruction of property. Despite Government statements announcing investigations into the most serious criminal acts, as far as the Commission is aware, the Government has yet to take concerted action to hold those responsible accountable.[[919]](#footnote-920)

 1. Domestic Formal Justice System

 a) Challenges and Obstacles

* Lack of Resources and the Need for Enhanced Institutional Capacity

667. There are approximately 145 public prosecutors, 165 judges and 1,150 defence lawyers in the country.[[920]](#footnote-921) The majority of South Sudan’s practicing lawyers are concentrated in Juba, and only play a limited role in courts outside of the capital. The justice institutions are under-funded and are characterized by a lack of financial and material resources, poor or non-existent infrastructure, particularly outside of urban centres, a lack of transportation and a living wage.

668. Moreover, South Sudan elected to transition away from Sudan’s Sharia law system towards a common law system after independence. Against this background, in which many of the country’s Arabic-speaking judges presiding over County Courts are trained in Sharia law and now preside over common law trials in English-speaking courts, the formal justice system requires concerted medium to long-term efforts to support the justice institutions to deliver meaningful justice.

669. Insufficient witness protection, lack of fair trial guarantees and inadequate legal aid for indigent defendants, meagre capacity for defence lawyers to access statutory laws and judicial precedent, as well as the imposition of the death penalty in a small number of cases[[921]](#footnote-922) remain significant obstacles to the provision of fair and impartial justice.[[922]](#footnote-923)

670. In response to these concerns, the Government’s draft National Development Strategy (2018-2021) identifies the justice sector as a priority area for development.[[923]](#footnote-924) Following recent interviews with the national justice sector, UNMISS Rule of Law Advisory Section (RoLAS) found that adequate legal and structural frameworks exist to support the investigation and prosecution of conflict-related crimes against women and children, including those committed by police and soldiers, and that there is willingness on the part of several senior officials to support the establishment of dedicated units to do so.[[924]](#footnote-925) UNMISS RoLAS’s findings are consistent with the Ministry of Justice’s Case Management Report for 2015 which shows that prosecutions of sexual violence crimes have been taking place in the national courts, and that data on the number of prosecutions conducted countrywide is available. This report shows that during 2015, a total of 14,849 cases were prosecuted, of which 320 were rape, and 13 were sexual harassment. The Ministry of Justice is currently compiling reports capturing similar data of the number of prosecutions in national courts throughout 2016 and 2017.

671. Furthermore, a recent review of some sample judgments and decisions, including cases involving crimes against women and children, issued by South Sudan’s Court of Appeal and Supreme Court by UNMISS RoLAS, found sound judicial reasoning referencing relevant domestic law, analysis of the parties’ submissions and evidence presented at trial, as well as comparative analysis with jurisprudence from other courts and jurisdictions, and dissenting opinions by individual judges explaining reasons for their departure from the majority’s finding.[[925]](#footnote-926) In RoLAS’ view, this indicates the availability, at least, of: “a core group of experienced judges [who] could be identified to fairly and professionally adjudicate cases involving conflict-related crimes against women and children.”[[926]](#footnote-927)

672. Additionally, the judiciary has shown itself willing to interpret the law in a victim-sensitive manner, by granting specific protective measures such as the use of closed sessions in the High Court to protect the identity of victims and witnesses and, most recently, the use of closed sessions and video-link testimony allowed by presiding Judge Advocates in the Terrain military court martial.[[927]](#footnote-928)

673. These positive indicators provide hope that there is a sound base within the judicial branch upon which stronger institutions can be built. Accordingly, the Ministry of Justice, with support from the international community, has attempted to build the public prosecutors’ capacity, including their ability to investigate effectively and prosecute crimes against women and children.[[928]](#footnote-929) Between independence and the outbreak of fighting in December 2013, millions of dollars were spent on ad hoc capacity-building support to the formal justice system, the effects of which have been eroded by the conflict.

674. Learning from past experience, however, it remains clear that short-term capacity building initiatives are no panacea for the profound challenges facing South Sudan’s formal justice system as it moves away from the Sudanese justice system, and adjusts to an Anglophone common law system. Grappling with these challenges requires long-term engagement on the part of the South Sudanese people and the international community. Any support to the formal justice system by the international community to investigate, prosecute, adjudicate, and rehabilitate those responsible for serious crimes must be well-coordinated, long-term, adequately funded and include concerted support to the justice infrastructure such as: mentoring and on-the-job training, case management, improving detention conditions in police stations and prisons, building court rooms, in addition to technical assistance.

* Interference from the Executive Branch

675 Actual or perceived executive interference in the functioning of prosecutorial and judicial authority casts doubt on the fairness of proceedings. Following a judicial strike over the judges’ frustration with the Chief Justice’s alleged inability to provide adequate compensation and working conditions for judges, in July 2017, the President dismissed 14 judges who refused to return to work based on a constitutional provision that allowed removal for gross misconduct—a term broad enough to encompass neglect of duty.[[929]](#footnote-930)

676 Kukurlopita Marino Pitia, Justice of the Supreme Court, resigned in November 2017, citing executive interference in the judiciary. In particular, he referred to the dismissal of the former Deputy Chief Justice for his opinion in a constitutional petition that was brought against the President for creating additional states in South Sudan, in contravention of the 2015 Peace Agreement.[[930]](#footnote-931)

677. In February 2017, two top officers overseeing South Sudan’s military courts resigned: Brigadier General Henry Oyay Nyago, Director of Military Justice for the SPLA and a Judge Advocate General; and Colonel Khalid Ono Loki, the Head of Military Courts. The officers cited high-level interference, ethnic partiality and impunity as reasons for their resignation.[[931]](#footnote-932) In their resignation letters, they accused the President and the Chief of General Staff of deliberately frustrating the legal process and failing to prosecute soldiers for murder and rape.[[932]](#footnote-933) The senior officers stated that soldiers were committing crimes, including rape and extra-judicial killings without fear of punishment, particularly those who are Dinka - the same tribe as the president and chief of army staff.[[933]](#footnote-934)

678. Loki accused the Government of corruption, arbitrary arrests and detention of non-Dinka citizens, and of frustrating the military justice process by overruling or ignoring convictions for criminal offences. Both cite the use of military prisons to detain civilians.[[934]](#footnote-935) Nyago accused the Government of, inter alia, circumventing the military justice system and committing: war crimes; crimes against humanity; genocidal acts and ethnic cleansing of civilians from the Murle, Fertit, Kakwa, Nuer and Shilluk communities.[[935]](#footnote-936)

 b) Access to Justice for Women and Children

679. At present, the weakness of the formal justice system set forth above exacerbates discrimination against women and children, pushing them towards traditional structures that place an emphasis on collective, rather than individual justice.[[936]](#footnote-937)

680. While the customary justice system provides an important forum for compensation and recourse, it is not a suitable forum for adjudication of serious criminal cases, and crimes against women and children in particular.[[937]](#footnote-938) Strengthening the formal justice system would bring justice to the most vulnerable members of society.

681. Timely, fair and impartial criminal trials build confidence in the rule of law, address the root causes of the conflict – anger, impunity and injustice for ethnically-motivated crimes – and contribute to ending the cycle of violence. Criminal processes formally record and acknowledge the harm done to the victims, punish the perpetrator, deter future crimes and build confidence in the State as an arbiter of justice. A strong justice system dispenses justice irrespective of perpetrators’ social or political power. Therefore, while customary justice processes, truth-telling and reconciliation efforts undoubtedly play an important role in justice delivery, they are not an alternative to fair and credible trials.

 c) Promising Institutions and Indicators: The Terrain Trial - A First Step towards Accountability

682. At the end of May 2017, the SPLA began its court martial proceedings to address the 11 July 2016 incident at the Terrain hotel in Juba. Twelve low-ranking soldiers stood accused of the murder of John Gatluak a South Sudanese journalist, rape and sexual harassment, armed robbery, theft, looting and criminal trespass and violations of military standing orders.

683. In a country where virtually no accountability measures have been put in place to address serious criminal offences against civilians since December 2013, the Terrain trial represents a first step towards establishing a culture of accountability.

684. The trial began nine months after the Terrain incident, the court was presided over by Military Judge Advocates, a military prosecutor assisted by two privately funded prosecutors (representing the victims and Terrain’s civil claim) leads the prosecution and five to eight military lawyers represent the defendants. The court heard evidence from approximately eighteen prosecution witnesses and three defense witnesses during the course of thirty hearings. After initial concerns that the proceedings would collapse, a brave survivor returned to Juba to give her evidence in person, reinvigorating the hearings and ensuring that the proceedings would continue. The survivor identified a number of the accused, including the most senior among them, as responsible for rape and violence.

685. Adhering to due process, the parties made legal submissions, citing relevant provisions of law which were ruled on by the bench. Throughout most of the trial the Court provided simultaneous translation from simple Arabic to English and vice versa. By providing this service, the Court ensured that the media and English speakers in the public gallery were able to consistently follow the trial. The Court also permitted accused who were unable to testify in simple Arabic to receive simultaneous translation from Juba Arabic to the Dinka language when on the stand.

686. The Court ensured that protective measures were used throughout the trial to protect the identity of victims and witnesses and to facilitate their testimony. To ensure the safety and security of international and South Sudanese victims, the Court granted the Prosecution’s application to use video-link testimony. Testifying through video-link, not only facilitated the provision of valuable evidence, but also set a precedent that can be used to assist other vulnerable victims and witnesses to testify in future trials involving sexual violence.

687. The defendants are being prosecuted because they were identified as perpetrators of the crimes. The accused who died was the most senior SPLA soldier present, and shortly before his death, had been identified by at least two survivors as physically assaulting one victim and giving orders to the soldiers to rape at least one woman. Despite the high-profile nature of the case, it is unlikely that the case would have been brought, were it not for the personal intervention of Major General Marial Chanuong Yol Mangok, former Commander of the Presidential Guard. This speaks to a systemic weakness in the system, that without concerted pressure from a senior official, cases may never be brought.

688. While the proceedings are generally in accordance with international standards,[[938]](#footnote-939) the circumstances and conditions of the defendants’ detention are concerning. One of the accused, First Lieutenant Luka Akechak, the commander of one of the units that attacked Terrain, died in custody at NSS headquarters in Juba, on 12 October 2017, reportedly of malaria and typhoid. According to the army, Akechak had fallen sick “some weeks ago” and received medical treatment in Juba but did not recover and was found dead in the morning. At least one defendant appeared very seriously under nourished. The other accused are notably thin, three appear to be limping; one badly enough to use a crutch.[[939]](#footnote-940)

689. The Commission observes that despite the Government investigation into the events that took place at Terrain, in which senior officers were named, no proceedings have been brought against them. Senior officers should also be prosecuted for their role in failing to prevent the crimes committed by their subordinates.

690. Nonetheless, the Terrain case highlights the demonstrable ability of the SPLA to hold its soldiers to account. Terrain should not be exceptional, but should be an example of how to achieve accountability and encourage the SPLA to take immediate and concerted action to prosecute its soldiers for rape and sexual violence against civilians, including the hundreds of South Sudanese women raped by soldiers during the July 2016 violence.

 d) Confidential Dossier

691. The Commission was mandated by the Human Rights Council to “collect and preserve evidence of, and clarify responsibility for alleged gross violations and abuses of human rights and related crimes”.[[940]](#footnote-941)

692. The Commission has determined that there are reasonable grounds to believe that a number of individuals bear responsibility for the related crimes identified by the Commission. The names of the individuals and links to the evidence related to the crimes referred to in this report have been placed in a confidential sealed dossier and this has been handed over to the United Nations High Commissioner for Human Rights. The United Nations High Commissioner for Human Rights has been asked by the Commission to consider providing access, in accordance with the relevant protocols, to the information in this confidential dossier at the appropriate time to relevant institutions, including the Hybrid Court for South Sudan and other relevant courts of law, following strict witness protection requirements, to ensure there is justice for the people of South Sudan. Particular attention has been paid in compiling the sealed dossier to the jurisdiction of the hybrid court to be established by the African Union.

 X. Conclusions and Recommendations

 A. Conclusions

693. **There is sufficient evidence to conclude that the SPLA, both factions of the SPLA-IO, as well as the armed groups that support the parties to the conflict are deliberately targeting civilians on the basis of their ethnic identity and by means of killings, abductions, rape and sexual violence, as well as the destruction of villages and looting. These acts constitute war crimes and crimes against humanity.**

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

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

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

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

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

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

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

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

 B. Recommendations

 1. To the Government of South Sudan:

* **Comply with obligations under both national and international law to promote and protect the rights of civilians, including issuing clear, public orders to all armed forces, security agencies and militias, to prevent and end all violations of human rights and international humanitarian law, including unlawful killings, arbitrary detentions, torture, enforced disappearances, crimes of sexual and gender-based violence, and theft and looting of civilian property;**
* **Sign, with the African Union, as soon as possible, the Memorandum of Understanding on the establishment of a Hybrid Court;**
* **Take the necessary steps for the establishment of the Commission on Truth, Reconciliation and Healing, ensuring that selection and appointment of Commission members should be conducted in an open and transparent manner, with candidates subjected to an independent vetting and screening process to ensure their independence, credibility and impartiality;**
* **Take the necessary measures to establish the Compensation and Reparation Authority;**
* **Establish an interim reparations programme and provide prompt medical services, including psycho-social support, to address the immediate needs of survivors, incorporating a gender-sensitive approach and paying particular attention to conflict-related sexual violence;**
* **Investigate all allegations of serious violations of human rights and international humanitarian law, as well as serious crimes under South Sudanese law, committed by the SPLA and other members of the security forces. The Government should ensure prosecutions conform with fair trial standards;**
* **Initiate a security sector reform process with a view to building a pluralistic and ethnically-inclusive security sector;**
* **Ensure and protect the freedom of movement of the population, humanitarian workers, humanitarian aid and commercial goods across the country;**
* **Establish conditions that are conducive to the return of IDPs and refugees to their homes, allowing them to live in freedom and dignity;**
* **Ensure the security and freedom of expression and work of civil society actors, including the media and human rights defenders; and create an environment conducive to the freedoms of speech, association and the media;**
* **Initiate civic engagement and consultations with victims, civil society, including human rights defenders, women leaders, religious and traditional leaders, to raise awareness on issues involved and frame Transitional Justice to meet their demands.**

 2. To the SPLA, both factions of the SPLA-IO and all non-State armed groups:

* **Issue clear, public orders to all troops, and allied militias to prevent and end unlawful killings, arbitrary detentions, torture, enforced disappearances, conflict-related sexual violence, and looting of civilian property;**
* **Immediately vacate all schools and hospitals;**
* **Immediately release all children associated with armed forces;**
* **Allow unfettered access to the United Nations, ICRC, humanitarian organisations, and human rights defenders to enable them carry out their work in accordance with international law and their respective mandates.**

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

* **Immediately establish the Hybrid Court in accordance with ARCSS, and appoint a Prosecutor with immediate effect, to identify those against whom indictments could be issued based on the available evidence;**
* **Set realistic deadlines for implementation the CTHR and the CRA.**

 4. To UNMISS:

* **Support the Technical Working Committee to embark on a comprehensive outreach and education programme on the Chapter V institutions and assist with establishing these institutions in accordance with best international practices;**
* **Continue to support national justice institutions to prosecute serious crimes and ensure that all witnesses and victims receive appropriate protection and support;**
* **Continue to support United Nations agencies and civil society organisations to document conflict related sexual violence and to design and establish mapping and documentation programmes which also disaggregate data of specific incidents of gender based violence and conflict-related sexual violence ensuring that the confidentiality and security of witnesses and victims are protected so as to ensure future accountability.**

Annex I: List of Acronyms and Abbreviations

|  |  |  |
| --- | --- | --- |
| **Acronym or Abbreviation** |  | **Name** |
|  |  |  |
|  |  |  |
| ACRWC |  | African Charter on the Rights and Welfare of the Child |
| African Charter |  | African Charter on Human and Peoples’ Rights |
| AoR |  | Areas of Responsibility  |
| APC |  | Armoured Personnel Carrier |
| AU |  | African Union |
| BANFMU |  | UNMISS Bangladesh Navy Force Marine Unit |
| Battalion  |  | Battalion  |
| Bde. |  | Brigades |
| Brig. Gen. |  | Brigadier General |
| CAR |  | Central African Republic |
| CAT |  | Convention Against Torture |
| CDF |  | Chief of Defence Staff |
| CEDAW |  | Convention on the Elimination of All Forms of Discrimination Against Women |
| CERD |  | International Convention on the Elimination of all forms of Racial Discrimination  |
| CoGS |  | Chief of General Staff |
| Col. |  | Colonel |
| CPA |  | Comprehensive Peace Agreement |
| CRA |  | Compensation and Reparations Authority |
| CRC |  | Convention on the Rights of the Child |
| CRPD |  | Convention on the Rights of Persons with Disabilities |
| CRSV |  | Conflict-Related Sexual Violence |
| CTFMR |  | Country Task Force on Monitoring and Reporting |
| CTRH |  | Commission for Truth, Reconciliation and Healing  |
| Div.  |  | Division  |
| EU |  | European Union  |
| DRC |  | Democratic Republic of Congo |
| FBI |  | Federal Bureau of Investigations (United States of America) |
| FC |  | Fire Controllers |
| FDP/SSDF |  | Federal Democratic Party/South Sudan Democratic Forces  |
| FSA |  | Flight Safety Assurance |
| HRD |  | United Nations Mission in the Republic of South Sudan, Human Rights Division |
| ICC |  | International Criminal Court |
| ICCPR |  | International Covenant on Civil and Political Rights |
| ICESCR |  | International Covenant on Economic, Social and Cultural Rights |
| ICPPED |  | International Convention for the Protection of all Persons from Enforced Disappearance  |
| ICRC |  | International Committee of the Red Cross |
| ICRMW |  | International Convention on the Rights of Migrant Workers and their Families |
| IGAD |  | Intergovernmental Authority on Development |
| IOM |  | International Organization for Migration  |
| Joinet/Orentlicher Principles |  | Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity |
| JVMM |  | Joint Verification Monitoring Mission |
| Kampala Convention  |  | Convention for the Protection and Assistance of Internally Displaced Persons in Africa |
| LGBTI |  | Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersex |
| Lt. Gen. |  | Lieutenant General |
| Maj. Gen. |  | Major General |
| Maputo Protocol  |  | African Charter on the Rights of Women in Africa  |
| MSF |  | Médicins sans frontières |
| NAS |  | National Salvation Front  |
| NDM |  | National Democratic Movement  |
| NGO |  | Non-Governmental Organisation  |
| NSS |  | National Security Service  |
| OCHA |  | United Nations Office for the Coordination of Humanitarian Affairs |
| PDM |  | People’s Democratic Movement  |
| PoCs |  | Protection of Civilians sites |
| PTSD |  | Post-Traumatic Stress Disorder |
| RoLAS |  | United Nations Mission in the Republic of South Sudan, Rule of Law Section |
| RPF |  | Regional Protection Force |
| SDF |  | Sudan Defence Forces  |
| SGBV |  | Sexual and Gender-Based Violence |
| SPLA |  | Sudan People's Liberation Army |
| SPLA/M-IO |  | Sudan People's Liberation Army/Movement In Opposition |
| SPLA/M-IO (RM) |  | Sudan People's Liberation Army/Movement In Opposition forces loyal to Dr. Riek Machar |
| SPLA/M-IO (TD) |  | Sudan People's Liberation Army/Movement In Opposition forces loyal to First Vice President Taban Deng Gai |
| SSDM/A |  | South Sudan Democratic Movement/Army |
| SSNMC |  | South Sudan National Movement for Change  |
| SSP |  | South Sudanese Pound |
| SSPM/A |  | South Sudan Patriotic Movement/Army  |
| TGoNU |  | Transitional Government of National Unity |
| UAGs |  | Unidentified Armed Groups |
| UNICEF |  | United Nations Children’s Fund |
| UNMISS |  | United Nations Mission in the Republic of South Sudan |
| UNSCR |  | United Nations Security Council Resolution  |
| Van Boven Principles |  | Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law |
| WFP |  | World Food Programme  |

1. \* Reproduced as received. [↑](#footnote-ref-2)
2. \*\* The information contained in this document should be read in conjunction with the report of the Commission on Human Rights in South Sudan (A/HRC/37/71). [↑](#footnote-ref-3)
3. See for example in 2014: African Union, *Final Commission Report*; South Sudan Human Rights Commission, *Interim Report on South Sudan Internal Conflict, 15 December 2013 – 15 March 2014*; Amnesty International, *Nowhere Safe: Civilians under Attack in South Sudan*; Amnesty International, *“Do Not Remain Silent” Survivors of Sexual Violence in South Sudan Call for Justice and Reparations*; UNMISS, *Conflict in South Sudan: A Human Rights Report*, May 2014; Human Rights Watch, *South Sudan’s New War, Abuses by Government and Opposition Forces*, August 2014. [↑](#footnote-ref-4)
4. The United Nations’ policy with regard to archiving and classification of documents can be found at ST/SGB/2007/6. [↑](#footnote-ref-5)
5. The Agreement on the Resolution of the Conflict in the Republic of South Sudan, (2015) (the Peace Agreement) was signed on 17 August 2015. [↑](#footnote-ref-6)
6. Peace Agreement (2015), Chapter II, Article 1.3. [↑](#footnote-ref-7)
7. Peace Agreement (2015), Chapter II, Article 1.7. [↑](#footnote-ref-8)
8. Establishment Order No. 36/2015 October 2015; Government of Republic of South Sudan, *Republican Order, 02/2017*, 14 January 2017. [↑](#footnote-ref-9)
9. Øystein H. Rolandsen & Nicki Kindersley, *South Sudan: A Political Economy Analysis*, 16 October 2017, page 7. [↑](#footnote-ref-10)
10. JMEC, see <http://jmecsouthsudan.org/>. [↑](#footnote-ref-11)
11. CTSAMM reports are publicly available (<http://ctsamm.org/reports-documents/ctsamm-violation-reports/>). [↑](#footnote-ref-12)
12. See also Report of the African Union Commission of Inquiry on South Sudan, Addis Ababa, 15 October 2014, paragraphs 390, 420-421 and 424-440; A/HRC/31/CRP.6, paragraphs 65-136. [↑](#footnote-ref-13)
13. Search for Common Ground, *Building a “Constituency for Peace” in South Sudan*, 2017, page 10; Conflict Trends Report No. 59: Real-Time Analysis of African Political Violence, June 2017. Armed Conflict Location & Event Data Project, June 2017. [↑](#footnote-ref-14)
14. See for example, the appointment of SPLA General Chol Thon as the first Governor of Eastern Nile State in December 2015, and his recent reappointment to the SPLA as 1st Lieutenant General in October 2017. [↑](#footnote-ref-15)
15. John Young, *Isolation and Endurance, Riek Machar and the SPLM-IO in 2016-17*, Small Arms Survey, Human Security Baseline Assessment, October 2017, page 42. [↑](#footnote-ref-16)
16. Alliance of Opposition Group Press Statement and signed Cessation of Hostilities Agreement, 22 December 2017, ERN D105687-D105688. [↑](#footnote-ref-17)
17. Copies of letters of Defection received from the Commission: ERN D100837-D100842, D101217-D101218, D101219-D101221, D105810-D105810, D103086-D103088, D103194-D103194. [↑](#footnote-ref-18)
18. E.g. the SPLA-IO loyal to Machar attacked positions of the NAS in Kajo-Keji in November 2018, ERN D101410. See also confidential meeting notes, 5 December 2017. [↑](#footnote-ref-19)
19. African Union, *Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa*, AU Doc. Assembly/AU/6(XXX), paragraphs 26, 27; Armed groups consist of the National Salvation Front (NAS); the National Democratic Movement (NDM); the Federal Democratic Party/South Sudan Armed Forces (FDP/SSAF); the South Sudan National Movement for Change (SSNMC); the South Sudan United Movement/Army (SSUM/A); the South Sudan Liberation Movement/Army (SSLM/A); the South Sudan Patriotic Movement/Army (SSPM/A). [↑](#footnote-ref-20)
20. IGAD, Cessation of Hostilities Agreement, 21 December 2017. [↑](#footnote-ref-21)
21. IGAD, Cessation of Hostilities Agreement, 21 December 2017, Art. 12 “Accountability for Any Violations”. [↑](#footnote-ref-22)
22. SPLA-IO, Declaration of Cessation of Hostilities, Reference 001/12/2017, ERN D104231-D104231. *See also* The Guardian, *South Sudan’s Warring Parties Agree Ceasefire in Bid to End Four-year War*, 23 December 2017. [↑](#footnote-ref-23)
23. Statement by the Chairperson of IGAD Council of Ministers on Violations of the Agreement on Cessation of Hostilities, 29 December 2017. [↑](#footnote-ref-24)
24. IGAD Council of Ministers, *Statement on the Reports of Violations of Cessation of Hostilities Agreement in the Republic of South Sudan,* 25 January 2018. [↑](#footnote-ref-25)
25. United States, Department of State, *Press Release: Treasury Announces Targeted Sanctions on South Sudanese Officials and Companies*, 6 September 2017. [↑](#footnote-ref-26)
26. Radio Tamazuj, *Government says sanctions show US's ignorance about South Sudan situation,* 8 September 2017. [↑](#footnote-ref-27)
27. Council of the European Union, *Press Release: South Sudan: EU adds 3 persons involved in serious human rights violations to sanctions list*, 2 February 2018. [↑](#footnote-ref-28)
28. United States, Department of State, *Press Statement: U.S Arms Restrictions on South Sudan*, 2 February 2018. [↑](#footnote-ref-29)
29. See, for example the National Security Service Act 2015, which gives broad powers to the NSS to arrest, detain, seize property and surveille those suspected of committing broadly defined “crimes against the State.” [↑](#footnote-ref-30)
30. Confidential Source, ERN D105680-D105683. [↑](#footnote-ref-31)
31. Interim report of the Panel of Experts on South Sudan (S/2017/326), April 2017, paragraph 38. [↑](#footnote-ref-32)
32. Confidential meeting, 25 November 2017. [↑](#footnote-ref-33)
33. Human Rights Watch and Amnesty International, *South Sudan: A Year On, Two Men’s Whereabouts Unknown, Reveal Fate, Whereabouts of Dong Samuel Luak, Aggrey Idri*, 23 January 2018. [↑](#footnote-ref-34)
34. Human Rights Watch and Amnesty International, *South Sudan: A Year On, Two Men’s Whereabouts Unknown, Reveal Fate, Whereabouts of Dong Samuel Luak, Aggrey Idri*, 23 January 2018. [↑](#footnote-ref-35)
35. Interim report of the Panel of Experts on South Sudan (S/2017/979), 20 November 2017. [↑](#footnote-ref-36)
36. Sudan Tribune, *South Sudan rebel appointed governor abducted in Kenya,* 1 January 2018. [↑](#footnote-ref-37)
37. Search for Common Ground, *Building a “Constituency for Peace” in South Sudan*, 2017, citing Freedom House, *Global Freedom Under Pressure*, 2016, ERN D102500-D102521. [↑](#footnote-ref-38)
38. Interim report of the Panel of Experts on South Sudan (S/2017/979), 20 November 2017. [↑](#footnote-ref-39)
39. Interim report of the Panel of Experts on South Sudan (S/2017/979), 20 November 2017. [↑](#footnote-ref-40)
40. The Juba Monitor, *Opening Remarks at Press Conference by the Commission on Human Rights in South Sudan,* 16 December 2017, page 10. The full transcript of the opening remarks is available at: http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22545&LangID=E. [↑](#footnote-ref-41)
41. In Article Nine, paragraph 2 (b) of the Cessation of Hostilities Agreement, the term “prisoners of war” is used to refer to persons detained by the parties, including the SPLA and both factions of the SPLA-IO. According to the agreement, such persons shall be released to the ICRC. [↑](#footnote-ref-42)
42. World Bank, *South Sudan Economic Update 2017*, pages 11, 24. [↑](#footnote-ref-43)
43. World Bank, *South Sudan Economic Update 2017*, page 3. [↑](#footnote-ref-44)
44. World Food Programme South Sudan, *Special Working Paper on Devaluation of South Sudan Pound: Short-term Food Security Implications*, 29 January 2016, pages 3, 5; United Nations, Operational Exchange Rate, ERN D105684-D105685. [↑](#footnote-ref-45)
45. OCHA South Sudan, *Humanitarian Needs Overview 2018*, page 2. [↑](#footnote-ref-46)
46. OCHA South Sudan, *Humanitarian Needs Overview 2018*, page 2. [↑](#footnote-ref-47)
47. Øystein H. Rolandsen & Nicki Kindersley, *South Sudan: A Political Economy Analysis*, 16 October 2017; Interim report of the Panel of Experts on South Sudan (S/2017/979), 20 November 2017. [↑](#footnote-ref-48)
48. Peace Agreement (2015), Chapter V. [↑](#footnote-ref-49)
49. Inter-Agency Standing Committee, *L3 IASC System-wide response activations and deactivations*, 1 November 2017. [↑](#footnote-ref-50)
50. [Office for the Coordination of Humanitarian Affairs](https://reliefweb.int/organization/ocha) (OCHA), *Humanitarian Bulletin South Sudan*, 18 January 2018; UNHCR, *South Sudan Situation*, 15 January 2018. [↑](#footnote-ref-51)
51. OCHA, *2017 South Sudan Humanitarian Needs Overview,* February 2017. [↑](#footnote-ref-52)
52. WHO, *With threat of famine looming for 2018, WHO helps worst cases of malnutrition in children in South Sudan*, 4 December 2017; S/2017/784, paragraph 28. [↑](#footnote-ref-53)
53. Integrated Food Security Phase Classification for South Sudan, September 2017-March 2018. [↑](#footnote-ref-54)
54. OCHA South Sudan, *Humanitarian Needs Overview 2018*, page 21. [↑](#footnote-ref-55)
55. Witness 554, ERN 101111-101113. [↑](#footnote-ref-56)
56. Witness 555, ERN 101114-101116. [↑](#footnote-ref-57)
57. Witness 438, ERN 100424-100427. [↑](#footnote-ref-58)
58. Confidential Source, ERN D105609-D105621, paragraph 7h. [↑](#footnote-ref-59)
59. Witness 327, ERN [100253-100257](https://remote.ohchr.org/sites/CoI-SouthSudan/Lists/Interviews%20V/DispForm.aspx?ID=215). [↑](#footnote-ref-60)
60. Discussions with women refugees, Nguenyyiel Refugee Camp, Gambella, Ethiopia, 12 September 2017. [↑](#footnote-ref-61)
61. OCHA, Humanitarian Bulletin South Sudan, 18 January 2018. [↑](#footnote-ref-62)
62. South Sudan Protection Cluster Strategy 2017-2018, page 2. [↑](#footnote-ref-63)
63. OCHA South Sudan, *Humanitarian Access Overview* (January – December 2017), 6 February 2018. [↑](#footnote-ref-64)
64. UNICEF South Sudan Briefing Note, 15 December 2017, page 3. [↑](#footnote-ref-65)
65. Interim report of the Panel of Experts on South Sudan (S/2017/979), paragraph 34. [↑](#footnote-ref-66)
66. Report of the Secretary-General on South Sudan (covering the period from 2 June to 1 September 2017),15 September 2017 (S/2017/784), paragraph 30. [↑](#footnote-ref-67)
67. Witness 293, ERN 100388-100402. [↑](#footnote-ref-68)
68. Witness 216, ERN 100203-100215. [↑](#footnote-ref-69)
69. Witness 550, ERN 101021-101026; Letter from Relief Organization for South Sudan, *Standardising Security clearance & random routine check on all charter flights including UN marked, except ICRC fleet*, dated 24 March 2017, purported to impose a landing fee tax of $300; ERN D105713-D105713. [↑](#footnote-ref-70)
70. OCHA, *South Sudan Humanitarian Bulletin, issue 17*, 17 November 2017, page 1. [↑](#footnote-ref-71)
71. OCHA, *Humanitarian Bulletin South Sudan*, 18 January 2018 ; OCHA South Sudan, *Humanitarian Access Overview* (January – December 2017), 6 February 2018. [↑](#footnote-ref-72)
72. OCHA, *Humanitarian Bulletin South Sudan*, 18 January 2018 ; OCHA South Sudan, *Humanitarian Access Overview* (January – December 2017), 6 February 2018. [↑](#footnote-ref-73)
73. OCHA South Sudan, *Humanitarian Needs Overview 2018*, page 27. [↑](#footnote-ref-74)
74. OCHA South Sudan, *Humanitarian Needs Overview 2018*, page 27. [↑](#footnote-ref-75)
75. OCHA South Sudan, *Humanitarian Needs Overview 2018*, page 27. [↑](#footnote-ref-76)
76. Meeting with NGO in Akobo, 13 December 2017. [↑](#footnote-ref-77)
77. Meeting with Major General Dr Ajak Bullen Alier Commander of SPLA Health Services and others, 16 January 2018. The military Medical Corps also faces significant challenges, including: just twelve practising doctors, thirty nurses and twenty-six first aiders for the whole country; no rehabilitation centre to treat amputees; no helicopters or airplanes for medical evacuation purposes; and limited supplies of medicine due to the current economic situation. [↑](#footnote-ref-78)
78. Meeting with Major General Dr Ajak Bullen Alier Commander of SPLA Health Services and others, 16 January 2018. [↑](#footnote-ref-79)
79. Meeting with IDPs in Akobo on 13 December 2017. See also OCHA South Sudan, *2018 Humanitarian Needs Overview South Sudan*, page 7. [↑](#footnote-ref-80)
80. United Nations News Centre, *Attacks on hospitals and medical staff “symptoms of grave disregard” for international law – UN chief*, 25 May 2017. [↑](#footnote-ref-81)
81. Witness 298, ERN 100459-100463. [↑](#footnote-ref-82)
82. Witness 298, ERN 100459-100463. [↑](#footnote-ref-83)
83. Witness 416, ERN D107757-D107759; Witness 183, ERN 100089-100096; Witness 486, ERN, 100566-100570; Witness 216, ERN100203-100215. [↑](#footnote-ref-84)
84. OCHA South Sudan, *2018 Humanitarian Needs Overview*, page 2. [↑](#footnote-ref-85)
85. South Sudan Education Cluster, Response Strategy 2018. [↑](#footnote-ref-86)
86. UNHCR, South Sudan Situation, *Information Sharing Portal*; UNHCR, *South Sudan refugees now exceed one million,* 17 August 2017. [↑](#footnote-ref-87)
87. OCHA, *Humanitarian Bulletin South Sudan*, 18 January 2018. [↑](#footnote-ref-88)
88. South Sudan Regional Refugee Response Plan – Revised, January-December 2017, May 2017, page 12. [↑](#footnote-ref-89)
89. OCHA, *Humanitarian Bulletin South Sudan*, 18 January 2018, page 2. [↑](#footnote-ref-90)
90. UNMISS PoC Update No. 190, 3 February 2018. As of 1 February 2018, the total number of civilians seeking safety in six Protection of Civilians (PoC) sites located on UNMISS bases is 204,247. This includes 114,245 in Bentiu, 24,417 in Malakal, 38,113 in Juba UN House, 2,296 in Bor, and 147 in the UNMISS base and 25,029 in the area adjacent to UNMISS in Wau. The majority of which are women and children. [↑](#footnote-ref-91)
91. The Global Women’s Institute and International Rescue Committee (2017), *No Safe Place: A Lifetime of Violence for Conflict-Affected Women and Girls in South Sudan.* Washington DC: George Washington University and London. [↑](#footnote-ref-92)
92. Witness 293, ERN 100388-100402. [↑](#footnote-ref-93)
93. OCHA, *Humanitarian Bulletin South Sudan, Issue 01*, 18 January 2018, page 2. [↑](#footnote-ref-94)
94. Group discussions with women in PoCs 1 and 3, November 2017. [↑](#footnote-ref-95)
95. Group discussions with women in PoCs 1 and 3, November 2017. [↑](#footnote-ref-96)
96. Group discussion with women in PoC 1, November 2017. [↑](#footnote-ref-97)
97. Group discussion with women in PoC 1, November 2017. [↑](#footnote-ref-98)
98. Amnesty International, “[*Our hearts have gone dark”: The mental health impact of South Sudan’s conflict*](https://www.amnesty.org/en/documents/afr65/3203/2016/en/), July 2016. [↑](#footnote-ref-99)
99. [Lauren C Ng](https://www.semanticscholar.org/author/Lauren-C-Ng/6374362), [Belkys López](https://www.semanticscholar.org/author/Belkys-L%C3%B3pez/17081520), [Matthew F. Pritchard](https://www.semanticscholar.org/author/Matthew-F-Pritchard/30331266), [David Deng](https://www.semanticscholar.org/author/David-Deng/17032462), *Posttraumatic stress disorder, trauma, and reconciliation in South Sudan,* Social Psychiatry and Psychiatric Epidemiology, 2017. [↑](#footnote-ref-100)
100. [Lauren C Ng](https://www.semanticscholar.org/author/Lauren-C-Ng/6374362), [Belkys López](https://www.semanticscholar.org/author/Belkys-L%C3%B3pez/17081520), [Matthew F. Pritchard](https://www.semanticscholar.org/author/Matthew-F-Pritchard/30331266), [David Deng](https://www.semanticscholar.org/author/David-Deng/17032462), *Posttraumatic stress disorder, trauma, and reconciliation in South Sudan,* Social Psychiatry and Psychiatric Epidemiology, 2017. [↑](#footnote-ref-101)
101. In a complaint brought by Democratic Republic of Congo against Burundi, Rwanda and Uganda before the African Commission, the Commission considered the control exercised by the Respondent States and “Recommend[ed] that adequate reparations be paid, according to the appropriate ways to the Complainant State for and on behalf of the victims of the human rights by the armed forces of the Respondent States while the armed forces of the Respondent States were in effective control of the provinces of the Complainant State, which suffered these violations.” *227/99 Democratic Republic of Congo / Burundi, Rwanda, Uganda*, 33rd Ordinary Session of the African Commission on Human and People’s Rights, 29 May 2003, Meeting in Niger. See also paragraphs 7, 72, 88, 90. [↑](#footnote-ref-102)
102. South Sudan became a party to the African Charter on Human and Peoples’ Rights on 19 May 2016 and it entered into force on 19 August 2016. South Sudan became a party to the CRC on 23 January 2015, to CAT and its Optional Protocol and to CEDAW and its Optional Protocol on 30 April 2015. They each came into force 30 days after ratification. South Sudan did not enter any limitations to, derogations from and reservations to the rights contained therein. The CAT Optional Protocol establishes an international inspection system for places of detention. The CEDAW Optional Protocol establishes complaint and inquiry mechanisms which allows the [Committee on the Elimination of Discrimination against Women](https://en.wikipedia.org/wiki/Committee_on_the_Elimination_of_Discrimination_against_Women) to hear complaints from individuals or inquire into "grave or systematic violations" of the Convention. [↑](#footnote-ref-103)
103. South Sudan ratified the Maputo Protocol, with reservations, on 16 October 2017. It came into effect on the same day. Reservations relate to Article 6(1)(c) which encourages monogamy over polygamy, and Article 14(1)(a) and (b) and 14(2)(c) regarding women’s reproductive rights. [↑](#footnote-ref-104)
104. Maputo Protocol, Articles 2, 3, 4, 11. [↑](#footnote-ref-105)
105. In January 2014 President Salva Kiir announced a “state of emergency” in Jonglei, Unity and Upper Nile states. In July 2017, he announced a three-month state of emergency in Gogrial, Tonj, Wau and Aweil East. However, these announcements do not affect the application of the African Charter on Human and Peoples’ Rights. In a communication concerning killings and disappearances during a civil war, the African Commission on Human and Peoples’ Rights, confirmed that no derogation was possible under the African Charter on Human and Peoples’ Rights, and that the government remained responsible for securing the safety and liberty of its citizens and for conducting investigations into murders: African Commission on Human and Peoples’ Rights, *Civil Liberties Organisation v. Chad*, Communication No. 74/92, 11 October 1995, sections 21-22. [↑](#footnote-ref-106)
106. CAT, Articles 2, 4, 5, 6, 7, 8, 9, 12, 13, 14, 16. [↑](#footnote-ref-107)
107. CEDAW, Articles 2, 15. [↑](#footnote-ref-108)
108. Article 1 of the CRC states: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” In South Sudan, the Child Act 2008, defines a child as a person under the age of 18. [↑](#footnote-ref-109)
109. CRC, Articles 1, 4, 6, 19, 24, 27, 28, 37. [↑](#footnote-ref-110)
110. CRC Article 38 (2)(3). [↑](#footnote-ref-111)
111. CRC, Article 38(4). [↑](#footnote-ref-112)
112. Children and armed conflict: Report of the Secretary-General (S/2014/339)*,* 15 May 2014, paragraphs 122-130; and Annex I; Children and armed conflict: Report of the Secretary-General, (S/2016/360) 20 April 2016,paragraphs 122-131 and Annex I. Under this regime, a persistent violator was defined as a party that had been in the annex for at least five years, ibid at page 23. The 2017 annual report of the Secretary-General lists the same parties as violators and now lists A/72/361–S/2017/821, 24 August 2017, and places in them outside the new category of “parties that have put in place measures during the reporting period aimed at improving the protection of children.” [↑](#footnote-ref-113)
113. Children and armed conflict: Report of the Secretary-General (S/2014/339)*,* 15 May 2014, paragraphs 122-130; and Annex I; Children and armed conflict: Report of the Secretary-General, (S/2016/360) 20 April 2016, paragraphs 122-131 and Annex I. [↑](#footnote-ref-114)
114. Children and armed conflict: Report of the Secretary-General, (S/2016/360) 20 April 2016, Annex I. [↑](#footnote-ref-115)
115. Children and armed conflict: Report of the Secretary-General (S/2014/339), 15 May 2014, paragraphs 122-130; and Annex I; Children and armed conflict: Report of the Secretary-General, (S/2016/360) 20 April 2016,*,* paragraphs 122-131 and Annex I. [↑](#footnote-ref-116)
116. UNICEF Briefing Note: *Childhood Under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-117)
117. The six grave violations are: killing and maiming; abductions; recruitment and use of children; attacks against schools or hospitals; rape and other forms of sexual violence; and denial of humanitarian access. During its fact-finding, the Commission was able to gather firsthand information on incidents involving: killing and maiming; recruitment and use of children; attacks against schools or hospitals; rape and other forms of sexual violence; and denial of humanitarian access. The Commission received information regarding cases where children have been abducted by members of the Murle community and sold in Jonglei. However, the Commission did not have time or resources to investigate these cases so they are not included in the reporting. See i.e. Confidential Source, ERN D105609-D105621, paragraphs 19-20; paragraphs 91(a-b). [↑](#footnote-ref-118)
118. Also known as the Banjul Charter. South Sudan ratified the African Charter on 19 May 2016. [↑](#footnote-ref-119)
119. African Charter, Articles 2, 3, 4, 5, 6, 7, 14, 16, 17, 18. [↑](#footnote-ref-120)
120. African Commission on Human and Peoples’ Rights, communication No. 279/03-296/05, “Sudan Human Rights Organization and Centre on Human and Peoples’ Rights and Evictions v. Sudan, 27 May 2009, paragraph 156. [↑](#footnote-ref-121)
121. Optional Protocols on the Involvement of Children in Armed Conflict, on the Sale of Children, Child Prostitution and Child Pornography and on a communications procedure. [↑](#footnote-ref-122)
122. South Sudan signed the ACRWC and the Kampala Convention on 24 January 2013. [↑](#footnote-ref-123)
123. United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147 of 16 December 2005; United Nations Commission on Human Rights, Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity which was recognised in a consensus resolution of the United Nations Commission on Human Rights in 2005, See also Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher, 8 February 2005 (E/CN.4/2005/102/Add.1). [↑](#footnote-ref-124)
124. United Nations Commission on Human Rights, *Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity*, Principle 1. [↑](#footnote-ref-125)
125. United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147 of 16 December 2005. [↑](#footnote-ref-126)
126. United Nations Declaration on the Protection of Persons from Enforced Disappearances; adopted by General Assembly resolution 47/133, 18 December 1992. [↑](#footnote-ref-127)
127. United Nations Guiding Principles on Internal Displacement, presented to the Commission on Human Rights (E/CN.4/1998/53/Add.2). [↑](#footnote-ref-128)
128. United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. [↑](#footnote-ref-129)
129. International Court of Justice (ICJ), *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro),* Judgment, 2007 paragraphs 392, 399. [↑](#footnote-ref-130)
130. International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 8, See also ICJ, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, 1986* paragraphs 109-110; and *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, 2007* paragraphs 400, 401. [↑](#footnote-ref-131)
131. International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 11. In its General Comment No. 3 on the African Charter on Human and Peoples’ Rights: The Right to Life (Article 4), the African Commission on Human and Peoples’ Rights expressed the view that a State could be held responsible for killings by non-State actors if it approved, supported or acquiesced in those acts. See also the Report on the Commission of Inquiry on Burundi, September 2017 (A/HRC/36/54), paragraphs 23-27. [↑](#footnote-ref-132)
132. See the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65, paragraphs 9, 10, 17. [↑](#footnote-ref-133)
133. See, for example, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005. [↑](#footnote-ref-134)
134. Paragraph 9 of the General Comment 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. [↑](#footnote-ref-135)
135. General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, CEDAW/C/GC/35, 14 July 2017, paragraph 24(b) (footnotes omitted). [↑](#footnote-ref-136)
136. The Universal Declaration of Human Rights is the foundation of international human rights law. Many, if not all of the rights set out therein have attained the status of customary international law. See further H. Hannum, “The Status of the Universal Declaration of Human Rights in National and International Law”, vol. 25 *Georgia Journal of International and Comparative Law* (1995/6) 287-397. [↑](#footnote-ref-137)
137. Advisory Opinion of 28 May 1951, page 12. [↑](#footnote-ref-138)
138. See United Nations International Commission of Inquiry on the Central African Republic (S/2014/928), 22 December 2014, paragraphs 41 and 107; Report of the Secretary-General’s Panel of Experts on Accountability in Sri Lanka, 31 March 2011, paragraph 188. See also Report of the International Commission of Inquiry to investigate all Alleged Violations of International Human Rights Law in the Libyan Arab Jamahiriya, 2 March 2012, paragraph 18. [↑](#footnote-ref-139)
139. UNMISS, *Conflict in South Sudan: A Human Rights Report*, 8 May 2014, paragraph 18. [↑](#footnote-ref-140)
140. CEDAW/C/GC/35, 14 July 2017, paragraph 25. [↑](#footnote-ref-141)
141. CEDAW/C/GC/35, 14 July 2017, paragraph 16 (footnotes omitted). [↑](#footnote-ref-142)
142. Additional Protocol II to the Geneva Conventions of 12 August 1949 (Additional Protocol II), Article 13(2), ICRC *Study on Customary International Humanitarian Law*, Rule 1; *Prosecutor v. Tadić,* Case No. IT-94-1-AR72, ICTY Appeals Chamber, *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction,* 2 October 1995, paragraphs 109-119. [↑](#footnote-ref-143)
143. See in particular the Annual Report 2013 at page 200, the press release 6 January 2014, <https://www.icrc.org/eng/resources/documents/news-release/2014/01-06-south-sudan-juba-peter-maurer-president-visit.htm>; Annual Report 2014 at page 204; the Intercross blog interview with the ICRC of 12 June 2015, <http://intercrossblog.icrc.org/blog/interview-with-head-of-delegation-in-south-sudan>; Annual Report 2015 page 208; Annual Report 2016, page 195. [↑](#footnote-ref-144)
144. The ICRC 2016 *Commentary on the First Geneva Convention* (Cambridge, Cambridge University Press, 2016) for Article 3 states: “A situation of violence that crosses the threshold of an “armed conflict not of an international character” is a situation in which organized Parties confront one another with violence of a certain degree of intensity.” At page 141, paragraph 387. At pages 174-175, para 484, it states “Article 3 becomes applicable as soon as a non-international armed conflict comes into existence … as soon as the criteria of intensity and organization are fulfilled in a situation of violence between a State and a non-State armed group or between two or more non-State armed groups.” See further paragraphs 414-444 for detail on the criteria of intensity of violence and organization; See also Gabriella Venturini, “The temporal Scope of the Conventions”, in A. Clapham, P. Gaeta, and M. Sassòli, (eds), *The 1949 Geneva Conventions: A Commentary*, (Oxford, Oxford University Press, 2015) 51-66, at 61. [↑](#footnote-ref-145)
145. ICRC 2016 Commentary at paragraph 490. See also Venturini (supra) “The 1995 *Tadić* Decision held that in the case of internal conflicts, IHL applies until a ‘peaceful settlement is achieved’. In the *Haradinaj* Decision, the ICTY clarified that once the threshold of violence is met, a decrease in the intensity of fighting (or, one might add, degree of organization of an armed group involved) cannot end the applicability of IHL.” *Ibid* at pages 61-62. [↑](#footnote-ref-146)
146. South Sudan ratified the Four Geneva Conventions and their Additional Protocols on 25 January 2013; they entered into force for South Sudan on 25 July 2013. [↑](#footnote-ref-147)
147. Common Article 3 to the Geneva Conventions of 12 August 1949 (Common Article 3). [↑](#footnote-ref-148)
148. Common Article 3(1). [↑](#footnote-ref-149)
149. Additional Protocol II, Article 1(1). [↑](#footnote-ref-150)
150. Additional Protocol II, Article 1(1). [↑](#footnote-ref-151)
151. Additional Protocol II, Articles 11, 13(2), 16. [↑](#footnote-ref-152)
152. Additional Protocol II, Article 13(2). [↑](#footnote-ref-153)
153. Additional Protocol II, Article 14. [↑](#footnote-ref-154)
154. Additional Protocol II, Article 17(1). [↑](#footnote-ref-155)
155. Additional Protocol II, Article 4 (2) and (3). [↑](#footnote-ref-156)
156. ICRC, *Study on Customary International Humanitarian Law*, Rules 1-24. [↑](#footnote-ref-157)
157. Additional Protocol II, Article 13(2); ICRC, *Customary International Humanitarian Law Study*, Rule 1. [↑](#footnote-ref-158)
158. ICRC, *Study on Customary International Humanitarian Law*, Rule 7. [↑](#footnote-ref-159)
159. ICRC, *Study on Customary International Humanitarian Law*, Rule 12: *“Indiscriminate attacks are those: a.) which are not directed at a specific military objective; b.) which employ a method or means of combat which cannot be directed at a specific military objective; or c.) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilian objectives without distinction”*. [↑](#footnote-ref-160)
160. ICRC, *Study on Customary International Humanitarian Law*, Rule 14. [↑](#footnote-ref-161)
161. ICRC, *Study on Customary International Humanitarian Law*, Rule 10. [↑](#footnote-ref-162)
162. ICRC, *Study on Customary International Humanitarian Law*, Rules 15-24. [↑](#footnote-ref-163)
163. ICRC, *Study on Customary International Humanitarian Law*, Rules 6, 25, 27, 28, 29, 30, 31, 32, 33. [↑](#footnote-ref-164)
164. ICRC, *Study on Customary International Humanitarian Law*, Rules 52, 89, 90, 93, 98, 99, 129. [↑](#footnote-ref-165)
165. ICRC, *Study on Customary International Humanitarian Law*, Rules 135, 136, 138. Additional Protocol II. [↑](#footnote-ref-166)
166. Draft Articles on State Responsibility, Article 8; ICRC, *Study on Customary International Humanitarian Law*, Rule 149. [↑](#footnote-ref-167)
167. ICRC, *Study on Customary International Humanitarian Law*, Rules 144, 150, 157, 158. For examples of United Nations practice supporting the obligations of armed groups to make reparations see the *ICRC, Study*, J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law - Volume 1: Rules*, (Cambridge: Cambridge University Press, 2005) at 550 where they also make the point that “in many countries victims can bring a civil suit for damages against the offenders”. [↑](#footnote-ref-168)
168. ICRC*, Study on Customary International Humanitarian Law*, Rule 156*.* [↑](#footnote-ref-169)
169. ICRC, *Study on Customary International Humanitarian Law*, Rules 151, 152, 153. [↑](#footnote-ref-170)
170. The duty to investigate human rights violations arises as a result of the duty of States to provide an effective remedy and provide effective protection of human rights, but is also made explicit in a number of human rights treaties: e.g. CAT, Article 12. The duty to prosecute attaches to human rights violations amounting to crimes under either national or international criminal law and is explicitly referred to in a variety of treaties, including CAT, Articles 4 and 7, to which South Sudan is a party. The duty to investigate and prosecute serious violations of international humanitarian law is recognised in customary international law: see *ICRC* *Study on Customary International Humanitarian Law*, Rule 158; United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, and the United Nations Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity. [↑](#footnote-ref-171)
171. United Nations Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principles 20, 21. [↑](#footnote-ref-172)
172. ICRC*,* *Study on Customary International Humanitarian Law*, Rule 150; United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principles 15-23; Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity, principles 31-38. [↑](#footnote-ref-173)
173. See the African Union Peace and Security Council communiqué dated 26 September 2015, which, *inter alia*, reaffirmed the commitment of the African Union to combating impunity, reiterated condemnation of the violence and abuses committed by armed actors in South Sudan, and agreed to the establishment of an independent hybrid court pursuant to the 2015 Peace Agreement. [↑](#footnote-ref-174)
174. Draft Statute of the Hybrid Court for South Sudan, 10 August 2017, Articles 2, 3, 4, 5 and 6. [↑](#footnote-ref-175)
175. Genocide Convention 1948, Article II. [↑](#footnote-ref-176)
176. Draft Statute of the Hybrid Court for South Sudan, Article 2, Rome Statute, Article 6; Genocide Convention 1948, Article. [↑](#footnote-ref-177)
177. Article 206A: Genocide “Whoever intents to destroy, in whole or in part, a national, ethnical, racial or religious group or kills members of the group or causes serious bodily or mental harm to members of the group or deliberately inflicts on the group conditions of life calculated to bring about its physical destruction in whole or in part or imposes measures intended to prevent births within the group or forcibly transfers children of the group to another group commits an offence of genocide and upon conviction shall be sentenced to death or life imprisonment”. [↑](#footnote-ref-178)
178. Draft Statute of the Hybrid Court for South Sudan, Article 3. [↑](#footnote-ref-179)
179. Article 206B Crimes Against Humanity “Whoever directs widespread or systematic attack against any civilian population, with intent of killing or extermination or enslavement or deportation or forcible transfer of population or imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law or torture or rape or sexual slavery or pregnancy or enforced sterilization or any other form of sexual violence or comparable gravity or prosecution against any identifiable group or collectivity on political or racial or national or ethnic or cultural or religious or gender or enforced disappearance of persons or crime of apartheid or any other inhuman acts of similar character commits an offences of crimes against humanity and upon conviction shall be sentenced to death or life imprisonment.” [↑](#footnote-ref-180)
180. See Section 7 (1) “Any person, of whatever nationality, who, in the Republic of South Sudan, commits, or aids, abets or procures any other person to commit a breach of any of the Conventions or Protocols not covered by section 3, is guilty of an indictable offence. (2) Any national of the Republic of South Sudan who, outside the Republic of South Sudan commits, or aids, abets or procures the commission by another person of a breach of any of the Conventions or Protocols not covered by section 3 is guilty of an indictable offence.” [↑](#footnote-ref-181)
181. Draft Statute of the Hybrid Court for South Sudan, Articles 4 and 5. [↑](#footnote-ref-182)
182. Draft Statute of the Hybrid Court for South Sudan, Article 5. [↑](#footnote-ref-183)
183. Article 206C war crimes “Whoever willfully kills or tortures or causes inhuman treatment, including biological experiments or willfully causes great suffering or serious injury to body or health or extensively destroys and appropriates property not justified by military necessity and unlawfully and wantonly or compels prisoner of war or other protected person to serve in the forces of a hostile power or willfully deprives a prisoner of war or other protected person of the rights of fair and regular trial or unlawfully deports or transfers or unlawful confines or takes hostages commits war crimes and upon conviction shall be sentenced to death or life imprisonment.” [↑](#footnote-ref-184)
184. See for example the International Court of Justice, *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment,* 20 July 2012, paragraph 99. [↑](#footnote-ref-185)
185. Convention Against Torture, Article 1; Committee Against Torture, General Comment No. 2, Implementation of Article 2 by State Parties, (CAT/C/GC/2), 24 January 2008; CEDAW Committee, General Recommendation No. 19. Rape and sexual violence have been recognized as forms of torture by several international human rights mechanisms including the international criminal tribunals, Committee Against Torture and by independent special rapporteurs. See for example: *Prosecutor v. Akayesu,* ICTR-96-4-T, Trial Judgment, 2 September 1998; ICTY *Prosecutor v. Kunarac*, No. IT-96-23, Trial Judgement, 22 February 2001; Committee Against Torture, General Comment No. 2, Implementation of Article 2 by State Parties (CAT/C/GC/2), 24 January 2008. [↑](#footnote-ref-186)
186. Committee Against Torture, General Comment No. 2, Implementation of Article 2 by State Parties (CAT/C/GC/2), 24 January 2008, paragraph 18. [↑](#footnote-ref-187)
187. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez, 5 January 2016, A/HRC/31/57. [↑](#footnote-ref-188)
188. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, *Extra-custodial use of forced and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment*, A/72/178, 20 July 2017, paragraph 31. See also paragraphs 35-36. [↑](#footnote-ref-189)
189. See ICTY, *Prosecutor v. Kunarac*, No. IT-96-23, Trial Judgement, 22 February 2001, paragraphs 491, 496. [↑](#footnote-ref-190)
190. *R* *v Zardad*¸ Central Criminal Court (7 April 2004), discussed and explained by R. Cryer, “Zardad”, in A. Cassese, (ed), *Oxford Companion to International Criminal Justice*, (Oxford: OUP, 2009) 979-80. [↑](#footnote-ref-191)
191. Draft Statute of the Hybrid Court for South Sudan, Article 8(1). [↑](#footnote-ref-192)
192. Draft Statute of the Hybrid Court for South Sudan, Article 8(2). [↑](#footnote-ref-193)
193. Draft Statute of the Hybrid Court for South Sudan, Article 8(4). [↑](#footnote-ref-194)
194. J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law - Volume 1: Rules*, ICRC Customary Study (Cambridge: Cambridge University Press, 2005), page 599. [↑](#footnote-ref-195)
195. Transitional Constitution of the Republic of South Sudan (2011), Bill of Rights. [↑](#footnote-ref-196)
196. Transitional Constitution of the Republic of South Sudan (2011), Article 188(a). [↑](#footnote-ref-197)
197. The declarations of states of emergency in Jonglei, Unity, and Upper Nile States on 1 January 2014, and in July 2017 in Gogrial, Tonj, Wau and Aweil East, do not specify which provisions of the Transitional Constitution, if any, they intend to suspend. [↑](#footnote-ref-198)
198. See, for example, Penal Code (2008), Articles 191, 206, 223, 235, 247, 269, 270, 298, 305. [↑](#footnote-ref-199)
199. Code of Criminal Procedure Act (2008), including Articles 6, 75, 83, 93. [↑](#footnote-ref-200)
200. Geneva Convention Act (2012), Articles 6, 7, 8. [↑](#footnote-ref-201)
201. Child Act (2008), Articles 9, 12, 14, 15, 19, 36. [↑](#footnote-ref-202)
202. Child Act (2008), Article 31. [↑](#footnote-ref-203)
203. SPLA Act (2009), section 83. By incorporating the Penal Code in full into the SPLA Act, section 83 permits any crime – whether of a military nature or not, i.e. an ordinary criminal offence – to be tried by court martial however, when the victim of any crime is civilian, section 37 requires the civil criminal court to assume jurisdiction over the case. A soldier may be tried for theft, rape, and murder in either a military court-martial or a civilian criminal court. [↑](#footnote-ref-204)
204. Maputo Protocol, Articles 2, 3, 4, 11. See also: CAT, CRC, CEDAW. As a party to CEDAW, the Republic of South Sudan is obliged to take necessary action to prevent, protect against, and respond to violence against women in an effective way. States must address all forms of gender-based violence against women committed by state, and non-state actors alike through an effective and accessible legal framework, and must investigate, prosecute and provide reparations for survivors, Articles 2, 15. CEDAW is complemented by United Nations Security Council Resolution (UNSCR) 1325 (2000), UNSCR 1820 (2008); UNSCR 1888 (2009), UNSCR 1960 (2010) UNSCR 2106 (2013), UNSCR 2122 (2013), UNSCR 2242 (2015) which, *inter alia*, set out obligations on States to address the disproportionate impact of armed conflict on women and take special measures to protect women and girls from sexual and gender-based violence during armed conflict. The Transitional Constitution of the Republic of South Sudan (2011) guarantees equality between the sexes and other women’s rights; Articles 247 and 259 of the South Sudan Penal Code, 2008 criminalise rape and female genital mutilation. [↑](#footnote-ref-205)
205. See Jok, A.A., Leitch, R.A., and Vandewint, C. *A study of Customary Law in contemporary Southern Sudan, World Vision International and the South Sudan Secretariat of Legal and Constitutional Affairs*, (2004), pages 33-34; Biong Deng, L. *Social Capital and Civil War: the Dinka Communities in Sudan’s civil war*, African Affairs, 2010, 109 (435), pages 243-245. [↑](#footnote-ref-206)
206. Edward, J.K., *A Strategy for Achieving Gender Equality in South Sudan*, Sudd Institute, (2014), Special Report. [↑](#footnote-ref-207)
207. Stern, O. (2011). “This is how marriage happens sometimes: Women and marriage in South Sudan”, in Hope, Pain and Patience. Bubenzer, F. and Stern, O (Eds). [↑](#footnote-ref-208)
208. Jok, A.A., Leitch, R.A., and Vandewint, C. A study of Customary Law in contemporary Southern Sudan, World Vision International and the South Sudan Secretariat of Legal and Constitutional Affairs, (2004), pages 6-8; and Benesova, S., Southern Sudanese women in the Diaspora, Osprey Journal, 2004, 4 (79), pages 5 – 7. [↑](#footnote-ref-209)
209. South Sudan ratified the Maputo Protocol, with reservations, on 16 October 2017. It came into effect on the same day. Reservations relate to Article 6(1)(c) which encourages monogamy over polygamy, and Article 14(1)(a) and (b) and 14(2)(c) regarding women’s reproductive rights. [↑](#footnote-ref-210)
210. These three types of arrangements are practiced to ensure that a man’s name, or legacy is continued after his death. The practice includes widows being married to a male relative of their late spouse who will then take up the role of husband. Any children fathered in the union are considered to be the children of the deceased. With the advent of HIV/AIDS, economic hardships, conflict and displacement of communities, these practices have further complicated women’s status. See, Edward, J.K., *A Strategy for Achieving Gender Equality in South Sudan*, Sudd Institute, (2014), Special Report and Stern, O. (2011). “This is how marriage happens sometimes: Women and marriage in South Sudan”, in Hope, Pain and Patience. Bubenzer, F. and Stern, O (Eds). [↑](#footnote-ref-211)
211. Witness 580, ERN 101075-101077. [↑](#footnote-ref-212)
212. Jok, A.A., Leitch, R.A., and Vandewint, C. A study of Customary Law in contemporary Southern Sudan, World Vision International and the South Sudan Secretariat of Legal and Constitutional Affairs, (2004), page 51. [↑](#footnote-ref-213)
213. Witness 582, ERN 101088-101091. [↑](#footnote-ref-214)
214. Confidential Source, ERN D105360-D105361. [↑](#footnote-ref-215)
215. D’Awol, A., “Sibu ana, sibu ana” (“leave me, leave me”): Survivors of sexual violence in South Sudan, in *Hope, Pain and Patience*. Bubenzer, F. and Stern, O (Eds), 2011, pages 62, 63. [↑](#footnote-ref-216)
216. The Child Act (2008) defines a child as any person under the age of 18 years. Article 23(1) states that every child has the right to be protected from early marriage. [↑](#footnote-ref-217)
217. Human Rights Watch, *This old man can feed us, you will marry him: Child and forced marriage in South Sudan*, 2013, pages 31; 41-42. [↑](#footnote-ref-218)
218. Edward, J.K., *A Strategy for Achieving Gender Equality in South Sudan*, Sudd Institute, (2014), Special Report, page 16, 18. [↑](#footnote-ref-219)
219. Human Rights Watch, *This old man can feed us, you will marry him: Child and forced marriage in South Sudan,* 2013, pages 4-8. [↑](#footnote-ref-220)
220. Witness 573, ERN 101049-101053, paragraph 8. [↑](#footnote-ref-221)
221. Edward, J.K., *A Strategy for Achieving Gender Equality in South Sudan*, Sudd Institute, (2014), Special Report, page 19. [↑](#footnote-ref-222)
222. Witness 571, ERN 101040-101043. [↑](#footnote-ref-223)
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224. Ayiera, E., *Sexual violence in conflict: A problematic international discourse*. Feminist Africa, (2010), 14, pages 7-20 and D’Awol, A., “Sibu ana, sibu ana” (“leave me, leave me”): Survivors of sexual violence in South Sudan, in *Hope, Pain and Patience*. Bubenzer, F. and Stern, O (Eds), 2011, pages 53, 56-58. [↑](#footnote-ref-225)
225. D’Awol, A., *South Sudan – the endless brutality of killing and rape, Daily Maverick*, 2015, Op-Ed. [↑](#footnote-ref-226)
226. Witness 583, ERN 101092-101096. [↑](#footnote-ref-227)
227. Edward, J. K., (2014). “A strategy for achieving gender equality in South Sudan”, Special Report, Sudd Institute; Jok, M.J., (2001). “War and Slavery in Sudan”, University of Pennsylvania Press. [↑](#footnote-ref-228)
228. UNDP and Small Arms Survey, *National Small Arms Assessment South Sudan*, 1 August 2017, page 8. [↑](#footnote-ref-229)
229. Office of the Special Representative of the Secretary General on Sexual Violence in Conflict*, Report of the Secretary-General in conflict-related sexual violence*, 2017, S/2017/249, paragraph 61. [↑](#footnote-ref-230)
230. South Sudan Protection Cluster, *Protection Trends: South Sudan, 2015 – 2016*, February 2017, page 14. [↑](#footnote-ref-231)
231. Amnesty International, *“Do not remain silent”: Survivors of sexual violence in South Sudan call for justice and reparations*, July 2017. [↑](#footnote-ref-232)
232. CTSAMM, *Report 2018/03, SGBV in Central Equatoria*, 15 January 2018, paragraph 2.1. [↑](#footnote-ref-233)
233. Witness 501, ERN 100838-100845; Witness 578, ERN 101097-101107; Witness 583, ERN 101092-101096; Witness 136, ERN D101254-D101258; Witness 249, ERN 100664-100674. [↑](#footnote-ref-234)
234. Witness 579, ERN 101064-101068. [↑](#footnote-ref-235)
235. Centre for Justice and Peace witness statement, H-060617, ERN D105348-D105351. [↑](#footnote-ref-236)
236. Witness, 583, ERN 101092-101096. [↑](#footnote-ref-237)
237. Witness 576, ERN 101082-101087; Witness 577, ERN 101069-101074; Witness 320, ERN 100525-100532; Witness 330, ERN 100603-100610. [↑](#footnote-ref-238)
238. A traditional long knife. [↑](#footnote-ref-239)
239. Witnesses detailed how they saw sticks being inserted into women’s vaginas and in one instance, how a woman was shot in the vagina after resisting rape. [↑](#footnote-ref-240)
240. Witness 302, ERN 100439-100443. [↑](#footnote-ref-241)
241. Witness 301, ERN 100444-100448. [↑](#footnote-ref-242)
242. Witness 581, ERN 101078-101081. [↑](#footnote-ref-243)
243. Witness 581, ERN 101078-101081. [↑](#footnote-ref-244)
244. Witness 276, ERN 100625-100636. [↑](#footnote-ref-245)
245. Witness 301, ERN 100444-100448. [↑](#footnote-ref-246)
246. Witness 494, ERN 100714-100 722. [↑](#footnote-ref-247)
247. Meeting of the Chairperson of the Commission in December 2017. [↑](#footnote-ref-248)
248. Witness 578, ERN 101097-101107; Witness 577, ERN 101069-101074; Witness 206, ERN 100444-100448; Witness 559, ERN 101117-101119; Confidential meeting of the Commission, ERN D105699-D105706. [↑](#footnote-ref-249)
249. Witness 206, ERN 100444-100448. [↑](#footnote-ref-250)
250. Witness 577, ERN 101069-101074. [↑](#footnote-ref-251)
251. Witness 578, ERN 101097-101107. Theitness listed scissors, knife, razor blade, needle and pistol amongst the instruments he was threatened with. [↑](#footnote-ref-252)
252. Statement collected by Centre for Peace and Justice, ERN D107760-D107762. [↑](#footnote-ref-253)
253. Dolan, C., Refugee Law Project, *Hidden Realities: Screening for experiences of violence amongst war-affected South Sudanese refugees in northern Uganda*, August 2017, Working Paper 25, page 12. [↑](#footnote-ref-254)
254. Witness 245, ERN 100684-100692. [↑](#footnote-ref-255)
255. In a 2017 screening exercise for experiences of violence amongst refugees in Northern Uganda, the Refugee Law Project found that symptoms such as anal pain, pain in private parts and lower abdominal pain, all associated with sexual violence, were significantly reported amongst the sample of respondents. These body pains were reported and described while sexual violence was not. See Dolan, C., Refugee Law Project, *Hidden Realities: Screening for experiences of violence amongst war-affected South Sudanese refugees in norther Uganda*, August 2017, Working Paper 25, pages 12 and 23. [↑](#footnote-ref-256)
256. Witness 559, ERN 101117-101119. [↑](#footnote-ref-257)
257. Witness 292, ERN 100675-100683. [↑](#footnote-ref-258)
258. Witness 581, ERN 101078-101081. [↑](#footnote-ref-259)
259. Witness 583, ERN 101092-101096. [↑](#footnote-ref-260)
260. Witness 523, ERN 100802-100807. [↑](#footnote-ref-261)
261. Confidential Meeting, 1 November 2017. [↑](#footnote-ref-262)
262. Witness 578, ERN 101097-101107. [↑](#footnote-ref-263)
263. Confidential Meeting, December 2017. [↑](#footnote-ref-264)
264. Witness 538, ERN 100 742-100750. [↑](#footnote-ref-265)
265. Confidential Meeting, ERN D105699-D105706. [↑](#footnote-ref-266)
266. Witness 302, ERN 100439-100443; Confidential Meeting, ERN D105699-D105706. [↑](#footnote-ref-267)
267. Witness 579, ERN 101064-101068. [↑](#footnote-ref-268)
268. Confidential Meeting, ERN D105699-D105706. [↑](#footnote-ref-269)
269. Witness 301, ERN 100444-100448. [↑](#footnote-ref-270)
270. Witness Centre for Peace and Justice, H-060617, ERN D105348-D105351. [↑](#footnote-ref-271)
271. Confidential Meeting, 17 December 2017. [↑](#footnote-ref-272)
272. GBV Sub-Cluster Strategy, 2017. [↑](#footnote-ref-273)
273. Confidential Meeting, 13 December 2017. [↑](#footnote-ref-274)
274. Witness 500, ERN 100788-100793. [↑](#footnote-ref-275)
275. Witness 500, ERN 100788-100793. [↑](#footnote-ref-276)
276. Confidential Meeting, 13 November 2017. [↑](#footnote-ref-277)
277. Confidential Meeting, 16 November 2017. [↑](#footnote-ref-278)
278. Efforts to obtain further clarification and updates were unsuccessful because the Governor of Yei and his office were preparing for the burial of the Deputy Governor in Lainya. [↑](#footnote-ref-279)
279. Confidential Meeting, 16 November 2017. [↑](#footnote-ref-280)
280. CEDAW, Articles 2, 15. [↑](#footnote-ref-281)
281. Joint Communiqué of the Republic of South Sudan and the United Nations on the Prevention of Conflict Related Sexual Violence, 11 October 2014, ERN D107763-D107765. [↑](#footnote-ref-282)
282. Joint Communiqué of the Republic of South Sudan and the United Nations on the Prevention of Conflict Related Sexual Violence, 11 October 2014, ERN D107763-D107765. [↑](#footnote-ref-283)
283. Meeting with Acting Chief Protection 18 January 2017, UN House Juba South Sudan. [↑](#footnote-ref-284)
284. Joint Communiqué of the SPLM/A-IO and the United Nations on the Prevention of Conflict Related Sexual Violence, 18 December 2014, ERN D107766-D107768. [↑](#footnote-ref-285)
285. See Office of the Special Representative on Sexual Violence in Conflict Press Release: “South Sudan: UN Special Representative welcomes SPLA-IO action plan to combat rape in war and undertakings by Commanders”. [↑](#footnote-ref-286)
286. CEDAW/C/GC/35, 14 July 2017, paragraphs 16, 25. [↑](#footnote-ref-287)
287. See for example the International Court of Justice in *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal), Judgment of 20 July 2012*, paragraph 99. [↑](#footnote-ref-288)
288. See Applicable Law section, supra. [↑](#footnote-ref-289)
289. Penal Code (2008), Articles 247, 248, 249; See also the Child Act (2008) Articles 23(1), 26(1). [↑](#footnote-ref-290)
290. Report of the Secretary-General on conflict-related sexual violence (S/2017/249). [↑](#footnote-ref-291)
291. United Nations Special Representative on Sexual Violence in Conflict, Pramilla Pattern. [↑](#footnote-ref-292)
292. CRC, Articles 1, 4, 6, 19, 24, 27, 28, 37, 38; Transitional Constitution Article 17(1) every child is guaranteed the rights (a) to life, survival and development; (b) to a name and nationality; (c) to know and be cared for by his or her parents or legal guardian; (d) not to be subjected to exploitative practices or abuse, nor to be required to serve in the army nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being; (e) to be free from any form of discrimination; (f) to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions; (g) not to be subjected to negative and harmful cultural practices which affect his or her health, welfare or dignity; and (h) to be protected from abduction and trafficking; The Child Act 2008, Articles 9, 12, 14, 15, 19, 36. [↑](#footnote-ref-293)
293. UNICEF, *South Sudan Annual Report 2015*, 2016. [↑](#footnote-ref-294)
294. UNICEF, *Briefing Note:* *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-295)
295. UNICEF, *Briefing Note:* *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-296)
296. This figure is based on group discussions conducted in Gambella, Ethiopia and Malakal, Upper Nile. Individuals who had experienced violations as children participated in two of these group discussions even though they were over 18 years old at the time they met with the Commission. For reporting purposes, those who are over 18 have not been included in the overall figures regarding the number of participants in the discussions or in the methodology. [↑](#footnote-ref-297)
297. The Commission conducted all discussions with children in the presence of a legal guardian, child protection officer and/or social worker. Still, in order to protect the children’s confidentiality, the Commission has decided not to include detailed information from witness statements or direct quotes from children about human rights or related violations in its report. [↑](#footnote-ref-298)
298. Commission Discussion Group with Young Men in Nguenyyiel Refugee Camp, Gambella, Ethiopia, 12 September 2017. [↑](#footnote-ref-299)
299. UNICEF, *Briefing Note:* *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-300)
300. See united Nations General Assembly and Security Council, *Report of the Secretary-General on Children and Armed Conflict*, 20 April 2016 (A/70/836–S/2016/360), paragraph 5. [↑](#footnote-ref-301)
301. Witness 536, ERN 100766-100771. [↑](#footnote-ref-302)
302. Witness 536, ERN 100766-100771. [↑](#footnote-ref-303)
303. Witness 536, ERN 100766-100771. [↑](#footnote-ref-304)
304. Witness 536, ERN 100766-100771. [↑](#footnote-ref-305)
305. Witness 465, ERN D106573-D106577. [↑](#footnote-ref-306)
306. Witness 167, ERN D101240-D101241, paragraph 7. [↑](#footnote-ref-307)
307. UNICEF, *Briefing Note:* *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-308)
308. Witness 504, ERN 100822-100832. [↑](#footnote-ref-309)
309. Witness 518, ERN 101131-101136. [↑](#footnote-ref-310)
310. Commission Discussion Groups Internally Displaced Women in POCs Sites 1 and 3, Juba, South Sudan, 1-2 November 2017, ERN D105697-D105698; ERN 100001-100001; ERN D105699-D105706. [↑](#footnote-ref-311)
311. UNICEF, *The State of the World’s Children 2016*, 2017. [↑](#footnote-ref-312)
312. UNICEF, *Ending Child Marriage in South Sudan: Our Collective Responsibility*, 14 June 2013. [↑](#footnote-ref-313)
313. WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division. *Trends in Maternal Mortality: 1990 to 2015*, 2015; World Health Organization, *Canada and WHO strive to improve maternal and child health in South Sudan*, 28 November 2017. [↑](#footnote-ref-314)
314. Human Rights Watch, *This Old Man Can Feed Us, You Will Marry Him, Child and Forced Marriage in South Sudan*, 2013. [↑](#footnote-ref-315)
315. CHRSS Discussion Group with Women in Nguenyyiel Refugee Camp, Gambella, Ethiopia, 12 September 2017. [↑](#footnote-ref-316)
316. Report of the Secretary-General on Conflict-Related Sexual Violence, 23 March 2015 (S/2015/203), paragraph 48. [↑](#footnote-ref-317)
317. Confidential medical report on file with the Commission. [↑](#footnote-ref-318)
318. UNICEF, *Briefing Note:* *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-319)
319. CTSAMM, *Report 2018/02,* *Child Soldiers*, 15 January 2018. [↑](#footnote-ref-320)
320. Report of the Secretary-General on Children and Armed Conflict, 24 August 2017 (A/72/361–S/2017/821), Annex I; See also Child Act (2008), Article 31. [↑](#footnote-ref-321)
321. Draft Statute of the Hybrid Court for South Sudan, Article 5. [↑](#footnote-ref-322)
322. Commission Investigator’s Note, ERN D103447-D103447. [↑](#footnote-ref-323)
323. Commission Investigator’s Note, ERN D103386-D103386. [↑](#footnote-ref-324)
324. According to CTSAMM, these children were initially recruited under SLPA-IO (RM) and the faction switched allegiances to SPLA-IO (TD). CTSAMM, *Report 2018/02, Child Soldiers*, 15 January 2018. [↑](#footnote-ref-325)
325. CTSAMM, *Report 2018/02, Child Soldiers*, 15 January 2018. [↑](#footnote-ref-326)
326. Confidential Source, ERN D105719-D105721. [↑](#footnote-ref-327)
327. Confidential Source, ERN D105715-D105718. [↑](#footnote-ref-328)
328. CTSAMM, *Report 2018/02*, *Child Soldiers*, 15 January 2018. [↑](#footnote-ref-329)
329. UNICEF, *Reaching children in South Sudan: The situation of children in the world's youngest country*, 2017; UNICEF, *Briefing Note:* *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-330)
330. South Sudan Education Cluster, *Response Strategy for 2018*, 2017, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/ssec_-_strategy_for_2018.pdf>. [↑](#footnote-ref-331)
331. Witness 216, ERN 100203-100215; Witness 225, ERN 100225-100239. [↑](#footnote-ref-332)
332. UNICEF Briefing Note: *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-333)
333. South Sudan Education Cluster, *National Assessment of the Status of Education*, November 2016. [↑](#footnote-ref-334)
334. This constitutes a 50 per cent increase in the number of incidents involving denial of humanitarian access compared to the previous year. Report of the Secretary-General on children and armed conflict, 24 August 2017 (A/72/361–S/2017/821), paragraph 152. [↑](#footnote-ref-335)
335. Witness 216, ERN 100203-100215. [↑](#footnote-ref-336)
336. Confidential Source, ERN D101411-D101412; Confidential Source, ERN D106360-D106371. [↑](#footnote-ref-337)
337. Confidential Source, ERN D103427-D103435; Confidential Source, ERN D105689-D105692; Witness 216, ERN 100203-100215. [↑](#footnote-ref-338)
338. Witness 216, ERN 100203-100215; Meeting with Confidential Source, 1 December 2018. [↑](#footnote-ref-339)
339. Witness 216, ERN 100203-100215; Meeting with Confidential Source, 1 December 2018. [↑](#footnote-ref-340)
340. Witness 550, ERN 101021-101026 paragraph 13. [↑](#footnote-ref-341)
341. UNICEF, *Briefing Note:* *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-342)
342. Witness 225, ERN 100225-100239. [↑](#footnote-ref-343)
343. Report of the Secretary-General on Children and Armed Conflict, 24 August 2017 (A/72/361–S/2017/821), paragraph 150. [↑](#footnote-ref-344)
344. Witness 225, ERN 100225-100239, paragraph 9. [↑](#footnote-ref-345)
345. Save the Children South Sudan, *Health and Nutrition*, last accessed 25 January 2018; UNICEF, *The State of the World’s Children 2016*, 2017. [↑](#footnote-ref-346)
346. UNICEF, *Annual Report 2016: South Sudan*, 2016; UNICEF, *Briefing Note:* *Childhood under Attack, the Staggering Impact of South Sudan’s Crisis on Children*, 15 December 2017. [↑](#footnote-ref-347)
347. Report of the Secretary-General on South Sudan (covering the period from 2 September to 14 November 2017) (S/2017/1011). [↑](#footnote-ref-348)
348. World Vision, *Conflict-related trauma: the devastating effect of war on South Sudan's refugee children*, 21 July 2017. [↑](#footnote-ref-349)
349. World Vision, *Conflict-related trauma: the devastating effect of war on South Sudan's refugee children*, 21 July 2017. [↑](#footnote-ref-350)
350. Commission Discussion Group with Unaccompanied and Separated Children in Nguenyyiel Refugee Camp, Gambella, Ethiopia, 18 December 2017. [↑](#footnote-ref-351)
351. The Nuer White Army, the Dinka *Mathiang Anyoor* and the Shilluk *Agwelek* militia. [↑](#footnote-ref-352)
352. Rands. “In need of Review”, page 10. [↑](#footnote-ref-353)
353. Rands, Africano. [↑](#footnote-ref-354)
354. SPLA Act (2009) Chapter 4, Section 24. [↑](#footnote-ref-355)
355. Confidential Source, ERN D103194-D103194; Confidential Source, ERN D103086-D103086. [↑](#footnote-ref-356)
356. Witness 373, ERN 100379-100387. [↑](#footnote-ref-357)
357. Commission Military Advisor, Confidential meeting, 2 November 2017. [↑](#footnote-ref-358)
358. Meeting of the Commission Military Advisor with the Acting Division Commander Brigadier General Kagor Reech Gak, 2 Div., SPLA, Malakal on 23 November 2017. [↑](#footnote-ref-359)
359. He is a member of the Dinka community from Bahr el Ghazal. [↑](#footnote-ref-360)
360. ERN D105722-D105723. See also: L. D. Biong, *Dinka youth in civil war: between cattle, community and government.* In: Informal armies: community defence groups in South Sudan, Saferworld (2017); P.A. Nyaba, The Disarmament of the Gel-Weng of Bahr el Ghazal And The Consolidation of the Nuer – Dinka Peace Agreement 1999, Sudan Council of Churches and Pax Christi (2001); N. R. Pendle, *”They are now Community Police”: Negotiating the Boundaries and Nature of the Government in South Sudan through the Identity of Militarised Cattle Keepers*, International Journal on Minority and Group Rights 22 (2015), pages 410-434. [↑](#footnote-ref-361)
361. See: *Final Report of the African Union Commission of Inquiry on South Sudan*, Addis Ababa, 15 October 2014, paragraph 513. [↑](#footnote-ref-362)
362. Confidential meeting on 1 December 2017. [↑](#footnote-ref-363)
363. Interim Report of the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 (2015), November 2016 (S/2015/656) , paragraphs 13-25. [↑](#footnote-ref-364)
364. OHCHR-UNMISS, *A Report on Violations and Abuses of International Human Rights Law and Violations of International Humanitarian Law in the Context of the Fighting in Juba, South Sudan, in July 2016*, January 2017. [↑](#footnote-ref-365)
365. Small Arms Survey - Human Security Baseline Assessment for South Sudan and Sudan, Number 28, “*Spreading Fallout: The Collapse of ARCSS and the new conflict along the Equatorias-DRC border*”, May 2017, page 3. [↑](#footnote-ref-366)
366. Small Arms Survey: Human Security Baseline Assessment for South Sudan and Sudan, Number 28, “*Spreading Fallout: The Collapse of ARCSS and the new conflict along the Equatorias-DRC border”*, May 2017, page 4. [↑](#footnote-ref-367)
367. Witness 316, ERN 100560-100565; Confidential Source, ERN D106292-D106300. [↑](#footnote-ref-368)
368. Meeting with Inspector of Police for Lainya County on 7 November 2017. [↑](#footnote-ref-369)
369. Witness 316, ERN 100560-100565. [↑](#footnote-ref-370)
370. Confidential Source, ERN D106292-D106300; Confidential Source, ERN D106301-D106308. [↑](#footnote-ref-371)
371. Confidential Source, ERN D106309-D106315. [↑](#footnote-ref-372)
372. Witness 315, ERN 100571-100581; Witness 323, ERN 100507-100512; UNMISS Report, *Human Rights Violations and Abuses in Yei, July 2016 – January 2017,* paragraph 24. [↑](#footnote-ref-373)
373. Small Arms Survey: Human Security Baseline Assessment for South Sudan and Sudan, Number 28 *“Spreading Fallout: The Collapse of ARCSS and the new conflict along the Equatorias-DRC border”*, May 2017, page 13. [↑](#footnote-ref-374)
374. Witness 320, ERN 100525-100532; Witness 527, ERN 100858-100864; Witness 305, ERN 100872-100876. [↑](#footnote-ref-375)
375. Witness 309, ERN 100538-100543. [↑](#footnote-ref-376)
376. Witness 315, ERN 100571-100581; Confidential Source, ERN D106301-D106308. [↑](#footnote-ref-377)
377. Witness 315, ERN 100571-100581. See also, Witness 305, ERN 100872-100876. [↑](#footnote-ref-378)
378. Witness 315, ERN 100571-100581. [↑](#footnote-ref-379)
379. Witness 315, ERN 100571-100581. See also, Witness 305, ERN 100872-100876. [↑](#footnote-ref-380)
380. Witness 315, ERN 100571-100581. [↑](#footnote-ref-381)
381. Witness 318, ERN 100518-100524; Witness 291, ERN 100838-100845; Witness 203, ERN 100714-100722; Witness 206, ERN 100779-100787. [↑](#footnote-ref-382)
382. Witness 314, ERN 100566-100570. See also Confidential Source, ERN D106177-D106185. [↑](#footnote-ref-383)
383. Witness 314, ERN 100566-100570. [↑](#footnote-ref-384)
384. Witness 318, ERN 100518-100524. [↑](#footnote-ref-385)
385. Witness 291, ERN 100838-100845. [↑](#footnote-ref-386)
386. UNMISS Report: *Human Rights Violations and Abuses in Yei, July 2016 – January 2017,* page 14. [↑](#footnote-ref-387)
387. See for example, Witness 335, ERN 100905-100912; Witness 317, ERN 100513-100517. [↑](#footnote-ref-388)
388. Witness 317, ERN 100513-100517. [↑](#footnote-ref-389)
389. Witness 317, ERN 100513-100517. [↑](#footnote-ref-390)
390. UNMISS Report: *Human Rights Violations and Abuses in Yei, July 2016 – January 2017*, pages 16, 17. [↑](#footnote-ref-391)
391. CTSAMM, *Report 051 - Sexual and Gender Based Violence in the Yei Area,* 3 November 2017. [↑](#footnote-ref-392)
392. Confidential Meeting on 8 November 2017. [↑](#footnote-ref-393)
393. Meeting with Executive Director of Lainya County on 7 November 2017. [↑](#footnote-ref-394)
394. Witness 319, ERN 100533-100537. [↑](#footnote-ref-395)
395. Confidential Source, ERN D106177-D106185. [↑](#footnote-ref-396)
396. Witness 318, ERN 100518-100524. [↑](#footnote-ref-397)
397. Witness 318, ERN 100518-100524. [↑](#footnote-ref-398)
398. UNMISS Report: *Human Rights Violations and Abuses in Yei, July 2016 – January 2017*, page 21. See also UNOSAT, *Satellite Damage Density Map, Yei City, Nahr Yei district*, March 2017, ERN D101203-D101203. [↑](#footnote-ref-399)
399. UNOSAT, *Satellite Damage Density Map, Yei City, Nahr Yei district*, March 2017, ERN D101203-D101203. [↑](#footnote-ref-400)
400. UNOSAT, *Satellite Density of Damaged Structures in Yei District*, March 2017, ERN D101201-D101201. [↑](#footnote-ref-401)
401. CTSAMM, *Report 033, Burning of Homes in the Yei Area*, 28 March 2017. [↑](#footnote-ref-402)
402. OCHA: *Inter-agency Rapid Needs Assessment Report: Yei, Central Equatoria* *(6-8 September 2016).* [↑](#footnote-ref-403)
403. Sudan Population Census, 2008. [↑](#footnote-ref-404)
404. OCHA: *Inter-agency Rapid Needs Assessment Report: Yei, Central Equatoria (6-8 September 2016).* [↑](#footnote-ref-405)
405. Witness 316, ERN 100560-100565. [↑](#footnote-ref-406)
406. Witness 316, ERN 100560-100565. [↑](#footnote-ref-407)
407. CTSAMM, *Report 052, Violations in the Yei Area,* 4 September 2017; CTSAMM, *Report 044, Yei Area Monitoring Report*, 27 July 2017. [↑](#footnote-ref-408)
408. OCHA: *Inter-agency Rapid Needs Assessment Report: Kajo-Keji, Central Equatoria, 20-22 December 2016.* [↑](#footnote-ref-409)
409. OCHA: *Inter-agency Rapid Needs Assessment Report: Kajo-Keji, Central Equatoria, 20-22 December 2016.* [↑](#footnote-ref-410)
410. OCHA: *Inter-agency Rapid Needs Assessment Report: Kajo-Keji, Central Equatoria, 20-22 December 2016.* [↑](#footnote-ref-411)
411. Confidential Source, ERN D103405-D103407; Confidential Source, ERN D106319-D106325; Confidential Source, ERN D106330-D106345; Confidential Source, ERN D106346-D106357; Human Rights Watch Report: *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias,* August 2017, page 25. [↑](#footnote-ref-412)
412. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias,* August 2017, page 25. [↑](#footnote-ref-413)
413. Small Arms Survey, Human Security Baseline Assessment for South Sudan and Sudan, Number 28 *“Spreading Fallout: The Collapse of ARCSS and the new conflict along the Equatorias-DRC border”,* page 6; Press Release by Brig. Gen. Emmanuel Wani Gore Resigning from SPLA-IO in Central Equatoria to join NAS, 23 November 2017, ERN D101410-D101410; Confidential Source, ERN D103405-D103407; Confidential Source, ERN D106330-D106345; Confidential Source, ERN D106346-D106357. [↑](#footnote-ref-414)
414. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias,* August 2017, page 27. [↑](#footnote-ref-415)
415. Confidential Source, ERN D106208-D106217. [↑](#footnote-ref-416)
416. CTSAMM, *Report 034, Monitoring Report February 2017*, 28 March 2017, paragraph 2.1. [↑](#footnote-ref-417)
417. CTSAMM, *Report 034, Monitoring Report February 2017*, 28 March 2017, paragraph 2.2. [↑](#footnote-ref-418)
418. Witness 393, ERN 101000-101003. [↑](#footnote-ref-419)
419. Witness 393, ERN 101000-101003. [↑](#footnote-ref-420)
420. Witness 393, ERN 101000-101003. [↑](#footnote-ref-421)
421. Witness 384, ERN 100976-100979. [↑](#footnote-ref-422)
422. CTSAMM, *Report 034 – Monitoring Report February 2017*, paragraphs 2.1 to 2.6. [↑](#footnote-ref-423)
423. Confidential Source, ERN D106319-D106325; Human Rights Watch reports that 6 civilians were killed during this incident: see Human Rights Watch Report: *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias*,August 2017, page 29. [↑](#footnote-ref-424)
424. Confidential Source, ERN D106319-D106325; Confidential Source, ERN D106186-D106196. [↑](#footnote-ref-425)
425. Confidential Source, ERN D106319-D106325. [↑](#footnote-ref-426)
426. Protection Cluster Update: *Grave Concerns for the Lives of Civilians in Kajo Keji: Appeal for Immediate Ceasefire in Kajo Keji, Freedom of Movement and Protection of Civilians, Land and Property,* 24 February 2017. [↑](#footnote-ref-427)
427. Protection Cluster Update: *Grave Concerns for the Lives of Civilians in Kajo-Keji: Appeal for Immediate Ceasefire in Kajo-Keji, Freedom of Movement and Protection of Civilians, Land and Property*, 24 February 2017. [↑](#footnote-ref-428)
428. UNHCR, *South Sudan Regional Refugee Response Plan – Revised, January – December 2017*, page 7:“From July 2016 through January 2017, more than 512,000 South Sudanese refugees arrived in Uganda at an average of 2,400 refugees per day. The influx reached 3,000 a day for several months, making Uganda the third-ranked refugee-hosting country in the world with close to one million refugees.” [↑](#footnote-ref-429)
429. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias,* August 2017, page 27. [↑](#footnote-ref-430)
430. Confidential Source, ERN D106186-D106196. [↑](#footnote-ref-431)
431. Confidential Source, ERN D106186-D106196. See also, Letter of Resignation of Thomas Cirillo Swaka of 11 February 2017, ERN D100837-D100842. [↑](#footnote-ref-432)
432. Small Arms Survey: Human Security Baseline Assessment for South Sudan and Sudan, Number 28, *“Spreading Fallout: The Collapse of ARCSS and the new conflict along the Equatorias-DRC border”*, page 14. [↑](#footnote-ref-433)
433. See for example, Defection of Brig. General Victorio from SPLA-IO in Kajo Keji to NAS, 5 December 2017, ERN D103086-D103086; Letter of Defection of Maj. General Taban Wilson from SPLA-IO in Yei River State to NAS, 29 November 2017, ERN D103087-D103088; Press Release by Brig. Gen. Emmanuel Wani Gore Resigning from SPLA-IO in Central Equatoria to join NAS, 23 November 2017, ERN D101410-D101410. [↑](#footnote-ref-434)
434. Letter of Defection of Maj. General John Kenyi Loburon from SPLA-IO in Yei River State to NAS, 28 July 2017, ERN D105810-D105810. See https://minbane.wordpress.com/2017/07/29/httpwp-mep1xtjg-595/. [↑](#footnote-ref-435)
435. Africans Press, *“Maj. Gen. Kenyi escaped from SPLA IO”, 2 August 2017”*: *“[…] he is still at large but we are looking for him, he escaped toward Uganda […] it is only Gen. John Kenyi Loburon we want, kenyi is at large we will look for him wherever he is we will find him and bring him to book”.* [↑](#footnote-ref-436)
436. Witness 309, ERN 100538-100543. [↑](#footnote-ref-437)
437. Witness 310, ERN 100544-100559. [↑](#footnote-ref-438)
438. Witness 316, ERN 100560-100565. [↑](#footnote-ref-439)
439. Confidential Source, ERN D106177-D106185; Confidential Source, ERN D106186-D106196; Confidential Source, ERN D106208-D106217; Confidential Source, ERN D106218-D106230; Confidential Source, ERN D106254-D106268. [↑](#footnote-ref-440)
440. Transitional Constitution of the Republic of South Sudan, 2011, Article 164(2). [↑](#footnote-ref-441)
441. See http://radiotamazuj.org/en/news/article/new-commissioners-of-yei-river-state. [↑](#footnote-ref-442)
442. See Catholic Radio Network, *“Church buries body of deceased youth leader”* 16 August 2016. See also, Gurtong, *“Road Construction in Yei to Tame Insecurity”*: **“***The Commissioner of Yei County, Colonel David Lokonga Moses says the county will prioritise road construction in a bid to reduce insecurity and to open up productive areas.”* 16 November 2009; See also, Sudan Tribune*, “South Sudan government sets up a special LRA market”*, 4 June 2006 and Nyamilepedia, *“Yei River County Governor Reports Defected Officials To Salva Kiir For Alleged Recruitment of Rebels in Uganda”*13 November 2016, where the governor is repeatedly referred to by his rank of “Colonel”. [↑](#footnote-ref-443)
443. UNMISS, *Human Rights Violations and Abuses in Yei July 2016 – January 2017,* paragraph 24. See also Witness 315, ERN 100571-100581. [↑](#footnote-ref-444)
444. See *Final Report of the African Union Commission of Inquiry on South Sudan*, paragraphs 53, 54; See Letter dated 22 January 2016 from the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 (2015) addressed to the President of the Security Council: *“Equatorians have described a pattern of abuses by SPLA forces and the allied ethnic Dinka militia known as Mathiang Anyoor, including killings, arbitrary arrest and detention, rape and other forms of sexual violence, torture and the looting and destruction of property (S/2016/963 and S/2017/326)*”. See also Council on Foreign Relations, *“Understanding the Roots of Conflict in South Sudan”,* by Alex de Waal, 14 September 2016. [↑](#footnote-ref-445)
445. Witness 315, ERN 100571-100581. [↑](#footnote-ref-446)
446. See for example, Confidential Source, ERN D106316-D106318; Confidential Source, ERN D106319-D106325; Confidential Source, ERN D106330-D106345; Confidential Source, ERN D106346-D106357. [↑](#footnote-ref-447)
447. Confidential Source, ERN D106319-D106325. [↑](#footnote-ref-448)
448. Investigator’s Report on Integrated Mission to Kajo Keji, 24 November 2017 ERN D107820-D107825 pages D107823, D107824. [↑](#footnote-ref-449)
449. Confidential Source, ERN D103405-D103407; Confidential Source, ERN D106330-D106345; Confidential Source, ERN D106346-D106357. [↑](#footnote-ref-450)
450. Confidential Source, ERN D106330-D106345; Confidential Source, ERN D106346-D106357. [↑](#footnote-ref-451)
451. Confidential Source, ERN D106218-D106230. [↑](#footnote-ref-452)
452. IRIN, *“The war in Equatoria: A rare look inside South Sudan's spreading conflict”*, by Jason Patinkin, 12 July 2017. [↑](#footnote-ref-453)
453. Witness 309, ERN 100538-100543. See also, ForeignPolicy.com, *“No Place for Civilians”* by Jason Patinkin, 31 August 2017; Messenger Africa, *“South Sudan: Rebel infighting in Kajo Keji leads to govt gains”,* 3 November 2017. [↑](#footnote-ref-454)
454. Note Verbale to the Ministry of Foreign Affairs and International Cooperation of the Government of South Sudan, 19 January 2018, CHRSS/COR/2018/6. [↑](#footnote-ref-455)
455. Now newly-named Imatong State. [↑](#footnote-ref-456)
456. These being the *payams* of Pajok, Lawaci, Caigon and Lagii, which form four neat quadrants separated by the Atebi River (running east to west) and the Magwi road (running north to South). [↑](#footnote-ref-457)
457. Ryan O'Byrne, *Safety at the Margins: perceptions of justice and (in)security from South Sudan’s southern border*, 1 February 2015. [↑](#footnote-ref-458)
458. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 1.1. [↑](#footnote-ref-459)
459. Confidential Source, ERN D103493-D103495. [↑](#footnote-ref-460)
460. Confidential Source, ERN D103499-D103509, page D103499. [↑](#footnote-ref-461)
461. Confidential Source, ERN D103496-D103498. [↑](#footnote-ref-462)
462. Witness 573, ERN 101049-101053. [↑](#footnote-ref-463)
463. Human Rights Watch*,​“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias,”* August 2017, page 41. [↑](#footnote-ref-464)
464. Witness 574, ERN 101054-101058. She and her children fled further to Uganda the next morning after the gunshots started. [↑](#footnote-ref-465)
465. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 2.2; see also Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias,* August 2017, page 42. [↑](#footnote-ref-466)
466. Witness 573, ERN 101049-101053. [↑](#footnote-ref-467)
467. Witness 573, ERN 101049-101053. [↑](#footnote-ref-468)
468. Confidential Source, ERN D103496-D103498. [↑](#footnote-ref-469)
469. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 2.1. [↑](#footnote-ref-470)
470. Confidential Source, ERN D103499-D103509, page D103502. [↑](#footnote-ref-471)
471. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 2.2. [↑](#footnote-ref-472)
472. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, page 1. [↑](#footnote-ref-473)
473. Witness 572, ERN 101044-101048. [↑](#footnote-ref-474)
474. Witness 572, ERN 101044-101048. [↑](#footnote-ref-475)
475. Witness 584, ERN 101108-101110. [↑](#footnote-ref-476)
476. Witness 574, ERN 101054-101058. [↑](#footnote-ref-477)
477. Members of Imatong State Parliament from Ayaci and Magwi Counties, *Report on the general situation in Pogee, Pajok, Lerwa, Palotakaand, Magwi after the incident that happened on 3rd and 4th April 2017*, 1 May 2017, ERN D100342-D100373, page D100354. [↑](#footnote-ref-478)
478. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias*, August 2017, page 42. [↑](#footnote-ref-479)
479. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias*, August 2017, pages 42, 43. [↑](#footnote-ref-480)
480. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias*, August 2017, page 43. [↑](#footnote-ref-481)
481. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias*, August 2017, pages 43, 44. [↑](#footnote-ref-482)
482. Members of Imatong State Parliament from Ayaci and Magwi Counties, *Report on the general situation in Pogee, Pajok, Lerwa, Palotakaand, Magwi after the incident that happened on 3rd and 4th April 2017*, 1 May 2017, ERN D100342-D100373, page D100354. According to the SPLA, 12 people were killed: nine SPLA-IO rebels and three civilians in crossfire. [↑](#footnote-ref-483)
483. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, page 4. [↑](#footnote-ref-484)
484. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias*, August 2017, pages 41, 42. [↑](#footnote-ref-485)
485. Witness 573, ERN 101049-101053. [↑](#footnote-ref-486)
486. Report of the Secretary-General on South Sudan (covering the period from 2 March to 1 June 2017), 15 June 2017 (S/2017/505), paragraph 36. [↑](#footnote-ref-487)
487. Report of the Secretary-General on South Sudan (covering the period from 2 March to 1 June 2017), 15 June 2017 (S/2017/505), paragraph 36. [↑](#footnote-ref-488)
488. Confidential Source, ERN D101562-D101565, page D101563. [↑](#footnote-ref-489)
489. Witness 571, ERN 101040-101043. [↑](#footnote-ref-490)
490. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 2.4. [↑](#footnote-ref-491)
491. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 2.1. [↑](#footnote-ref-492)
492. Confidential Source, ERN D103499-D103509, page D103506. [↑](#footnote-ref-493)
493. Members of Imatong State Parliament from Ayaci and Magwi Counties, *Report on the general situation in Pogee, Pajok, Lerwa, Palotakaand, Magwi after the incident that happened on 3rd and 4th April 2017*, 1 May 2017, ERN D100342-D100373, page D100343. [↑](#footnote-ref-494)
494. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, page 6. [↑](#footnote-ref-495)
495. Confidential Source, ERN D103536-D103540. [↑](#footnote-ref-496)
496. Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias,* August 2017, page 45. [↑](#footnote-ref-497)
497. Members of Imatong State Parliament from Ayaci and Magwi Counties, *Report on the general situation in Pogee, Pajok, Lerwa, Palotakaand, Magwi after the incident that happened on 3rd and 4th April 2017*, 1 May 2017, ERN D100342-D100373, page D100344. [↑](#footnote-ref-498)
498. Report of the Secretary-General on South Sudan (covering the period from 2 March to 1 June 2017), 15 June 2017 (S/2017/505), paragraph 36. [↑](#footnote-ref-499)
499. Witness 388, ERN 100970-100975. [↑](#footnote-ref-500)
500. Witness 388, ERN 100970-100975. [↑](#footnote-ref-501)
501. Witness 573, ERN 101049-101053. [↑](#footnote-ref-502)
502. Confidential Source, ERN D103499-D103509, page D103507. [↑](#footnote-ref-503)
503. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 2.6. [↑](#footnote-ref-504)
504. Confidential Source, ERN D101562-D101565, page D101564. [↑](#footnote-ref-505)
505. Confidential Source, ERN D103513-D103517. [↑](#footnote-ref-506)
506. UNHCR, *Uganda Refugee Response: South Sudan Situation*, 4 August 2017. [↑](#footnote-ref-507)
507. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 2.3. [↑](#footnote-ref-508)
508. Confidential Source, ERN D103525-D103529. [↑](#footnote-ref-509)
509. Confidential Source, ERN D103530-D103535. [↑](#footnote-ref-510)
510. Reuters, *South Sudanese troops butchered civilians, shot children: refugees*, 5 April 2017. [↑](#footnote-ref-511)
511. Confidential Source, ERN D103530-D103535, page D103532. [↑](#footnote-ref-512)
512. Confidential Source, ERN D103499-D103509, page D103501. [↑](#footnote-ref-513)
513. Members of Imatong State Parliament from Ayaci and Magwi Counties, *Report on the general situation in Pogee, Pajok, Lerwa, Palotaka and, Magwi after the incident that happened on 3rd and 4th April 2017*, 1 May 2017, ERN D100342-D100373, pages D100344, D100345. [↑](#footnote-ref-514)
514. TSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 3.2. [↑](#footnote-ref-515)
515. Report of the Secretary-General on South Sudan (covering the period from 2 March to 1 June 2017), 15 June 2017 (S/2017/505), paragraph 41. [↑](#footnote-ref-516)
516. ICRC *Study on Customary International Humanitarian Law*, Rule 11. [↑](#footnote-ref-517)
517. Confidential Source, ERN D103518-D103524. [↑](#footnote-ref-518)
518. Confidential Source, ERN D103513-D103517. [↑](#footnote-ref-519)
519. CTSAMM, *Report 38 – Killing and Displacement of Civilians in Pajok*, 15 May 2017, paragraph 2.1. [↑](#footnote-ref-520)
520. Confidential Source, ERN D103499-D103509, page D103500. As many *Mathiang Anyoor* were incorporated into the SPLA, it is possible that Dinka 3rd Division soldiers were misidentified at *Mathiang Anyoor*. Human Rights Watch also noted the presence of some defected Acholi rebels now allied with the Government, however this could not be confirmed by the Commission in the limited time available. [↑](#footnote-ref-521)
521. Confidential Source, ERN D103499-D103509; Human Rights Watch, *“Soldiers Assume We Are Rebels” Escalating Violence and Abuses in South Sudan’s Equatorias,* August 2017, page 42; Witness 572, ERN 101044-101048. [↑](#footnote-ref-522)
522. Confidential Source, ERN D103518-D103524; Confidential Source, ERN D105724-D105809, page D105753. [↑](#footnote-ref-523)
523. Confidential Source, ERN D103536-D103540, page D103537. [↑](#footnote-ref-524)
524. Confidential Source, ERN D103536-D103540, page D103539. [↑](#footnote-ref-525)
525. Members of Imatong State Parliament from Ayaci and Magwi Counties, *Report on the general situation in Pogee, Pajok, Lerwa, Palotakaand, Magwi after the incident that happened on 3rd and 4th April 2017*, 1 May 2017, ERN D100342-D100373. [↑](#footnote-ref-526)
526. The Wau Triangle is the triangular area between Wau town, Bazia to the south, and Bisselia to the west and also encompasses Moi Moi, Bussere, Baggari, Taban, and Faraj Allah. [↑](#footnote-ref-527)
527. Human Rights Watch, “*The People of Wau and Dinka-Fertit Rivalry*” in *Famine in Sudan, 1998*, 8 February 1999; Human Rights Watch, *South Sudan: Civilians Killed, Tortured in Western Region*, 24 May 2016. [↑](#footnote-ref-528)
528. Republic of South Sudan, *Report of the Investigation Committee on Wau Incident of 24-26th June 2016*, 1 August 2016, ERN D101519-D101553, page 7; IOM DTM, *Greater Wau Area Displacement Overview*, June 2016, page 1; Meeting with Major General Majur, Commander of 5th Division of SPLA on 26 October 2017. [↑](#footnote-ref-529)
529. Confidential Source, ERN D105217-D105306, page D105238; Confidential Source, ERN D105818-D105923, pages D105885, D105886. [↑](#footnote-ref-530)
530. CTSAMM, *Report 003: Violations of the PCTSA in Western Bahr el Ghazal State concerning Protection of Civilians*, 22 March 2016, page 4; Confidential Source, ERN D105217-D105306, page D105238. *See also* IOM DTM, *Greater Wau Area Displacement Overview*, June 2016, page 1; Confidential Source, ERN D105924-D106050, pages D105985, D105997; Confidential Source, ERN D106051-D106171, page D106098. [↑](#footnote-ref-531)
531. Confidential Source, ERN D105924-D106050, page D105997. [↑](#footnote-ref-532)
532. CTSAMM, *Report 003: Violations of the PCTSA in Western Bahr el Ghazal State concerning Protection of Civilians*, 22 March 2016, page 4. [↑](#footnote-ref-533)
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536. Witness 178, ERN 100002-100006, paragraph 4; Confidential Source, ERN D106378-D106485, pages D106449, D106454, D106458, D106462, D106466, D106470, D106474, D106478, D106482; Human Rights Watch, *South Sudan: Civilians Killed, Tortured in Western Region*, 24 May 2016. [↑](#footnote-ref-537)
537. *See for ex*. Confidential Source, ERN D105924-D106050, pages D105940, D105948, D106005, D106030, D106031; Confidential Source, ERN D106051-D106171, page D106122; Human Rights Watch, *South Sudan: Civilians Killed, Tortured in Western Region*, 24 May 2016. [↑](#footnote-ref-538)
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540. Confidential Source, ERN D100624-D100633, page D100629. [↑](#footnote-ref-541)
541. Confidential Source, ERN D106051-D106171, pages D106051, D106055, D106056, D106060, D106061, D106064, D106068, D106072, D106076, D106080, D106081, D106086, D106090, D106091, D106094, D106095, D106098, D106102, D106106, D106110, D106114, D106118; Witness 162, ERN D101222-D101225, paragraph 5. [↑](#footnote-ref-542)
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545. Witness 136, ERN D101254-D101257, paragraphs 4-5. [↑](#footnote-ref-546)
546. Witness 132, ERN 100011-100015, paragraphs 4, 5; Witness 130, ERN 100007-100010, paras 4, 5. [↑](#footnote-ref-547)
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560. Republic of South Sudan, *Report of the Investigation Committee on Wau incident of 24-26th June 2016*, 1 August 2016, ERN D101519-D101553, page 19; Witness 162, ERN D101222-D101225, paragraphs 5-9, 17; Radio Tamazuj, *Wau Governor removed Situation Tense,* 24 June 2016; Sudan Tribune, *President Kiir fires Wau state governor*, 24 June 2016. *See also* Human Rights Watch, *South Sudan: Civilians Killed, Tortured in Western Region*, 24 May 2016. [↑](#footnote-ref-561)
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564. Witness 162, ERN D101222-D101225, paragraphs 10-12. [↑](#footnote-ref-565)
565. Witness 162, ERN D101222-D101225, paragraphs 12, 14; Witness 173, ERN 100061-100066, paragraphs 5-10. [↑](#footnote-ref-566)
566. Witness 173, ERN 100061-100066, paragraphs 5-10. [↑](#footnote-ref-567)
567. Witness 134, ERN D101297-D101300; Witness 141, ERN D101288-D101290; Witness 162, ERN D101222-D101225; Witness 166, ERN D101238-D101239; Witness 167, ERN D101240-D101241; Witness 168, ERN D101242-D101244; Witness 169, ERN D101245-D101246; Witness 173, ERN 100061-100066; Witness 185, ERN D101488-D101490; Confidential Source, ERN D101511-D101517; Confidential Source, ERN D105818-D105923, page D105911. [↑](#footnote-ref-568)
568. Witness 141, ERN D101288-D101290, paragraphs 5, 6. [↑](#footnote-ref-569)
569. Witness 141, ERN D101288-D101290, paragraph 7. [↑](#footnote-ref-570)
570. Witness 168, ERN D101242-D101244, paragraph 6. [↑](#footnote-ref-571)
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576. Confidential Source, ERN D106852-D106977, page D106952; Confidential Source, ERN D106978-D107089, page D107016; CTSAMM, *Report #39 – Killings of Civilians in Wau*, 15 May 2017, page 2. [↑](#footnote-ref-577)
577. Confidential Source, ERN D107090-D107218, pages D107103, D107111, D107115; Confidential Source, ERN D106978-D107089, pages D106990, D106994, D106995. [↑](#footnote-ref-578)
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579. Confidential Source, ERN D106978-D107089, page D106996. [↑](#footnote-ref-580)
580. Confidential Source, ERN D106978-D107089, page D106987. [↑](#footnote-ref-581)
581. Confidential Source, ERN D106978-D107089, page D107008. [↑](#footnote-ref-582)
582. Confidential Source, ERN D106978-D107089, page D107008. [↑](#footnote-ref-583)
583. Confidential Source, ERN D107090-D107218, page D107119; Confidential Source, ERN D101592-D101604, page 6. [↑](#footnote-ref-584)
584. Confidential Source, ERN D107090-D107218, page D107119. [↑](#footnote-ref-585)
585. Confidential Source, ERN D100634-D100638, page D100635; Confidential Source, ERN D106978-D107089, page D107015; CTSAMM, *Report #39 – Killing of Civilians in Wau*, 15 May 2017, page 3. [↑](#footnote-ref-586)
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588. Confidential Source, ERN D107090-D107218, page D107143. [↑](#footnote-ref-589)
589. Witness 171, ERN D101249-D101251, paragraphs 5-10; Witness 170, ERN D101247-D101248, paragraphs 5-7; Witness 127, ERN D101639-D101641, paragraph 8; CTSAMM, *Report 039: Killing of Civilians in Wau*, 15 May 2017, page 4; Confidential Source, ERN D101592-D101604; Confidential Source, ERN D100658-D100662; Confidential Source, ERN D106978-D107089, page D107015. [↑](#footnote-ref-590)
590. Witness 171, ERN D101249-D101251, paragraphs 6, 7; Confidential Source, ERN D100658-D100662, pages D100659, D100660; Confidential Source ERN D101592-D101604, page 5; Confidential Source, ERN D106978-D107089, page D107015. [↑](#footnote-ref-591)
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597. Confidential Source, ERN D100634-D100638, page D100635. [↑](#footnote-ref-598)
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602. Confidential Source, ERN D107219-D107359, page D107267. [↑](#footnote-ref-603)
603. Confidential Source ERN D103019-D103029, page D103021; Confidential Source, ERN D107639-D107756, page D107747; Confidential Source, ERN D102993-D103001. [↑](#footnote-ref-604)
604. Confidential Source, ERN D103019-D103029, page D103021; Confidential Source, ERN D102993-D103001, page D102994. [↑](#footnote-ref-605)
605. Meeting with the Commander of SPLA 5th Division, 26 October 2017. [↑](#footnote-ref-606)
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607. Confidential Source, ERN D107360-D107491, page D107430. [↑](#footnote-ref-608)
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609. Confidential Source, ERN D107492-D107610, page D107610. [↑](#footnote-ref-610)
610. Confidential Source, ERN D107622-D107630, page D107624. [↑](#footnote-ref-611)
611. Witness 166, ERN D101238-D101239, paragraphs 4-6. [↑](#footnote-ref-612)
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613. Confidential Source, ERN D107611-D107621, page D107614. [↑](#footnote-ref-614)
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615. Confidential Source, ERN D107639-D107756, page D107747. [↑](#footnote-ref-616)
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621. Confidential Source, ERN D106704-D106810, page D106769. [↑](#footnote-ref-622)
622. Confidential Source, ERN D106852-D106977, page D106936. [↑](#footnote-ref-623)
623. Republic of South Sudan, *Report of the Investigation Committee on Wau incident of 24-26th June 2016*, 1 August 2016, ERN D101519-D101553, page 1. [↑](#footnote-ref-624)
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625. Investigations Committees Act of 2006, sections 11, 12. [↑](#footnote-ref-626)
626. Investigations Committees Act of 2006, section 13. [↑](#footnote-ref-627)
627. Meeting with Wau Police Commissioner, 26 October 2017. [↑](#footnote-ref-628)
628. Meeting with Commander of 5th Division, 26 October 2017. [↑](#footnote-ref-629)
629. Letter from Commission Secretariat to Police Commissioner of Wau, 30 October 2017, CHRSS/COR/2017/7. [↑](#footnote-ref-630)
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633. Meeting with Police Commissioner of Wau, 26 October 2017. [↑](#footnote-ref-634)
634. Letter from Commission Secretariat to Police Commissioner of Wau, 30 October 2017, CHRSS/COR/2017/7. CTSAMM reported that as of 15 May 2017, there had been no arrests. CTSAMM, *CTSAMM* *Report 039 – Killing of Civilians in Wau*, 15 May 2017. [↑](#footnote-ref-635)
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636. Small Arms Survey - Human Security Baseline Assessment for Sudan and South Sudan, *The Conflict in Upper Nile State - Describes events through 9 April 2015*, 16 April 2015, page 9. [↑](#footnote-ref-637)
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638. OHCHR, Assessment mission by the Office of the United Nations High Commissioner for Human Rights to improve human rights, accountability, reconciliation and capacity in South Sudan: detailed findings (A/HRC/31/CRP.6), paragraphs 247-250, 288-289. [↑](#footnote-ref-639)
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640. Government of South Sudan, *Republican Order, 02/2017*, 14 January 2017. [↑](#footnote-ref-641)
641. Confidential Source, ERN D103953-D103957. [↑](#footnote-ref-642)
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645. Médecins Sans Frontières, *South Sudan: Fleeing civilians cut off from emergency healthcare in Wau Shilluk*, 3 February 2017. [↑](#footnote-ref-646)
646. Witness 323, ERN 100268-100272. [↑](#footnote-ref-647)
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648. CTSAMM, *Report 037 – Fighting in Malakal area*, 15 May 2017, paragraph 2.1 and 2.4. [↑](#footnote-ref-649)
649. Confidential Source, ERN D103599-D103601. [↑](#footnote-ref-650)
650. Médecins Sans Frontières, *South Sudan: Fleeing civilians cut off from emergency healthcare in Wau Shilluk*, 3 February 2017. [↑](#footnote-ref-651)
651. Confidential Source, ERN D103611-D103660, pages D103655. [↑](#footnote-ref-652)
652. In a meeting with the Commission, the Commander of 2 Division said that after SPLA-IO rebels captured and beheaded an SPLA soldier, he had to “teach them a lesson”. However, SPLA-IO claims that they returned fire after one of their patrols was ambushed by SPLA soldiers. Meeting with the Acting Commander of 2nd Division and other officers, 23 November 2017. [↑](#footnote-ref-653)
653. Confidential Source, ERN D103958-D103959. [↑](#footnote-ref-654)
654. Witness 353, ERN 100925-100928. [↑](#footnote-ref-655)
655. Witness 355, ERN 100962-100965; Witness 358, ERN 100930-100933. [↑](#footnote-ref-656)
656. Witness 358, ERN 100930-100933. A small strip of water and marsh separates two parts of Wau Shilluk. [↑](#footnote-ref-657)
657. Witness 358, ERN 100930-100933. [↑](#footnote-ref-658)
658. Witness 353, ERN 100925-100928. [↑](#footnote-ref-659)
659. Confidential Source, ERN D103972-D104064, page D103985. [↑](#footnote-ref-660)
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662. Radio Tamuzuj, *5 dead, 25 injured in barrel bombs attack on Wau Shilluk: NGO*, 2 February 2017. [↑](#footnote-ref-663)
663. Radio Tamuzuj, *25 civilians killed in bombing in Wau Shilluk: SPLA-IO official,* 1 February 2017. [↑](#footnote-ref-664)
664. South Sudan Nation, *Bombardment of Innocent Shilluk Civilians by the Kiir’s Juba Regime*, 28 January 2017. [↑](#footnote-ref-665)
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667. Witness 355, ERN 100962-100965. [↑](#footnote-ref-668)
668. Amnesty International, *It was as if my village was swept by a flood": Mass displacement of the Shilluk population from the West Bank of the White Nile,* 21 June 2017, page 8. [↑](#footnote-ref-669)
669. Witness 353, ERN 100925-100928. [↑](#footnote-ref-670)
670. Witness 358, ERN 100930-100933. [↑](#footnote-ref-671)
671. Witness 327, ERN 100253-100257. [↑](#footnote-ref-672)
672. Witness 321, ERN 100273-100277. [↑](#footnote-ref-673)
673. Witness 324, ERN 100263-100267. [↑](#footnote-ref-674)
674. Witness 362, ERN 100946-100949. [↑](#footnote-ref-675)
675. Amnesty International, *It was as if my village was swept by a flood": Mass displacement of the Shilluk population from the West Bank of the White Nile,* 21 June 2017, page 9. [↑](#footnote-ref-676)
676. Witness 323, ERN 100268-100272. [↑](#footnote-ref-677)
677. Confidential Source, ERN D103661-D103709, page D103676. [↑](#footnote-ref-678)
678. Médecins Sans Frontières, *South Sudan: I am tired of running*, 16 March 2017. [↑](#footnote-ref-679)
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680. CTSAMM, *Report 037 – Fighting in Malakal area*, 15 May 2017, paragraph 3.3. [↑](#footnote-ref-681)
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683. Witness 357, ERN 100954-100957. [↑](#footnote-ref-684)
684. Witness 356, ERN 100958-100961. [↑](#footnote-ref-685)
685. Witness 365, ERN 100913-100916. [↑](#footnote-ref-686)
686. Witness 324, ERN 100263-100267. [↑](#footnote-ref-687)
687. Confidential Source, ERN D103972-D104064, page D104014. [↑](#footnote-ref-688)
688. Confidential Source, ERN D103972-D104064, page D104028. [↑](#footnote-ref-689)
689. Confidential Source, ERN D103972-D104064, page D104005. [↑](#footnote-ref-690)
690. Confidential Source, ERN D103972-D104064, pages D104009-D104012. [↑](#footnote-ref-691)
691. UNMISS Press Release, *UNMISS SRSG describes situation of displaced people in Upper Nile region as “real problem”*, 16 February 2017. [↑](#footnote-ref-692)
692. Confidential Source, ERN D103710-D103758, page D103712. [↑](#footnote-ref-693)
693. CTSAMM, *Report 037 – Fighting in Malakal area*, 15 May 2017, page 1. [↑](#footnote-ref-694)
694. CTSAMM, *Report 037 – Fighting in Malakal area*, 15 May 2017, page 1. [↑](#footnote-ref-695)
695. Confidential Source, ERN D103710-D103758, page D103747. [↑](#footnote-ref-696)
696. Confidential Source, ERN D103710-D103758, page D103754. [↑](#footnote-ref-697)
697. Confidential Source, ERN D103972-D104064, page D104011. [↑](#footnote-ref-698)
698. South Sudan Protection Cluster, *Protection Trends South Sudan: January-April 2017*, May 2017. [↑](#footnote-ref-699)
699. IOM*, Displacement Tracking Matrix*, March 2017. [↑](#footnote-ref-700)
700. Danish Refugee Council, *Post Displacement Rapid Protection Assessment: Aburoc*, February 2017. [↑](#footnote-ref-701)
701. REACH, *Situation Overview: Upper Nile State, South Sudan*, March 2017. [↑](#footnote-ref-702)
702. Confidential Source, ERN D104867-D104869. [↑](#footnote-ref-703)
703. Witness 438, ERN 100424-100427. [↑](#footnote-ref-704)
704. Confidential Source, ERN D103962-D103964. [↑](#footnote-ref-705)
705. Confidential Source, ERN D103962-D103964. [↑](#footnote-ref-706)
706. Confidential Source, ERN D106172-D106176, page D106173. [↑](#footnote-ref-707)
707. Many had also begun to move a couple of days before the offensive, Confidential Source, ERN D103759-D103808, page D103797. [↑](#footnote-ref-708)
708. Confidential Source, ERN D104875-D104876. [↑](#footnote-ref-709)
709. UNHCR, *Flash Update Sudan: South Sudanese Refugee Emergency*, 7 May 2017. [↑](#footnote-ref-710)
710. Confidential Source, ERN D103759-D103808, pages D103797, D103801. [↑](#footnote-ref-711)
711. Witness 364, ERN 100917-100920. [↑](#footnote-ref-712)
712. Witness 364, ERN 100917-100920. [↑](#footnote-ref-713)
713. Witness 363, ERN 100921-100924. [↑](#footnote-ref-714)
714. Witness 363, ERN 100921-100924. [↑](#footnote-ref-715)
715. Witness 361, ERN 100942-100945. [↑](#footnote-ref-716)
716. Witness 328, ERN 100247-100252. [↑](#footnote-ref-717)
717. Witness 328, ERN 100247-100252. [↑](#footnote-ref-718)
718. Witness 437, ERN 100420-100423; Witness 438, ERN 100424-100427; Witness 360, ERN 100938-100941; Witness 361, ERN 100942-100945. [↑](#footnote-ref-719)
719. Witness 365, ERN 100913-100916. [↑](#footnote-ref-720)
720. Witness 365, ERN 100913-100916. [↑](#footnote-ref-721)
721. Confidential Source, ERN D103809-D103861, pages D103859-D103860. [↑](#footnote-ref-722)
722. CTSAMM, *Report 042 – Military operations in Kodok*, 27 July 2017, paragraphs 1.4 and 2.3. [↑](#footnote-ref-723)
723. Confidential Source, ERN D103464-D103477. [↑](#footnote-ref-724)
724. Confidential Source, ERN D103464-D103477. [↑](#footnote-ref-725)
725. CTSAMM, *Report 042 – Military operations in Kodok*, 27 July 2017, paragraph 2.4. [↑](#footnote-ref-726)
726. Confidential Source, ERN D103464-D103477. [↑](#footnote-ref-727)
727. OHCHR, *South Sudan: Weary, frightened displaced civilians in Upper Nile at imminent risk of further violence*, 4 May 2017. [↑](#footnote-ref-728)
728. Confidential Source, ERN D103965-D103971. [↑](#footnote-ref-729)
729. United Nations, SRSG David Shearer, *Briefing to the Security Council on the Situation in South Sudan*, 24 May 2017, paragraph 11. [↑](#footnote-ref-730)
730. UNMISS Press Release, *“Nimble and pro-active” peacekeeping response to be replicated in other crisis situations in South Sudan,* 21 June 2017. [↑](#footnote-ref-731)
731. Confidential Source, ERN D104870-D104871; Confidential Source, ERN D104873-D104874. [↑](#footnote-ref-732)
732. Confidential Source, ERN D105080-D105200, page D105131. [↑](#footnote-ref-733)
733. CTSAMM, *Report 056 - Fighting in Aburoc*, 3 November 2017. [↑](#footnote-ref-734)
734. CTSAMM, *Report 056 - Fighting in Aburoc*, 3 November 2017. [↑](#footnote-ref-735)
735. Médecins Sans Frontières, *South Sudan: Continuing displacement is the new reality for many along northern frontier*, 6 October 2017. [↑](#footnote-ref-736)
736. Witness 353, ERN 100925-100928. [↑](#footnote-ref-737)
737. Interim report of the Panel of Experts on South Sudan (S/2017/979), 20 November 2017, paragraph 44. [↑](#footnote-ref-738)
738. Incidents were reported in Kodok on 23 February (Confidential Source, ERN D103960-D103961) and in Awardjok, on 17 March (Confidential Source, ERN D103710-D103758, page D103738). In contrast, international observers were routinely allowed to access Kodok and Aburoc, when under control of SPLA-IO forces. [↑](#footnote-ref-739)
739. Confidential Database, 17/0135; Amnesty International, *It was as if my village was swept by a flood": Mass displacement of the Shilluk population from the West Bank of the White Nile,* 21 June 2017, pages 6, 7. [↑](#footnote-ref-740)
740. Confidential Source, ERN D103759-D103808, page D103797. [↑](#footnote-ref-741)
741. Confidential Source, ERN D103710-D103758, page D103719. [↑](#footnote-ref-742)
742. ICRC, *Study on Customary International Humanitarian Law*, Rule 11. [↑](#footnote-ref-743)
743. CTSAMM, *Report 042 – Military operations in Kodok*, 27 July 2017. [↑](#footnote-ref-744)
744. UNHCR, *Sudan: South Sudanese Refugee Response*, 15 October 2017. The Sudanese provinces of White Nile and Southern Kordofan border the relevant areas. [↑](#footnote-ref-745)
745. Interim report of the Panel of Experts on South Sudan(S/2017/979), 20 November 2017, paragraph 41. [↑](#footnote-ref-746)
746. Radio Tamazuj, *Shilluk king accuses government of ethnic cleansing in Upper Nile*, 8 March 2017. [↑](#footnote-ref-747)
747. Radio Tamazuj, *Presidency denies Shilluk king allegations of “ethnic cleansing”*, 12 March 2017. [↑](#footnote-ref-748)
748. United Nations, Speech of the Chair of the Commission on Human Rights in South Sudan to the Human Rights Council, undated. [↑](#footnote-ref-749)
749. CTSAMM, *Report 37 – Fighting in the Malakal area*, 15 May 2017, paragraph 5.2. [↑](#footnote-ref-750)
750. Confidential Source, ERN D103478-D103480. [↑](#footnote-ref-751)
751. CTSAMM, *Report 042 – Military operations in Kodok*, 27 July 2017, page 1. [↑](#footnote-ref-752)
752. Confidential Source, ERN D103481-D103492. [↑](#footnote-ref-753)
753. Confidential Source, ERN D106172-D106176, page D106173. [↑](#footnote-ref-754)
754. Confidential Sources, ERN D103611-D103660, pages D103641, D103642 and ERN D106172-D106176, page D106174. [↑](#footnote-ref-755)
755. Confidential Source, ERN D104877-D104967, page D104949. [↑](#footnote-ref-756)
756. Confidential Source, ERN D103809-D103861, page D103812. [↑](#footnote-ref-757)
757. Confidential Source, ERN D106172-D106176, page D106173. [↑](#footnote-ref-758)
758. Confidential Source, ERN D106172-D106176, page D106173. [↑](#footnote-ref-759)
759. Confidential Source, ERN D103809-D103861, pages D103859, D103860. [↑](#footnote-ref-760)
760. Confidential Source, ERN D103759-D103808, page D103759. [↑](#footnote-ref-761)
761. Confidential Source, ERN D103759-D103808, page D103797; Confidential Source, ERN D106172-D106176, page D106174. [↑](#footnote-ref-762)
762. Confidential Source, ERN D103960-D103961. [↑](#footnote-ref-763)
763. Interim report of the Panel of Experts on South Sudan(S/2017/789), 20 September 2017, footnote 29. [↑](#footnote-ref-764)
764. Interim report of the Panel of Experts on South Sudan(S/2017/789), 20 September 2017, paragraph 23. [↑](#footnote-ref-765)
765. Confidential Source, ERN D106172-D106176, page D106174. [↑](#footnote-ref-766)
766. Despite SPLA-IO Chairman Dr. Riek Machar telling the Panel of Experts on South Sudan that Pagak was “not a significant opposition base or headquarters”, several witnesses referred to Pagak as SPLA-IO Headquarters. See Letter dated 20 September 2017 from the Panel of Experts on South Sudan addressed to the President of the Security Council (S/2017/789), paragraph 10. See also Witness 293, ERN 100388-100402, paragraph 4; Witness 344, ERN 100348-100352, paragraph 5. [↑](#footnote-ref-767)
767. Africa News, *South Sudan army captures Ethiopia border town held by rebels*, 29 July 2017. [↑](#footnote-ref-768)
768. At the time of the Government offensive in July 2017, Maiwut served as the State headquarters. The SPLA-IO faction loyal to First Vice-President Taban Deng Gai reports that the Government relocated to Pagak in February 2018 because the SPLA-IO (RM) is still in control of Maiwut. Radio Tamazuj, *Maiwut govt moves state headquarters to Pagak*, 1 February 2018. See also Confidential Source, ERN D104232-D104232. [↑](#footnote-ref-769)
769. Witness 464, ERN 100433-100438, paragraph 4. [↑](#footnote-ref-770)
770. Confidential Source, ERN D104237-D104240, page 3; Witness 464, ERN 100433-100438, paragraph 9; Witness 249, ERN 100664-100674, paragraph 16. [↑](#footnote-ref-771)
771. Small Arms Survey, Graduate Institute of International and Development Studies, *Fields of Control: Oil and (In)security in Sudan and South Sudan*, 2015; Katharine Houreld, Reuters, *South Sudan aims to more than double oil output in 2017/18*, 27 January 2017. [↑](#footnote-ref-772)
772. Government of South Sudan, *The Republican Order No.02/2017 for the Creation of New States in the Republic of South Sudan,* 14 January 2017, paragraph 4. [↑](#footnote-ref-773)
773. Government of South Sudan, *The Republican Decree No. 19/2017 for the Appointment of some Governors of the States*, 16 January 2017, page 2; Sudan Tribune, *S. Sudan’s Kiir sacks four governors after creating new states*, 17 January 2017; Witness 373, ERN 100379-100387, paragraph 9. [↑](#footnote-ref-774)
774. CTSAMM, *Report No. 48, Offensive Military Operations in Upper Nile State*, 4 September 2017; Witness 184, ERN 100097-100107, paragraph 6; Witness 189, ERN 100108-100114, paragraph 5. [↑](#footnote-ref-775)
775. The SPLA troops used in the Pagak Offensive were comprised of elements from the SPLA 1st and 6th Divisions and SPLA-IO (TD). CTSAMM, *Report No. 48, Offensive Military Operations in Upper Nile State*, 4 September 2017; Confidential Source, ERN D101204-D101215, page D101214; Confidential Source, ERN D104233-D104236; Confidential Source, ERN D105569- D105584, page D105571; Witness 184, ERN 100097-100107, paragraph 6. [↑](#footnote-ref-776)
776. Confidential Source, ERN D101204-D101215; CTSAMM, *Report No. 48, Offensive Military Operations in Upper Nile State*, 4 September 2017. [↑](#footnote-ref-777)
777. Confidential Source, ERN D101204-D101215; Interim report of the Panel of Experts on South Sudan (S/2017/789), 20 September 2017, page 5. [↑](#footnote-ref-778)
778. Confidential Source, ERN D101204-D101215, page D101212. [↑](#footnote-ref-779)
779. Confidential Source, ERN D105569-D105584, page D105570; Small Arms Survey, Graduate Institute of International and Development Studies, *Fields of Control: Oil and (In)security in Sudan and South Sudan*, 2015; Katharine Houreld, Reuters, *South Sudan aims to more than double oil output in 2017/18*, 27 January 2017; Ian Mwenda, Horn Institute, *The Three Main Curses of South Sudan*, [Undated]; Radio Tamazuj, *Government says oil installations secure after capture of Pagak*, 31 August 2017. [↑](#footnote-ref-780)
780. Confidential Source, ERN D107769-D107797, paragraph 79; Confidential Source, ERN D101204-D101207, page D101207; Witness 189, ERN 100108-100114, paragraphs 5, 11; Witness 332, ERN 100320-100324, paragraph 7; Witness 334, ERN 100314-100319, paragraph 8; Witness 340, ERN 100331-100335, paragraph 10; Witness 370, ERN 100367-100378, paragraph 6; Witness 371, ERN 100702-100710, paragraph 5; Witness 373, ERN 100379-100387, paragraph 9; Witness 464, ERN 100433-100438, paragraph 7. [↑](#footnote-ref-781)
781. Witness 292, ERN 100675-100683, paragraph 12; Witness 344, ERN 100348-100352, paragraph 6. [↑](#footnote-ref-782)
782. Witness 184, ERN 100097-100107, paragraph 15; Witness 189, ERN 100108-100114, paragraph 5; Witness 333, ERN 100308-100313, paragraph 5; Witness 371, ERN 100702-100710, paragraphs 5-6; Confidential Source, ERN D105569-D105584, page D105571; Confidential Source, ERN D107769-D107797, paragraph 79; Confidential Source, ERN D105585-D105596, page D105586. See also Small Arms Survey, Human Security Baseline Assessment, *Issue Brief No. 25,* *Legitimacy, exclusion, and power: Taban Deng Gai and the South Sudan Peace Process*, December 2016; Confidential Source, ERN D101204-D101207, page D101205, citing, *“The area is occupied by the Nuer tribe, and the number of its civilians were around 70,000, but those who [are] remain after the last fighting [are] around 37,000 people.”* [↑](#footnote-ref-783)
783. SPLA began preparations for this offensive as early as June 2017 near the SPLA 6th Division Headquarters in Guelguk and continued southeast down the Adar-Gajok-Mathiang-Maiwut axis. CTSAMM, *Report No. 48, Offensive Military Operations in Upper Nile State*, 4 September 2017; See also Witness 184, ERN 100097-100107; Witness 293, ERN 100388-100402; Witness 331, ERN 100592-100601. [↑](#footnote-ref-784)
784. The majority of those displaced were from the Nuer community and migrated to Gambella which has a predominantly Nuer host community. Dereje Feyissa, Life and Peace Institute, *The Horn of Africa Bulletin,* *The Spillover effect of South Sudan in Gambella, Ethiopia*, 18 November 2014, page 1; Jacey Fortin, New York Times, *Deadly Ethnic Strife Convulses Ethiopia-South Sudan Border*, 25 April 2016. [↑](#footnote-ref-785)
785. UNHCR estimates that 4,354 South Sudanese and 24,911 South Sudanese were displaced to Gambella, Ethiopia in August and September 2017, respectively; the vast majority of those displaced to Ethiopia entered through Pagak, Upper Nile. UNHCR Gambella Sub-Office, *South Sudan Situation: Refugee population in Gambella region*, 30 November 2017. [↑](#footnote-ref-786)
786. Reports of the Secretary-General on the Sudan and South Sudan, 20 July 2017 (S/PV.8008), page 8. [↑](#footnote-ref-787)
787. Reports of the Secretary-General on the Sudan and South Sudan, 20 July 2017 (S/PV.8008), page 2; Sudan Tribune, *S. Sudan’s SPLA controls Pagak but fighting continues in surrounding areas: UN*,25 August 2017. [↑](#footnote-ref-788)
788. UNHCR, *South Sudan Situation, Information Sharing Portal*, last accessed 1 February 2017, available at <http://data.unhcr.org/SouthSudan/region.php?id=36>. [↑](#footnote-ref-789)
789. The Commission was not able to confirm the exact number of SPLA forces used in the offensive, largely due to the fact that reinforcement troops were added from different contingents; however, by all accounts the number of SPLA soldiers used in the Government offensive were upwards of 7,500 soldiers. Witness 184, ERN 100097-100107, paragraphs 10 and 12; Witness 293, ERN 100388-100402, paragraph 13; Witness 331, ERN 100592-100601, paragraph 6. [↑](#footnote-ref-790)
790. Witness 183, ERN 100089-100096, paragraphs 7, 9; Witness 184, ERN 100097-100107, paras 13-17; Witness 331, ERN 100592-100601, para 5. [↑](#footnote-ref-791)
791. Witness 183, ERN 100089-100096, page 100094; Witness 184, ERN 100097-100107, paragraph 12; Witness 331, ERN 100592-100601, page 100597. [↑](#footnote-ref-792)
792. Witness 183, ERN 100089-100096, paragraphs 7-9; Witness 184, ERN 100097-100107, paras 13-17. [↑](#footnote-ref-793)
793. Witness 331, ERN 100592-100601, page 100597; Witness 334, ERN 100314-100319, paras 4-6. [↑](#footnote-ref-794)
794. Witness 225, ERN 100225-100239, paragraph 7; Witness 293, ERN 100388-100402, para 14; Witness 331, ERN 100592-100601, page 100597; Witness 342, ERN 100336-100341, para 6. [↑](#footnote-ref-795)
795. Witness 342, ERN 100336-100341, paragraph 6. [↑](#footnote-ref-796)
796. Witness 334, ERN 100314-100319, paragraphs 4-6; Witness 352, ERN 100649-100663, paras 5, 6. [↑](#footnote-ref-797)
797. Witness 261, ERN 100637-100648, paragraph 16; Witness 293, ERN 100388-100402, paragraph 24; Witness 334, ERN 100314-100319, paragraph 6-7; Witness 342, ERN 100336-100341, paras 7-8; Witness 352, ERN 100649-100663, paras 5, 6. [↑](#footnote-ref-798)
798. Witness 342, ERN 100336-100341, para 7. [↑](#footnote-ref-799)
799. Witness 331, ERN 100592-100601, para 10. [↑](#footnote-ref-800)
800. The Tiger Battalion originates from the SPLA-IO Tiger Division, which is considered to be the SPLA-IO’s Presidential Guard. After the standoff between the SPLA and SPLA-IO elements within the Presidential Guard in Juba in July 2016, the SPLA-IO Tiger Division retained its original name. Witness 293, ERN 100388-100402, para 13. [↑](#footnote-ref-801)
801. Members of the White Army were reportedly also present in different points of the offensive leading into Mathiang; however, it appears that in Mathiang is where they mobilized to fight the SPLA forces under their own Commander. Witness 293, ERN 100388-100402, paragraph 8; Witness 331, ERN 100592-100601, paragraphs 14-16; Witness 352, ERN 100649-100663, paras 6-9. [↑](#footnote-ref-802)
802. Soviet self-propelled anti-aircraft gun. Witness 296, ERN 100358-100363, paragraph 10. See also Witness 464, ERN 100433-100438, paragraph 5. [↑](#footnote-ref-803)
803. Witnesses estimated that there were approximately 300 members of the White Army with spears, axes and 200 small arms, primarily AK-47s. The White Army did not wear one consistent uniform in this battle. Witness 293, ERN 100388-100402, paragraph 10; Witness 299, ERN 100454-100458, paragraph 8; Witness 331, ERN 100592-100601, paragraph 14-16; Witness 340, ERN 100331-100335, paragraph 8. [↑](#footnote-ref-804)
804. Witness 293, ERN 100388-100402, paragraph 10; Witness 331, ERN 100592-100601, paragraphs 14-16; Confidential Source, ERN D105569-D105584, page D105571. [↑](#footnote-ref-805)
805. Witness 293, ERN 100388-100402, paragraph 10; Witness 331, ERN 100592-100601, paragraphs 14-16; Witness 334, ERN 100314-100319, paragraphs 5-6; Witness 340, ERN 100331-100335, paragraph 8; Witness 352, ERN 100649-100663, paragraphs 7-10. See also Confidential Source, ERN D103345-D103351, page D103346. [↑](#footnote-ref-806)
806. See also Confidential Source, ERN D101204-D101215, page D101207. [↑](#footnote-ref-807)
807. He was subsequently promoted to SPLA Major General. Witness 183, ERN 100089-100096, paragraph 17. [↑](#footnote-ref-808)
808. Witness 225, ERN 100225-100239, paragraph 9; Witness 373, ERN 100379-100387, paragraph 9. See also Witness 293, ERN 100388-100402, paragraph 5. [↑](#footnote-ref-809)
809. UNHCR, *Operational Update South Sudan 1-15 July 2017*, 15 July 2017, page 2; Confidential Source, ERN D101411-D101412; Witness 225, ERN 100225-100239, page 100237; Witness 249, ERN 100664-100674, paragraph 14; Witness 261, ERN 100637-100648, paragraphs 17-20; Witness 303, ERN 100582-100591, paragraphs 11-14; Witness 352, ERN 100649-100663, paragraphs 10-14; Witness 453, ERN 100464-100468, paragraph 4. [↑](#footnote-ref-810)
810. Witness 189, ERN 100108-100116, paragraph 9; Witness 300, ERN 100353-100443, paragraphs 5-9; Witness 334, ERN 100314-100319, paragraph 9; Witness 371, ERN 100702-100710, paragraphs 8, 9; Witness 464, ERN 100433-100438, paragraph 10. [↑](#footnote-ref-811)
811. Witness 261, ERN 100637-100648, paragraph 16. [↑](#footnote-ref-812)
812. Confidential Source, ERN D101204-D101215, page D101206. [↑](#footnote-ref-813)
813. In addition to the two children, the victims were reportedly mostly older persons and/or women. Confidential Source, ERN D101417-D101419. [↑](#footnote-ref-814)
814. Confidential Source, ERN D104232-D104232. [↑](#footnote-ref-815)
815. Confidential Source, ERN D104237-D104240, page 2; Confidential Source, ERN D101420-D101421; Confidential Source, ERN D104241-D104246, page 2; Witness 225, ERN 100225-100239, paragraph 8; Witness 249, ERN 100664-100674, paragraphs 9-12; Witness 303, ERN 100582-100591, paragraph 10. [↑](#footnote-ref-816)
816. Witness 249, ERN 100664-100674, paragraphs 9-12. See also Witness 183, ERN 100089-100096, paragraph 13. [↑](#footnote-ref-817)
817. Witness 225, ERN 100225-100239, paragraph 8. [↑](#footnote-ref-818)
818. Telephone Call with Confidential Source, 26 January 2018; Witness 216, ERN 101203-101215, paragraph 16; Witness 550, ERN 101021-101026, paragraph 7. [↑](#footnote-ref-819)
819. Telephone Call with Confidential Source, 26 January 2018; Witness 216, ERN 101203-101215, paragraph 16; Witness 550, ERN 101021-101026, paragraph 7. [↑](#footnote-ref-820)
820. Confidential Source, ERN D107769-D107797, paragraph 72; Meeting with Confidential Source, 15 November 2017; Confidential Source, ERN D103315-D103316; Confidential Source, ERN D101587-D101589; Confidential Source, ERN D105689-D105692; Confidential Source, ERN D103408-D103416; Confidential Source, ERN D101420-D101421; Confidential Source, ERN D104232-D104232; Confidential Source, ERN D106360-D106371; Witness 225, ERN 100225-100239, paragraph 7; Witness 331, ERN 100592-100601. [↑](#footnote-ref-821)
821. At least 26 boreholes were reportedly vandalized. Confidential Source, ERN D103345-D103351; Confidential Source, ERN D101417-D101419; Witness 293, ERN 100388-100402, paragraph 17; Witness 331, ERN 100592-100601, paragraph 19; Witness 370, ERN 100367-100378, paragraph 11. [↑](#footnote-ref-822)
822. Witness 225, ERN 100225-100239, paragraph 7. [↑](#footnote-ref-823)
823. Witness 293, ERN 100388-100402, paragraph 16; Witness 331, ERN 100592-100601, paragraph 20. [↑](#footnote-ref-824)
824. Confidential Source, ERN D104237-D104240; Confidential Source, ERN D101204-D101207, pages D101206-D101207. See also Confidential Source, ERN D106358-D106358; Confidential Source, ERN D106359-D106359; Witness 331, ERN 1100592-100601, paragraph 19. [↑](#footnote-ref-825)
825. UNHCR, *Operational Update South Sudan 1-15 July 2017*, 15 July 2017, page 2. [↑](#footnote-ref-826)
826. European Commission's Directorate-General for European Civil Protection and Humanitarian Aid Operations, *South Sudanese Refugee Influx (DG ECHO, UNHCR) (ECHO Daily Flash of 12 July 2017)*, 12 July 2017. [↑](#footnote-ref-827)
827. Confidential Source, ERN D105622-D105679, page D105642; Witness 292, ERN 100675-100683; Radio Tamazuj, *UN: 25 aid workers evacuated from Pagak over escalating clashes*, 5 July 2017. See also OCHA, *South Sudan Flash Update on Upper Nile*, 7 July 2017. [↑](#footnote-ref-828)
828. Confidential Source, ERN D107769-D107797, paragraph 78-79; Confidential Source, ERN D105622-D105679, page D105654; Confidential Source, ERN D101204-D101215, page D101206. [↑](#footnote-ref-829)
829. Confidential Source, ERN D105569-D105584, page D105571; Confidential Source, ERN D107769-D107797, paragraph 79; Witness 374, ERN 100684-100692, paragraph 5. [↑](#footnote-ref-830)
830. Confidential Source, ERN D105569-D105584, page D105575. [↑](#footnote-ref-831)
831. Confidential Source, ERN D105622-D105679, page D105665; Confidential Source, ERN D107769-D107797, paragraphs 75-76. [↑](#footnote-ref-832)
832. Confidential Source, ERN D105622-D105679, pages D105665, D105672; Confidential Source, ERN D105569-D105584, page D105582; Confidential Source, ERN D107769-D107797, paragraphs 75. [↑](#footnote-ref-833)
833. Witness 318, ERN 100693-100701 paragraph 17; Witness 330, 100603-100610, paragraphs 5-7. [↑](#footnote-ref-834)
834. Witness 374, ERN 100684-100692, paragraphs 6, 7. [↑](#footnote-ref-835)
835. Witness 297, ERN 100449-100453, paragraph 4; Witness 333, ERN 100308-100313, paragraph 4; Witness 339, ERN 100325-100330, paragraph 4. [↑](#footnote-ref-836)
836. Witness 297, ERN 100449-100453. [↑](#footnote-ref-837)
837. Witness 463, ERN 1004690-100473, paragraphs 5, 6. [↑](#footnote-ref-838)
838. Witness 318, ERN 100693-100701, paragraph 24; Witness 374, ERN 100684-100692, paragraph 10. See also Witness 261, ERN 100637-100648, paragraphs 18-20. [↑](#footnote-ref-839)
839. Confidential Source, ERN 100582-100581; Witness 303, ERN 100582-100591, paragraph 16; Witness 318, ERN 100693-100701, paragraph 24; Witness 370, ERN 100367-100378, paragraphs 7-9; Witness 371, ERN 100379-100387, paragraph 7. [↑](#footnote-ref-840)
840. Witness 343, ERN 100342-100347, paragraph 8. [↑](#footnote-ref-841)
841. Witness 293, ERN 100388-100402, paragraphs 22, 23; Witness 318, ERN 100693-100701, paragraph 19; Witness 370, ERN 100367-100378, paragraphs 7-9; Witness 371, ERN 100379-100387, paragraph 7. [↑](#footnote-ref-842)
842. Witness 370, ERN 100367-100378, paragraphs 7, 8. [↑](#footnote-ref-843)
843. Witness 370, ERN 100367-100378, paragraph 9; Witness 371, ERN 100379-100387, paragraph 7. [↑](#footnote-ref-844)
844. Witness 298, ERN 100459-100463, paragraphs 6-9; Witness 318, ERN 100693-100701, paragraph 23; Witness 370, ERN 100367-100378, paragraphs 11-13; Witness 374, ERN 100684-100692, paragraphs 11, 12. [↑](#footnote-ref-845)
845. Confidential Source, ERN D106373-D106373; Confidential Source, ERN D106374-D106374; Confidential Source, ERN D106375-D106375; Confidential Source, ERN D106376-D106376; Confidential Source, ERN D106377-D106377. [↑](#footnote-ref-846)
846. UNOSAT, *Damage Assessment in Maiwut Village, Maiwut County, South Sudan*, 22 January 2018, ERN D105707-D105712. [↑](#footnote-ref-847)
847. Witness 370, ERN 100367-100378, paragraph 11; Witness 374, ERN 100684-100692, paragraph 11. [↑](#footnote-ref-848)
848. Confidential Source, ERN D104237-D104240; Confidential Source, ERN D101204-D101215; CTSAMM, *Report No. 48,* *Offensive Military Operations in Upper Nile State*, 4 September 2017. [↑](#footnote-ref-849)
849. Witness 184, ERN 100097-100107. [↑](#footnote-ref-850)
850. Reuters, *South Sudan Army Captures Rebel-Held Town, Senior Rebel Defects*, 28 July 2017. [↑](#footnote-ref-851)
851. Witness 292, ERN 100675-100683, paragraph 12. [↑](#footnote-ref-852)
852. Confidential Source, ERN D105307-D105347, page D105344. [↑](#footnote-ref-853)
853. Confidential Source, ERN D105569-D105584, page D105582; Confidential Source, ERN D105307-D105347, pages D105340, D105344; See also Witness 329, ERN 100617-100624, paragraph 10; Witness 373, ERN 100379-100387, paragraph 6. [↑](#footnote-ref-854)
854. Confidential Source, ERN D105569-D105584; Witness 216, ERN 101203-101215, paragraphs 6, 7; Witness 276, ERN 100625-100636, paragraph 8. [↑](#footnote-ref-855)
855. Confidential Source, ERN [D105622-D105679](https://remote.ohchr.org/sites/CoI-SouthSudan/_layouts/listform.aspx?PageType=4&ListId=%7bF70CF9ED-19D6-489D-A8C9-87BCD2C56549%7d&ID=293&ContentTypeID=0x0100C1D30A3F06BA9849AB12112F2E2B85DB), pages D105638, D105642. [↑](#footnote-ref-856)
856. Witness 550, ERN 101021-101026, paragraph 9; Confidential Source ERN [D101204-D101215](https://remote.ohchr.org/sites/CoI-SouthSudan/_layouts/listform.aspx?PageType=4&ListId=%7bF70CF9ED-19D6-489D-A8C9-87BCD2C56549%7d&ID=293&ContentTypeID=0x0100C1D30A3F06BA9849AB12112F2E2B85DB), page D101214. [↑](#footnote-ref-857)
857. Witness 329, ERN 100617-100624, paragraph 6; Witness 339, ERN 100325-100330, paragraph 6; Witness 343, ERN 100342-100347, paragraphs 10-11. The Commission received reports that SPLA forces also damaged crops in other locations along the Government offensive. See ie. Witness 189, ERN 100108-100116, paragraph 8. [↑](#footnote-ref-858)
858. Witness 285, ERN 100358-100366, paragraphs 8, 9. [↑](#footnote-ref-859)
859. Witness 285, ERN 100358-100366, paragraphs 10, 11. [↑](#footnote-ref-860)
860. UNOSAT, *Pagak- Damage Assessment*, 26 November 2017, ERN D103317-D103320. [↑](#footnote-ref-861)
861. Witness 344, ERN 100348-100352, paragraph 5; Witness 339, ERN 100325-100330, paragraphs 5, 6. [↑](#footnote-ref-862)
862. Witness 249, ERN 100664-100674, paragraphs 14-15; Witness 299, ERN 100454-100458, paragraph 7; Witness 300, ERN 100353-100443, paragraphs 7-8; Witness 331, ERN 100592-100601, paragraphs 17-18; Confidential Source, ERN 100582-100591, paragraphs 7-14. See also Confidential Source, ERN D106372-D106372. [↑](#footnote-ref-863)
863. Witness 333, ERN 100308-100313, paragraph 8. [↑](#footnote-ref-864)
864. Confidential Source, ERN D105585-D105596. [↑](#footnote-ref-865)
865. Confidential Source, ERN D105585-D105596; Confidential Source, ERN D101204-D101215, page D101212. [↑](#footnote-ref-866)
866. UNOSAT, *Pagak- Damage Assessment*, 26 November 2017, ERN D103317-D103320; Witness 293, ERN 100388-100402, paragraph 11. [↑](#footnote-ref-867)
867. Confidential Source, ERN D105609-D105621, page D105621; Witness 293, ERN 100388-100402, paragraph 11; Witness 329, ERN 100617-100624, paragraphs 5, 6. [↑](#footnote-ref-868)
868. Witness 225, ERN 100225-100239, paragraph 6; Interim report of the Panel of Experts on South Sudan(S/2017/789), 20 September 2017, paragraph 10. [↑](#footnote-ref-869)
869. UNHCR, *Operational Update South Sudan 1-15 July 2017*, 15 July 2017, page 2; Confidential Source, D104232-D104232. [↑](#footnote-ref-870)
870. Witness 299, ERN 100454-100458, paragraph 7. [↑](#footnote-ref-871)
871. Witness 276, ERN 100625-100636, paragraphs 11-14; Witness 293, ERN 100388-100402, paragraph 11; Witness 300, ERN 100353-100443, paragraph 8; Witness 302, 100439-100443, paragraphs 7-10; Witness 342, ERN 100336-100341, paragraphs 10, 11. [↑](#footnote-ref-872)
872. Witness 300, ERN 100353-100443, paragraph 8. [↑](#footnote-ref-873)
873. Witness 300, ERN 100353-100357, D107814-D107816; Witness 302, 100439-100443, D107817-D107819. [↑](#footnote-ref-874)
874. OCHA, *South Sudan Flash Update on Upper Nile*, 7 July 2017; Confidential Source, ERN D104237-D104240; Witness 464, ERN 100433-100438, paragraph 9. [↑](#footnote-ref-875)
875. Witness 249, ERN 100664-100674, paragraph 16. [↑](#footnote-ref-876)
876. Witness 216, ERN 100203-100215; Witness 318, ERN 100693-100701, paragraph 23-31; Witness 550, ERN 101021-101026, paragraphs 6, 10; Telephone Call with Confidential Source, 26 January 2018; Confidential Source, ERN D101204-D101215, pages D101206, D101212. [↑](#footnote-ref-877)
877. Witness 276, ERN 100625-100636, paragraphs 11-14; Witness 293, ERN 100388-100402, paragraph 11; Witness 300, ERN 100353-100443, paragraph 8; Witness 302, ERN 100439-100443, paragraphs 7-10; Witness 330, ERN 100603-100610, paragraph 9; Witness 342, ERN 100336-100341, paragraphs 10, 11. [↑](#footnote-ref-878)
878. Witness 331, ERN 100592-100601, paragraph 25. [↑](#footnote-ref-879)
879. Witness 342, ERN 100336-100341, paragraphs 10-12. [↑](#footnote-ref-880)
880. Confidential Source, ERN D101204-D101215; Confidential Source, ERN D101417-D101419; Confidential Source, ERN D104232-D104232. [↑](#footnote-ref-881)
881. Witness 249, ERN 100664-100674, paragraph 7; Witness 285, ERN 100358-100366, paragraph 8; Witness 330, ERN 100603-100610, paragraph 8. [↑](#footnote-ref-882)
882. Witness 340, ERN 100331-100335, paragraph 6; Witness 370, ERN 100367-100378, paragraphs 5, 6. [↑](#footnote-ref-883)
883. Confidential Source, ERN D101204-D101215, page D101205. [↑](#footnote-ref-884)
884. Witness 318, ERN 100693-100701 paragraph 17; Witness 330, ERN 100603-100610, paragraphs 5-7. [↑](#footnote-ref-885)
885. ICRC, *Study on Customary International Humanitarian Law*, Rule 11; See also Witness 344, ERN 100348-100352, paragraphs 5, 6. [↑](#footnote-ref-886)
886. Confidential Source, ERN D101204-D101215, page D101212. [↑](#footnote-ref-887)
887. Confidential Source, ERN D105569-D105584, paragraph D105575. See also Witness 373, ERN 100379-100387; Witness 374, ERN 100684-100692. [↑](#footnote-ref-888)
888. Witness 184, ERN 100097-100107, paragraphs 6, 7; Witness 334, ERN 100314-100319, paragraph 8; Witness 339, ERN 100325-100330, paragraph 7; Witness 340, ERN 100331-100335, paragraphs 10, 13, 14; Witness 453, ERN 100464-100468, paragraph 7. [↑](#footnote-ref-889)
889. With one witness indicating, *“[…] we, as South Sudanese, […] really want to go back to our country but considering there is nothing left to come back [to] in our area, the people preferred to stay in the camps.”* Witness 340, ERN 100331-100335, paragraph 14. [↑](#footnote-ref-890)
890. Witness 334, ERN 100314-100319, paragraph 8. See also Witness 453, ERN 100464-100468, paragraph 7. [↑](#footnote-ref-891)
891. Witness 340, ERN 100331-100335, paragraph 10. [↑](#footnote-ref-892)
892. Confidential Source, ERN D101204-D101215, pages D101214, D101215. [↑](#footnote-ref-893)
893. Witness 225, ERN 100225-100239, paragraph 9; Witness 293, ERN 100388-100402, paragraph 5; Witness 373, ERN 100379-100387, paragraph 9. [↑](#footnote-ref-894)
894. Confidential Source, ERN D104233-D104236. [↑](#footnote-ref-895)
895. A/HRC/34/L.34, Situation of Human Rights in South Sudan, 2017. [↑](#footnote-ref-896)
896. Military court Condemns Soldier to Death, “Eye Radio – 23 September 2016, available at Http://www.eyeradio.org/military-court-condemns-soldier-death/. [↑](#footnote-ref-897)
897. Agreement on the Cessation of Hostilities, Protection of Civilians and Humanitarian Access, Addis Ababa 21st December 2017. [↑](#footnote-ref-898)
898. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 2016 (A/HRC/34/62) page 9, part C. [↑](#footnote-ref-899)
899. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, 2017 (A/72/523), para 66. [↑](#footnote-ref-900)
900. Ibid, para 18. [↑](#footnote-ref-901)
901. Ibid, para 76. [↑](#footnote-ref-902)
902. Ibid, para 87. [↑](#footnote-ref-903)
903. Reference has been made in the past to the AU Constitutive Act which rejects impunity and the fact that South Sudan acceded to this act when it became a member of the organization in July 2001. Added to this, the organization adopted the Malabo Protocol in July 2014 which would expand the jurisdiction of the African Court of Justice and Human and Peoples’ Rights to include international crimes. [↑](#footnote-ref-904)
904. Peace Agreement (2015), Chapter V, Article 3. [↑](#footnote-ref-905)
905. ARCSS Chapter V. 3.1.3. [↑](#footnote-ref-906)
906. Letter of the Minister of Justice to the Minister of Foreign Affairs dated 15 December 2017, Reference MOJ&CA/M/J/RSS/2017. [↑](#footnote-ref-907)
907. Although reliable data is lacking, it is generally estimated that customary justice fora handle over 90 per cent of cases in South Sudan. [↑](#footnote-ref-908)
908. UNDP “Search for a new beginning: Perceptions of truth, justice, reconciliation and healing in South Sudan” (2015) at 52. [↑](#footnote-ref-909)
909. See report of the Secretary General on South Sudan – December 2017 – S/2017/1011. [↑](#footnote-ref-910)
910. See ARCSS Chapter V, Article 4. [↑](#footnote-ref-911)
911. Commission’s meeting with the Government of South Sudan on 11 December 2017. [↑](#footnote-ref-912)
912. See report of the Commission on Human Rights in South Sudan –A/HRC/34/63 - March 2017. [↑](#footnote-ref-913)
913. The signatories to the statement included pro-Machar, the former political detainees, the National Salvation Front recently formed by former SPLA deputy chief of staff Thomas Cirrillo. [↑](#footnote-ref-914)
914. Report of the Secretary General on South Sudan – December 2017. [↑](#footnote-ref-915)
915. Commission meeting with Members of the National Steering Committee –14 December 2017. [↑](#footnote-ref-916)
916. A/HRC/36/50/Add.1 para 27. [↑](#footnote-ref-917)
917. See ARCSS – article 3.5.4. [↑](#footnote-ref-918)
918. For example, in 2015-2016 alone, the President issued three presidential orders granting amnesties to all those who “waged war against the state.” Republican Order No. 18/2016. [↑](#footnote-ref-919)
919. See for example President Salva Kiir’s statement that those responsible for killing civilians would be brought to justice: Sudan Tribune, *President Kiir calls for an end to all ethnic violence*, Republic of South Sudan Press Release, 24 December 2013. The Government has also set up investigations which produced reports identifying suspected perpetrators, but these have not been made public, or led to any criminal investigations or trials. [↑](#footnote-ref-920)
920. Interviews with UNMISS Rule of Law Advisory Section (RoLAS). [↑](#footnote-ref-921)
921. While the death penalty has been imposed in a number of cases, it is rarely carried out. Only two executions were reported last year and none in the preceding several years. [↑](#footnote-ref-922)
922. Under Article 135 of the Transitional Constitution prosecutors come under the authority of the Minister of Justice who is also the government’s legal advisor. Under the Code of Criminal Procedure Act 2008, sections 43 and 44, prosecutors need approval to proceed with certain cases involving crimes against the state and public servants. [↑](#footnote-ref-923)
923. Government of the Republic of South Sudan, Strategy to consolidate peace and stabilize the economy, The National Development Strategy July 2017 to June 2021, adopted in December 2017. [↑](#footnote-ref-924)
924. Interviews with UNMISS RoLAS. [↑](#footnote-ref-925)
925. Interviews with UNMISS RoLAS; “These decisions, setting forth the bases for their judgements and sentences, counter allegations of political interference.” [↑](#footnote-ref-926)
926. Interviews with UNMISS RoLAS. [↑](#footnote-ref-927)
927. Article 195 of the Code of Criminal Procedure does not list specific protective measures but contains a general provision for protecting victims and witnesses. [↑](#footnote-ref-928)
928. Interviews with UNMISS RoLAS. [↑](#footnote-ref-929)
929. One of the dismissed judges has a case pending before the East African Court of Justice and no final determination on the allegations has been made. [↑](#footnote-ref-930)
930. Kukurlopita Marino Pitia, Justice of the Supreme Court, Resignation letter, 14 November 2017, ERN D101434. [↑](#footnote-ref-931)
931. Brigadier General Henry Oyay Nyago, Resignation letter, 18 February 2017, ERN D101219-D101221; Colonel Khalid Ono Loki, Resignation letter, 17 February 2017, ERN D101217-D101218. [↑](#footnote-ref-932)
932. Resignation letter of Colonel Khalid Ono Loki, Head of Military Courts, 17 February 2017; Resignation letter of Brigadier General Henry Oyay Nyago, SPLA Director of Military Justice, 18 February 2017. [↑](#footnote-ref-933)
933. Resignation letter of Colonel Khalid Ono Loki, Head of Military Courts, 17 February 2017; Resignation letter of Brigadier General Henry Oyay Nyago, SPLA Director of Military Justice, 18 February 2017. [↑](#footnote-ref-934)
934. Colonel Khalid Ono Loki, Resignation letter, 17 February 2017, ERN D101217-D101218. [↑](#footnote-ref-935)
935. Brigadier General Henry Oyay Nyago, Resignation letter, 18 February 2017, ERN D101219-D101221. [↑](#footnote-ref-936)
936. For example: compensation with cows, practice of marrying the perpetrator. [↑](#footnote-ref-937)
937. Customary justice often includes a combination of punitive and compensatory rulings, combining direct payments, physical punishments and formal justice mechanisms such as prison sentences. [↑](#footnote-ref-938)
938. International Covenant on Civil and Political Rights (ICCPR), Article 14; see also the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1) 8 February 2005 which states that the jurisdiction of military tribunals must be restricted solely to specifically military offences committed by military personnel, to the exclusion of human rights violations, which shall come under the jurisdiction of the ordinary domestic courts or, where appropriate, in the case of serious crimes under international law, of an international or internationalized criminal court. [↑](#footnote-ref-939)
939. There are concerns that the defendant’s detention conditions do not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners which set out minimum requirements for treating detainees in a humane manner, including accommodation, personal hygiene, food and medical services. See also the Basic Principles for the Treatment of Prisoners 1990. [↑](#footnote-ref-940)
940. A/HRC/RES/34/25 (para 16 (b)). [↑](#footnote-ref-941)