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State of Impunity: the persistence of violence and human rights violations in South Sudan

Detailed findings of the Commission on Human Rights in South Sudan*

* The information contained in the present document should be read in conjunction with the official report of the Commission on Human Rights in South Sudan (A/HRC/52/26), submitted to the Human Rights Council at its fifty-second session, pursuant to Council resolution 49/2.

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Introduction and methodology

1. Violence and injustice have deep roots in South Sudan, where decades of conflict have been characterized by gross human rights violations and mass displacement. Millions of lives are marked, and many have been visibly scarred, by the traumas, disruptions, and divisions that are the legacies of conflict. Neglected and abused by their leaders, people in South Sudan continue to be traumatized by ongoing armed violence and human rights violations. The entrenched impunity enjoyed by the perpetrators of this violence fuels cyclical, further human rights violations.
2. Nearly all 14 of the United Nations' risk factors for atrocity crimes are now present in South Sudan.¹ Other broad indicators further illustrate the precarious position that people find themselves in. These include the tremendous scale of humanitarian needs, the ongoing internal mass displacement internally and the flight to other countries, the particularly precarious conditions for women and girls, and the persistent diversion of State resources from the people to political and military elites.
3. In 2016 when the UN Human Rights Council decided to establish the United Nations Commission on Human Rights in South Sudan ("the Commission"), it expressed concern that the situation in South Sudan continued to be characterized by impunity. Since then, the Commission's findings have concluded that the armed forces of the State and members of the armed groups have been involved in multiple gross human rights violations and abuses. These violations and abuses amount to crimes under the law of South Sudan, and often also amount to crimes under international law such as torture, war crimes and crimes against humanity. Over several years, the Commission has identified individuals who may bear individual responsibility for such serious crimes. The Commission is preserving the evidence it has collected related to these crimes, so that these identified individuals and other persons can be subjected to future prosecutions and other accountability processes.
4. The African Union (AU) Commission of Inquiry on South Sudan highlighted in 2014 the entrenched culture of impunity and the critical need for accountability in the country.² The AU Commission's report also noted that the nascent national justice system was not yet equipped to manage this, and recommended support from the AU. These findings were reflected in the Peace Agreement signed in 2015, and subsequently in the Revitalized Agreement on the Resolution of the Conflict in South Sudan (the "Revitalized Agreement") signed in 2018, which remains in force. In Chapter V of the Revitalized Agreement, the Parties recommitted to the establishment of three complementary transitional justice mechanisms: a Hybrid Court to be established with the African Union; a Commission for Truth Reconciliation and Healing; and a Compensation and Reparation Authority. These mechanisms were also emphatically endorsed by the AU Peace and Security Council in September 2015, when it reiterated a commitment to combating impunity and invited the Chairperson of the AU Commission to take all steps necessary to establish the transitional justice mechanisms in the Agreement. However, as of March 2023, none of these mechanisms had been established, despite some nascent efforts and steps taken.
5. The UN Commission on Human Rights in South Sudan has had the opportunity to have constructive engagement with the Government of South Sudan, the AU, UN Member States, and other key stakeholders including civil society, to provide guidance for the development of the transitional justice mechanisms to be established under the Revitalized Agreement.
6. This Conference Room Paper reflects in detail the main findings of the Commission based on its investigations conducted during 2022, which are summarized in the

¹ See UN, "Framework of Analysis for Atrocity Crimes," available at: <https://www.ohchr.org/en/documents/tools-and-resources/framework-analysis-atrocity-crimes>

² See "Final Report of the African Union Commission of Inquiry on South Sudan," 15 October 2014, available at: <https://www.peaceau.org/uploads/auciss.final.report.pdf>

Commission's accompanying report presented to the UN Human Rights Council in March 2023.³

7. In this paper, Part I provides the context of impunity in South Sudan, as a driver and enabler of violence, armed conflict, and accompanying human rights violations and abuses. Part II examines emblematic cases where human rights violations and abuses have been carried out as part of armed conflict and violence, in: Unity State; Upper Nile State; Warrap State; and in the three Equatorias (West, Central and East). In part III, the Commission presents findings on illustrative examples of the ongoing use of children in armed forces and groups, and the impacts this has on the survivors and victims. In part IV, the Commission details the prevalence, patterns and trends of conflict-related sexual violence in South Sudan. Part V examines the political economy of South Sudan which involves the diversion of State resources from government services and critical functions toward corruption, undermining the State's ability to meet its obligations under international human rights law. In part VI, the Commission assesses the State's nascent justice system and related initiatives, and the status of the transitional justice mechanisms envisaged under the Revitalized Agreement, none of which have so far been established. In part VII, the Commission provides findings on the virtual disappearance of civic space in the country, which, like the issues related to the political economy, if left unaddressed will severely undermine the prospects for peace, human rights, and a meaningful conclusion to transitional arrangements under the Revitalized Agreement. Finally, part VIII reflects the Commission's conclusions and recommendations.

8. The Commission's reporting, since its creation in 2016, has highlighted a failure of national leadership in addressing impunity, and described how senior public and military officials responsible for human rights violations have remained in their posts, and have even been rewarded with promotions and appointments, thus emboldening these officials and others to commit further crimes. The detailed findings in this report describe ongoing cycles of human rights violations, causing untold misery, and demonstrate why addressing impunity must be at the forefront of peace efforts.



Map: Locations in South Sudan Visited by the Commission in 2022

United Nations Commission on Human Rights in South Sudan



³ A/HRC/52/26, available at:

<https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session52/A-HRC-52-26-AdvanceEditedVersion.pdf>

A. Mandate

9. In 2016, in its resolution 31/20, the Human Rights Council established the Commission for a period of one year. In 2017, in its resolution 34/25, the Council extended the Commission's mandate for another year and requested it to continue to monitor and report on the situation of human rights in South Sudan, to make recommendations to prevent further deterioration of the situation, and to report and provide guidance on transitional justice. The Council subsequently extended the mandate of the Commission, each time for an additional year, in its resolutions 40/19, 43/27, 46/23 and 49/2.

10. The Commission has also been mandated to determine and report the facts and circumstances of, collect and preserve evidence of and clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence, with a view to ending impunity and providing accountability. The Human Rights Council has requested the Commission to make such information available to transitional justice mechanisms, including those to be established pursuant to chapter V of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan, including the Hybrid Court for South Sudan.

11. The current members of the Commission, appointed by the President of the Council, are Yasmin Sooka (Chair), Andrew Clapham and Barney Afako. Members of the Commission conducted three visits to South Sudan during the last reporting period. The Commission is supported by a Secretariat based in Juba, South Sudan.

12. The Commission extends its gratitude to the Government of South Sudan for facilitating its visits in South Sudan, and for the cooperation extended to its Secretariat. Further, the Commission grateful for the cooperation that it has received from governments in the region. It also expresses appreciation for the assistance of and contributions from the AU, the United Nations Mission in South Sudan (UNMISS), and various United Nations agencies, civil society organizations and independent experts. Furthermore, the Commission was privileged to have had the opportunity to speak with and listen to victims, survivors and witnesses of human rights violations and abuses in South Sudan, including those living as refugees. The Commission thanks all those individuals who have shared their experiences, without whom the Commission's work would be neither possible nor meaningful.

B. Methodology

13. This Conference Room Paper is informed by the interviews conducted with victims and survivors, as well as with witnesses, clinicians, service providers, humanitarian actors and related experts and stakeholders including United Nations entities.⁴

14. Investigations informing this paper were conducted during the period from February 2022 to February 2023.⁵ The Commission conducted several missions to locations within South Sudan. It also conducted missions to Kenya and Uganda. It received detailed witness statements, conducted meetings, organized focus group discussions and gathered confidential testimony. As part of its inquiries, the Commission looked at opensource materials and conducted forensic analysis. The Commission also sought information from the Government of South Sudan, including through formal correspondence, and by providing the Government with advance drafts of all its public reports and inviting the Government to correct and errors and respond to the findings.

⁴ In pursuance of its mandate, the Commission collects and preserves evidence that it catalogues by a unique evidence registration number. Reference is made to these numbers throughout the report so that States and the African Union may use them when requesting to consult the evidence.

⁵ The Commission's accompanying report to the Human Rights Council was finalized on 31 January 2023, and reflects the Commission's findings from January to December 2022. This Conference Room Paper was finalized in early March 2023, thereby enabling the Commission to include certain further evidence and developments collected during the additional period. This paper reflects certain key developments during the first week of March.

15. The evidence collected and all other information gathered is preserved in the Commission's secure and confidential database and archives. The Commission is mandated to make information available for the Hybrid Court for South Sudan,⁶ the Commission on Truth, Healing and Reconciliation and the Reparations and Compensation Authority, set out in Chapter V of the Peace Agreement.

16. The Commission employed international best practices of fact-finding, thereby ensuring the safety, security, confidentiality, and well-being of witnesses. Where quotes are used, they have been provided by witnesses, victims, survivors, or their family members. In some instances, detailed information is omitted to protect sources from potential harm. The Commission was guided at all times by the principles of confidentiality and "do no harm".

17. This paper does not purport to reflect the country-wide scale and prevalence of human rights violations and abuses. Its focus and findings represent instead a compilation of illustrative incidents, noting distinct patterns and trends, enabling conclusions on ongoing drivers of violations, and referencing findings previously reported by the Commission.

C. Legal Framework

18. The Commission has conducted its work with reference to the domestic law of South Sudan, international humanitarian law, international human rights law and relevant international criminal law.

19. The Commission's mandate emphasizes accountability, ensuring a focus on establishing responsibility for violations and identifying individuals and entities bearing responsibility for violations and crimes. In its reporting, the Commission has adopted a "reasonable grounds to believe" evidentiary standard. The Commission's work is also guided by the requirement to collect and preserve evidence to a standard that would support future accountability mechanisms, including criminal accountability. Where the Commission found information linking alleged perpetrators to specific violations that would be sufficient to warrant future criminal investigations or prosecutions, such evidence was collected and preserved.

20. Where insufficient information was available to identify the individuals responsible for violations or crimes, and the acts or omissions led to the responsibility of organs or offices of the Government of South Sudan, the State was identified as responsible. Where the acts involved an armed group, that entity was identified as responsible.

I. Context of impunity, conflict and human rights violations

21. The dynamics and drivers of violent conflict in South Sudan are complex: they are multi-dimensional and often inter-connected, involving localized and national factors, as well as regional and international influences. Political, military, and traditional elites have resorted to, and often manipulated, geographical, ethnic, and other identity-based markers to mobilize groups against each other. This has bred a culture of deep mistrust, revenge, and violence as a means of obtaining and asserting political and socio-economic power and control. South Sudan's economy remains hostage to a few elites who have continued to plunder national resources, denying citizens their economic and social entitlements. The country's independence did not remove violence and insecurity from political and inter-communal contestations, nor from the daily experiences of citizens. Women and girls have borne the brunt of the worst forms of sexual violence, discrimination and marginalisation.

22. Without the constraints of accountability, repeat violence compounds old grievances and divisions, and fuels new ones including along ethnic and other identity lines. Breaking the cycles of violence through a credible and transformative political project capable of cultivating a shared national identity is therefore essential for stability.

⁶ See Chapter V of the 2018 Revitalized Peace Agreement, which has been endorsed by the African Union.

23. In South Sudan's history, successive peace accords have failed to address grievances and divisions comprehensively or sustainably, and violence and conflict have returned or persisted. The Comprehensive Peace Agreement in 2005 paved the way for South Sudan's referendum, resulting in its independence in 2011. Yet by late 2013, the country was again plunged into armed conflict, sparked by struggles for political power and control of the country's economic resources, centred on individual leaders. An agreement inked in 2015 broke down in July 2016, when intense fighting started in Juba and spread to other areas of the country. Another cessation of hostilities was agreed in 2017, followed by the signing of the Revitalized Agreement in September 2018.

24. In a significant break from past peace pacts, the current peace agreement has adopted a comprehensive architecture of transitional justice. The 2018 Revitalized Agreement, continuing the provisions of its predecessor the 2015 Peace Agreement, envisage the implementation of meaningful transitional justice processes as key ingredients of a transformative project, within the framework of other political and economic reforms. Transitional justice has been envisaged in the commitments made by the Parties to the Revitalized Agreement, and in the decisions and conclusions of the AU. If properly implemented, South Sudan can have a different future.

25. Three transitional justice mechanisms, to be established under Chapter V of the Revitalized Agreement, are critical to facilitating national cohesion and healing and addressing drivers and legacies of conflict. Other political, governance, security and economic measures complete the package aimed at re-setting the country on a path toward prosperity and sustainable peace. Nurturing a culture of accountability is thus a central task of present transitional processes, and would not only strengthen the legitimacy of institutions, but yield tangible dividends in terms of better governance, economic prosperity, and the development of the social contract.

26. However, there are chronic delays in implementing key components of the Revitalized Agreement, including the formation of a new national army (the "Necessary Unified Forces"), reforming public financial management to prevent resources being corruptly diverted for private gain, and in implementing transitional justice measures. In August 2022, parties to the Revitalized Agreement extended the implementation timeframes, postponing planned elections to late 2024 and the conclusion of transitional governance arrangements to February 2025. While the extension was ultimately necessary, most of the delays were not, and many failures of implementation can be attributed to the ongoing pursuit of "winner takes all" political strategies by key political leaders in the country. The lack of political will to implement the Revitalized Agreement has had severe ramifications. As illustrated in this report, high levels of violence persist across vast swathes of the country, in various forms. The Commission's findings illustrate how attacks on civilians, and the insecurity which persists at the subnational level, can be traced back to national political actors and processes.

27. Throughout 2022, violators of human rights remained unpunished. For example, the county commissioners who led widespread attacks on civilians in Unity State's Leer County in February and April 2022 have faced no accountability and have remained in their posts as of February 2023. The Koch County Commissioner had been reappointed to the post despite his liability for similar crimes in the recent past. Also in Unity State, the State Governor and the South Sudan People's Defence Forces (SSPDF) Assistant Chief for Operations were involved in the detention, rendition and extrajudicial killings of four males in August 2022. These officials have faced no effective investigation, let alone sanction, despite the crimes being captured on camera and further incriminating evidence being posted on an official Facebook page. The extrajudicial killings in Unity State exemplify in stark terms how senior political figures are a law unto themselves.

28. In the latter half of 2022, forces linked to two former Sudan Liberation Movement/Army-in Opposition (SPLM/A-IO) generals attacked civilians in Upper Nile State and northern parts of Jonglei State. They had previously been implicated in serious crimes but were granted amnesties in January 2022, as part of the terms of their defection to the Sudan People's Liberation Movement-in Government (SPLM-IG), led by President Salva Kiir Mayardit. In Western Equatoria during 2022, the Commission noted that an SSPDF General had still faced no accountability or consequence for the recruitment and use of children in hostilities, noting that some recruits remain in military facilities against their will.

The Commission also received further information that a commander of the an SPLM/A-IO, led by First Vice-President Riek Machar, had been involved in abductions, sexual slavery and sexual violence against girls; the commander is now the Governor of Western Equatoria State, and the leadership of the SPLM/A-IO knew of his alleged crimes at the time of his appointment and yet appointed him and he remains in post.

29. A common thread in many of the situations of violence is contestation over power-sharing arrangements envisaged under the Revitalized Agreement. The violence and associated human rights violations in the states has had national ramifications that have threatened to derail the Revitalized Agreement. In March 2022, the SPLM/A-IO suspended its participation in the ceasefire and peace monitoring mechanisms, citing attacks by SPLM-IG-aligned forces on its cantonment sites in Unity State and Upper Nile State.⁷ Later in 2022, lines of control and responsibility for complying with the Revitalized Agreement were further blurred with the fracturing of a group of former SPLM/A-IO generals who had earlier defected to the SPLM-IG.⁸ The resulting fighting, characterized by human rights violations, involved multiple armed groups and bore the hallmarks of a proxy conflict between key parties to the Revitalized Agreement.

30. Disagreements over political representation and territorial control overlap with the divisions among warring armed groups to create an avenue for armed attacks and atrocities against opposing communities. In this context, much of the violence involves high-level political actors or key parties to the Revitalized Agreement. In Eastern Equatoria, the Commission documented communities fleeing their homes fearing that members of the Government forces will target civilians in their fight with the forces with which they are meant to be sharing power under the current peace arrangements. Communities in Western Equatoria continued to experience the impact of the politicization of ethnicity during violence in 2021 which was used as part of a proxy battle over power sharing arrangements in Tambura County. The violence in southern Unity State and in Upper Nile State in 2022 provides further examples of proxy conflicts carried out between members of groups that are parties to the Revitalized Agreement. These conflicts involve armed militia who have been mobilized by ethnic-based grievances and opportunities for looting.

31. The Commission has previously noted how cattle raiding has been instrumentalized, evolving into a lethal tool used by political protagonists, to terrorize and displace communities in the protagonists' quest for territorial influence and various forms of control. Little if any effective action has been taken by any Government actors at national or state level to address the issue. Where State actors have taken action, it has tended to be partisan, inflaming rather than addressing tensions. The Commission found that in Warrap State during 2022, interventions by powerful Government officials and members of the security forces have inflamed tensions between rival Dinka sections in violence reignited by cattle-raiding, and that the role of State actors was the primary driver of escalating violence. In other cases, the lack of action appears to have resulted in armed community members taking matters into their own hands, as seen in Central Equatoria in early 2023. The situation is aggravated by the proliferation of arms within communities and entrenched impunity for political violence.

32. Other historical grievances remain unresolved, and continue to be exploited, further compounding grievances and fuelling conflict and divisions in the country. For example, unresolved historical agitation for political autonomy within the Equatorias region has been highlighted by the National Salvation Front (NAS) and other opposition groups as their primary reason for remaining outside the Revitalized Agreement, with grave consequences for affected communities. Communities in Central Equatoria remain trapped between different armed forces fighting each other and attacking the civilian population.

33. Conflict has economic drivers as well, with South Sudan's political and military leaders seeking to divert public resources for private gain. Even the Revitalized Agreement itself has been an opportunity for personal enrichment, with unexplained uses of millions of

⁷ On 3 April, they re-joined these, following the signature of an agreement on the unification of the command of necessary unified forces. However, only days later, the hostilities in southern Unity sparked again, with SPLM/A-IO and government-aligned forces clashing in Leer and Koch counties. Violence again intensified significantly following this.

⁸ Known as the "Kitgwang" faction.

dollars devoted to its implementation. Individual political and military elites, including those under UN and other sanctions regimes, continue to enrich themselves, while other associates and family members of high-level officials take advantage of the country's non-existent public procurement system, benefiting from uncompetitive and overvalued government contracts. For example, in November 2022 the Humanitarian Affairs Minister Peter Mayen was dismissed from his post following reports implicating him in the misappropriation of Government assistance and flood response money. (The Commission had previously noted his conduct involving sexual and gender-based violence).⁹ However, as further evidence of South Sudan's impunity, no investigation or charges have been brought against him or anyone else involved. Mr. Mayen remained a Member of Parliament, the leader of the Other Opposition Parties group, and in January 2023 was appointed to be special envoy for the World Fund for Development and Planning. Unpunished economic crimes, involving the effective looting of future revenues through corruption and mismanagement, further aggravate the human suffering in South Sudan, as both current and future governments will be unable to fulfil their human rights obligation to provide basic services for the populace. Moreover, international donors are becoming increasingly unwilling to cover the shortfall that endemic corruption creates, especially at a time when lifesaving assistance has been cut in the context of the shocks due to the COVID-19 pandemic, the armed conflict in Ukraine, and climate change.

34. The need for accountability in South Sudan is yet to be addressed in a meaningful and practical way. Without tackling this core issue, armed violence and associated human rights violations will continue to be the way that actors pursue their political and other objectives. As a result, much of the population continues to suffer. The emblematic studies presented by the Commission in this report highlight failures of leadership and the consequent persistence of cycles of violence throughout South Sudan. These acts of extreme violence are perpetrated by individuals who have not faced any accountability for their crimes, which are in many instances effectively condoned by the State. South Sudanese civilians continue to experience violence, with little prospect for any end in sight regardless of the status of the Revitalized Agreement, because the spirit of the Agreement has not been followed by the parties and the State has still not put in place any of the measures which it itself, along with multiple other parties, have identified in the peace agreements as being necessary for a sustainable peace.

35. The failure of successive peace agreements to hold the protagonists of conflict and serious violations to account for their actions explains in part why repeat offenders are emboldened to resort back to violence including atrocities. This impunity sets the tone for conflict, as it emboldens similar destructive behaviour in others. The Revitalized Agreement remains a comprehensive framework for addressing impunity and other drivers of violence in South Sudan, but its potential has not been realized due to the lack of political will and the absence of a leadership committed to the implementation of these promises. Nevertheless, the extension during 2022 of the transition governance period offers a remedial opportunity to renew commitment to the pursuit of a durable, inclusive and just peace for South Sudan.

36. Many of the egregious violations described in this report will be depressingly familiar from the country's history, and they implicate both State and non-State actors, including in instigating attacks against civilians or in failures to protect them. Political elites, including signatories to the Revitalized Agreement, are continuing their political contestations, including through proxy fights which involve mobilizations or alignments along ethnic lines. These contestations are driven by the need to access and control economic resources and political power. The predatory violence plays out in South Sudan's regions, violating the bodies and humanity of women and girls, exacerbating the country's ethnic cleavages, undermining societal cohesion, and sowing the seeds of future violence by generating new grievances that remain unaddressed. Reversing this phenomenon requires South Sudan's political leaders to re-orient their politics to eschew violence as part of their political strategy.

37. Impunity is the enabler of this range of violations and is in evidence across the country and at all levels. Addressing impunity is a critical element of any prevention strategy, and failure to address impunity means the prospects for political and economic transformation of South Sudan will remain elusive. Tackling impunity in the wake of widespread violations

⁹ A/HRC/49/78, para 47.

was a core rationale for the establishment of the Commission on Human Rights in South Sudan in 2016. The South Sudanese parties also reaffirmed the necessity of transitional justice for South Sudan to include: a collective and candid reflection on the drivers of South Sudan's conflicts and violations; the promotion of healing and reconciliation between communities; the provision of reparations; and above all the re-establishment of a culture of accountability, including through the mechanisms of criminal justice in chapter V of the Revitalized Agreement. The present report highlights that breaking the grip of impunity in South Sudan will not be achieved without the recommitment of national authorities to the values they have adopted in the Revitalized Agreement. Breaking the grip of impunity will also require the vigilance and accompaniment of regional and international actors as the country heads towards the concluding phases of its political transition.

II. Emblematic situations in 2022

A. Leer County, Unity State

38. In early 2022 there was a return to extreme violence in southern parts of Unity State, centred in Leer County, while also affecting areas of southern Koch County and eastern Mayendit County. The violations and brutality were akin to those seen during the height of the fighting from 2013 to 2018, and the impact has been just as horrific, with civilian populations again being targeted. The Commission found that clashes and attacks took place between key parties to the Revitalized Agreement. These clashes involved Government-aligned forces under the command of the Koch County Commissioner Gordon Koang Biel ("Koch forces"), the Tahir militia of Mayendit in coordination with, or under the command of, the Mayendit County Commissioner Gatluak Nyang Hoth ("Mayendit forces"), and SPLM/A-IO forces.

1. Context

39. Southern Unity State includes the counties of Mayendit and Leer, both bordering Koch County to the north. The landscape features extensive swampland and waterways, including the White Nile River, which forms the state's eastern border with Jonglei State. Flowing north toward Upper Nile State and onto Sudan, the White Nile serves as an important economic hub and critical transport route, with riverports and surrounding areas being generators for significant revenues for actors with territorial control. As in most of Unity State, the population is Nuer. Nuer communities in this area are the Jagei Nuer of Koch, the Haak Nuer of Mayendit and the Dok Nuer of Leer.¹⁰

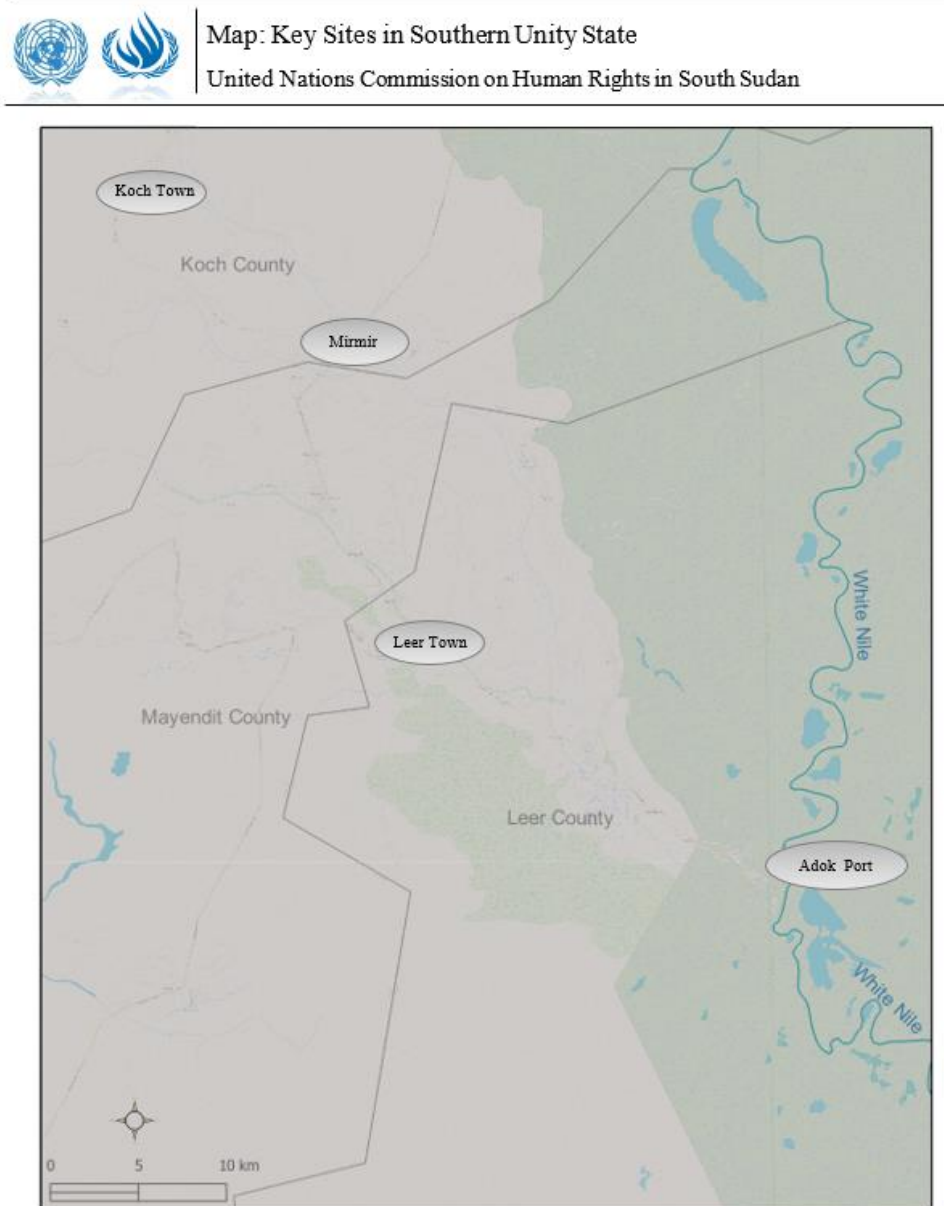
40. Leer County is the birthplace of Riek Machar, the First Vice-President of South Sudan and leader of the SPLM/A-IO. Since the SPLM/A-IO was established in December 2013, when conflict broke out in Juba and spread across the country, Leer County has been a stronghold. During the ensuing conflict of 2013 to 2018, Unity State was the site of major military offensives and battles between warring parties and aligned armed groups. The SPLM/A-IO fought alongside armed youth groups, namely the Gojam or "White Army".¹¹ Government forces, including the Sudan People's Liberation Army, also coordinated their operations with armed youth. These included armed groups under the command of Koch authorities, and the Tahir armed group of Mayendit. These groups are also heavily associated with cattle-keeping and cattle-raiding. The violence in this area involved some of the worst violations of international human rights law and international humanitarian law between 2013 and 2018, including killings, rapes, sexual slavery and other forms of sexual violence, destruction and looting of property, and abductions.¹² Forced displacement, the destruction

¹⁰ Further identity markers also exist within and across these groups, while inter-marriages and migration further contribute to the fluidity and complexity of such identity markers.

¹¹ For further details, see: A/HRC/40/CRP.1, pp 140-41.

¹² See Report of the Commission on Human Rights in South Sudan, 20 February 2019, A/HRC/40/CRP.1, pp. 140-151 and A/HRC/49/CRP.4, para 90. See also Joshua Craze and Jérôme Tubiana with Claudio Gramizzi, "A State of Disunity: Conflict Dynamics in Unity State, South Sudan, 2013-15," Small Arms

of productive livelihood assets and the looting of food had contributed to the declaration of famine in Leer and Mayendit counties in 2017.¹³ The violence in Leer in 2022 has been intense, re-enacting earlier patterns, and driven by the continuing ferocity of national political competition. It has also been abetted by impunity for past violations.



41. There is extensive documentation of gross human rights violations and serious crimes in southern Unity State for the period 2013-2018. A range of actors including the Commission, the UNMISS, the UN Security Council Panel of Experts on South Sudan, the AU, and the Inter-Governmental Authority on Development (IGAD) have reported on the

Survey, 2016, available at: <https://www.smallarmssurvey.org/sites/default/files/resources/HSBA-WP42-Unity.pdf>.

¹³ Food and Agriculture Organization, World Food Program and UNICEF, “Joint Statement On Famine In South Sudan,” 21 February 2017, available at: <https://www.wfp.org/news/joint-statement-famine-south-sudan>. See also: “IPC in South Sudan: localized famine and unprecedented levels of acute malnutrition in Greater Unity,” 20 February 2017, available at: https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/1_1_IPC_Alert_6_SouthSudan_Crisis_Feb_2017.pdf

violations.¹⁴ Despite the signing of a ceasefire agreement in 2017, and the Revitalized Agreement in 2018, gross human rights violations and serious crimes against civilians have not stopped. Yet individuals responsible for violations and crimes have not faced any criminal or other meaningful forms of accountability for their roles. In fact, many of those responsible still occupy positions of authority. As with elsewhere in South Sudan, nobody has been held accountable for atrocities committed in Leer during the period of 2013–2018.

2. Background to the violence in 2022

42. When the Revitalized Agreement was signed in 2018, SPLM/A-IO and South Sudan Opposition Alliance (SSOA) forces were to move to newly designated “cantonment sites”, while SSPDF forces were to be cantoned to barracks.¹⁵ This was also a prerequisite in the process of assembling, screening, training and finally deploying troops into the “Necessary Unified Forces” (South Sudan’s new national army).¹⁶ In Koch County, the area of Bieh Village in Mirmir Payam was selected to host an SPLM/A-IO cantonment site, after negotiations in which the SSPDF reportedly vetoed an SPLM/A-IO proposal to canton in Leer Town.¹⁷ Mirmir is right on the border with Mayendit County and nearby Leer County, in an area that had previously been hotly contested by warring parties.

43. SPLM/A-IO soldiers populated the cantonment in Mirmir in late 2018, alongside members of the Gojam, the armed youth group based in Leer. As noted above, the Gojam and SPLM/A-IO had previously fought in the area together against SPLA soldiers and Government-aligned armed youth.¹⁸ While broadly aligned to the SPLM/A-IO, the Gojam had remained distinct; ostensibly, its function was localized, to protect the Leer area.¹⁹ Pre-existing tensions between these groups increased in the process of subsuming the Gojam into the SPLM/A-IO.²⁰ As in other cantonments, limited provisions of food and supplies were challenges, as were defections to the Government.²¹ The SPLM/A-IO maintained an ongoing presence at the cantonment until early 2022.

44. In June 2020, President Salva Kiir reappointed Joseph Monytil as Unity State’s Governor.²² Then around February 2021, Governor Monytil appointed the state’s eight county commissioners, drawn from nominees of the parties to the Revitalized Agreement.²³

¹⁴ See “Final Report of the African Union Commission of Inquiry on South Sudan,” *op cit.*, “Violations against civilians, including SGBV, in southern Unity State, April–May 2013,” CTSAMM Report 2018/22, UNMISS and OHCHR, “Indiscriminate attacks against civilians in southern Unity: April–May 2018,” and “Final report of the Panel of Experts on South Sudan,” 9 April 2019, S/2019/301.

¹⁵ 2018 Revitalized Peace Agreement, section 2.2.2.

¹⁶ The process has been beset by extremely long delays and many of the key steps do not appear to have been implemented, including the screening element. Graduations of unified forces commenced only in late 2022.

¹⁷ See Joshua Craze, “The Politics of Numbers: On Security Sector Reform in South Sudan, 2005–2020,” 2020, available at: <https://www.lse.ac.uk/africa/assets/Documents/Politics-of-Numbers-Joshua-Craze.pdf>.

¹⁸ 105115–105124. See also Coalition for Humanity South Sudan, “Conflict Dynamics in Leer County, South Sudan: Issues, Barriers and Opportunities Towards Conflict Transformation,” November 2018, page 15.

¹⁹ Craze et al., “State of disunity,” *op cit.* 12, pp. 89.

²⁰ For instance, SPLM/A-IO soldiers reportedly felt disgruntled when, in a ploy to bolster troop numbers, Gojam members were awarded high ranks from then-SPLM/A-IO General Simon Gatwech Dual during a visit to the area. See Craze, “The Politics of Numbers,” *op cit.* 17, page 79.

²¹ “Peace monitors say S. Sudan forces leaving cantonment sites over lack of food, medicines,” Sudan Tribune, 29 October 2019, available at: <https://sudantribune.com/article66522/>.

²² In February 2020, South Sudan returned to ten states from 32, as part of implementing peace arrangements. Three states were amalgamated to re-form the pre-existing Unity State, resulting in changes to administrative posts. Throughout South Sudan, appointments of posts were political, based on leaders’ preferences and negotiations between parties to the peace agreement. Governor, deputy Governor and County Commissioners posts were divided based on pre-agreed ratios in the peace agreement. See Revitalized Peace Agreement, section 1.16.1. Monytil had previously served as the Governor of Unity State, and then as the Governor of Northern Liech State, appointed by President Kiir. He is also a Lieutenant General in the SSPDF (see section II(B), below).

²³ While these were announced in February, oath-taking ceremonies took place at the state’s capital Bentiu in March 2021. 105156–105173.

Of these, Gordon Koang Biel was appointed as the Koch County Commissioner, and Stephen Taker Riek as County Commissioner for Leer. Both had previously served in these or similar roles, and they had been renominated by the Government. The post of Mayendit County Commissioner went to the relative political new-comer Gatluack Nyang Hoth, representing SSOA, another party to the peace agreement.

45. Gordon Koang had previously served as a County Commissioner in the area and in 2018 he was absorbed into the SSPDF.²⁴ During the conflict he had commanded armed youth from Koch, fighting alongside Government forces against SPLM/A-IO forces and the Gojam in Leer County. There are documented gross human rights violations and atrocities perpetrated by forces under his command.²⁵ After his reinstatement as a County Commissioner in early 2021, he became increasingly frustrated that the SPLM/A-IO was present and continuing to exercise territorial control in Mirmir Payam. As well as being administratively part of Koch County, Mirmir is strategically located near where the counties of Koch, Mayendit and Leer meet, and serves as a transit point for trade and accompanying opportunities for taxation and revenue.²⁶ Gordon Koang planned to appoint new payam administrators and chiefs in Mirmir to replace those who were cooperating with the SPLM/A-IO.²⁷ At the same time, Koang had not appointed an SPLM/A-IO nominee to serve as his deputy County Commissioner, as was envisaged in power-sharing arrangements of the peace agreement.²⁸ (Instead he had appointed Guor Gatkuoth Ruot as deputy County Commissioner). Koang was not seen to be acting in good faith, and his plan to appoint new posts was rejected by the local SPLM/A-IO commanders, who in any case wanted their party to be consulted by the Government in the process.²⁹ Tensions rose between Koang and the SPLM/A-IO's commander in Mirmir, who refused to accommodate the County Commissioner. Koang was informed that he was unwelcome in Mirmir.³⁰ He was increasingly frustrated at being unable to visit or exercise administrative control in Mirmir Payam, which in his view came exclusively under his authority as County Commissioner.

46. In August 2021, fighting broke out among soldiers in the SPLM/A-IO Mirmir Cantonment. SPLM/A-IO authorities had detained a woman and a man in the cantonment, after the woman allegedly killed her husband. Soon after, several soldiers and civilians, including relatives of the deceased husband, reportedly stormed the detention facility and killed the woman and man in an apparent revenge killing. Clashes took place at the site.³¹ Facing disciplinary actions and apparently fearing arrest, SPLM/A-IO soldiers involved in the attack fled from Mirmir toward Koch Town which hosts the county headquarters and the

²⁴ He was integrated into the SSPDF with the rank of general in 2018. Panel of Experts, 9 April 2019, S/2019/301, pp 51.

²⁵ See CTSAMM, 2018, op cit. 14 and UNMISS and OHCHR, 2018, op cit. 14.

²⁶ 105115-105124.

²⁷ Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM), "Report 2022/17: Final Report on the Armed Clashes and Violations Against Civilians in Koch and Leer Counties of Unity State," page 1. 105211-105218. Koang effectively instituted changes in other payams throughout Koch County.

²⁸ Revitalized Peace Agreement, section 1.16.4, states: "In sharing State and local government positions the Parties shall take into account the relative prominence each Party has in the respective State or county." The appointment of deputy County Commissioners, and lower-level but critical posts including of Payam Administrator, were to be appointed based on a less prescriptive principle of power sharing among the parties. This has generally meant that a County Commissioner would appoint the member of a different party as their deputy, with Payam Administration posts appointed through a similar process of negotiation, if still often contested. Given the process for such appointments is not prescriptive under the agreement, adherence to the power sharing principle has also relied on the County Commissioner. Unlike other County Commissioners, Koang refused to appoint an SPLM/A-IO nominee.

²⁹ M-100092, M-100098.

³⁰ CTSAMVM, 2022/17, op cit. 27, page 3. See also discussion by the representative of the Interim Transitional Government of National Unity, in "Report of the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM) and Outcomes of CTSAMVM Technical Committee Meeting, Juba, South Sudan," 25 April 2022, page 45.

³¹ 105148-105155, 105211-105218, 105388-105392, CTSAMVM 2022/17, op cit. 27, para. 1(b).

home of Gordon Koang Biel. Led by Lieutenant Colonel Gatkhor Chuol, the soldiers were offered safe haven by Koang; they had effectively defected to the Government.³²

47. In early September 2021, Gordon Koang unilaterally selected a new payam administrator and other leaders to Mirmir, and the appointees travelled to the area seeking to take up their posts.³³ Gordon Koang then travelled toward Mirmir with deputy County Commissioner Guor Gatkuoth Ruot, accompanied by security forces including SSPDF soldiers and Koch armed youth.³⁴ Koang wanted to enforce the appointment of his nominees for the local administration in Mirmir. However, they did not proceed past the Ngony area, around five kilometres west of the cantonment, after reportedly receiving a message from local SPLM/A-IO commanders that Government forces would be repelled if they crossed the river toward Mirmir.³⁵ Koang's forces retreated to Koch Town, where the group of SPLM/A-IO defectors were by then encamped.

48. The SPLM/A-IO's Cantonment in Mirmir was eventually attacked several times between 8 January and 11 February 2022, when it was ultimately overrun by Government-aligned forces.³⁶ The first main attack, on 8 January, was repelled by the SPLM/A-IO.³⁷ Then on 23 January 2022, attackers launched two assaults, first in the early hours of the morning, and again late in the evening. Both attacks were repelled. Several days later, on 27 January 2022, the same attackers reportedly struck against SPLM/A-IO troops stationed at nearby Wath-Thiey, also known as "Port 29," the only port in Koch County.³⁸ Another attack there on 6 February also failed to dislodge SPLM/A-IO soldiers.³⁹

49. A third major attack on the Mirmir Cantonment took place in February 2022. On Thursday 10 February the cantonment was attacked from late morning until mid-afternoon, when the attackers were repelled. But a second attack was made at around 10 o'clock in the morning of the next day, Friday 11, and by the late afternoon the Government-aligned forces had overrun the cantonment, with SPLM/A-IO forces withdrawing south into Leer County.⁴⁰

50. The attacks on the SPLM/A-IO Cantonment were carried out by members of Koch armed youth, together with former SPLM/A-IO soldiers who defected from there in August 2021.⁴¹ Ground operations were led by deputy Koch County Commissioner Gordon Guor Gatkuoth and SPLM/A-IO defector Gatkhor Khor Tut Chol, under the overall direction of County Commissioner Gordon Koang.⁴² Koch forces led by the County Commissioner Gordon Koang, including the SPLM/A-IO defectors, settled in at the cantonment site.

51. At the time, widespread reporting framed the February attack on Mirmir as part of an internal dispute between the SPLM/A-IO and its defectors. According to such reports, the defectors had aligned with the breakaway "Kitgwang Faction" of the SPLM/A-IO, led by Simon Gatwech.⁴³ Government officials, including the office of Governor Monytil, played

³² 105156-105173, 105357-105364, 105357-105364, 105388-105392, D126703-D126714.

³³ 105148-105155, M-100098, 105357-105364.

³⁴ 105320-105332, 105148-105155, M-100098, 105388-105392, 105347-105356, 105357-105364.

³⁵ M-100103.

³⁶ At the time, an SPLM/A-IO spokesperson described the attackers as government forces under the command of the Koch County Commissioner, and this was subsequently verified by this Commission. "SSPDF, SPLA-IO clash in Maiwut, southern Unity," Sudan Post, 8 January 2020, available at: <https://www.sudanspost.com/sspdf-spla-io-clash-in-unity-state-spokesman/>.

³⁷ M-100098, 105148-105155.

³⁸ 105148-105155, CTSAMVM 2022/17, 1(c).

³⁹ 105148-105155. M-100103.

⁴⁰ 105156-105173, M-100098, CTSAMVM 2022/17, op cit. 27, para. 15. See also "SSPDF, SPLA-IO trade accusations over Mirmir clashes in Unity State," Eye Radio, 12 February 2022, available at: <https://www.eyeradio.org/sspdf-spla-io-trade-accusations-over-mirmir-clashes-in-unity-state/>.

⁴¹ CTSAMVM 2022/17, op cit. 27, para. 1(a). 105148-105155, M-100103

⁴² 105180-105210, 105148-105155. Gatkhor Khor Tut Chol subsequently died during clashes in 2022.

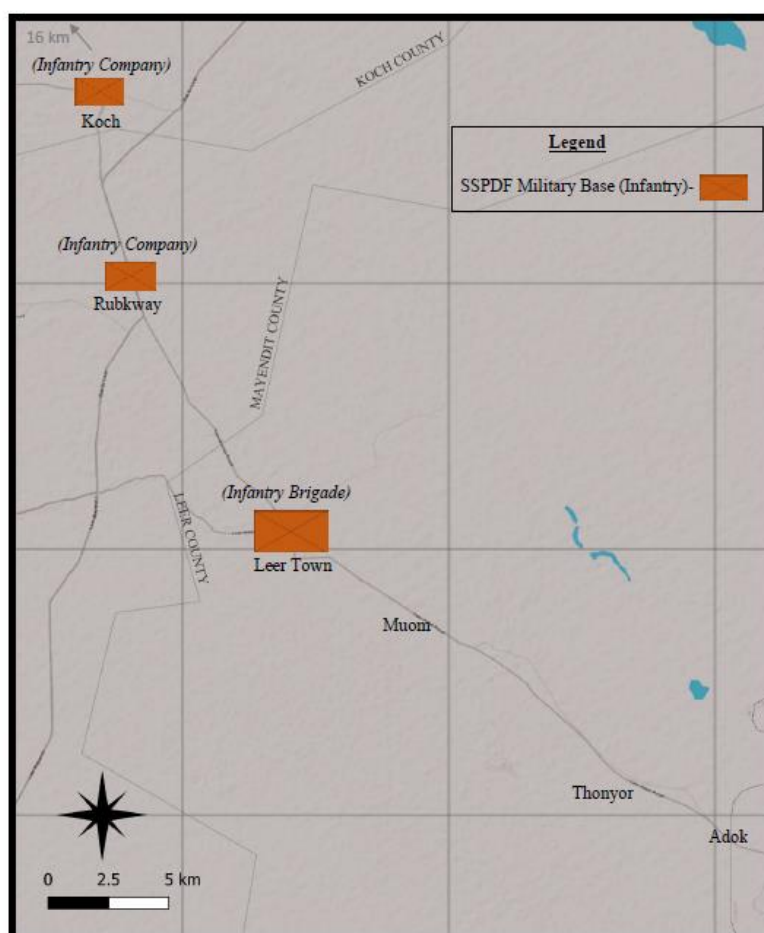
⁴³ Interpretation of the events in Mirmir was caught up in the developments of January 2022, when the Kitgwang Faction inked agreements with the Government, and in high-profile defections from the SPLM/A-IO in early February. The media reports appear to have largely if not exclusively been sourced at the time from a Facebook post at 1515 on 10 February by Gatwech's press secretary at the

up the split within the SPLM/A-IO as the reason for the clashes in Mirmir.⁴⁴ This narrative was disputed by the SPLM/A-IO.⁴⁵ The Commission received multiple testimonies from a broad range of sources who said the alleged Kitgwang connection was largely a fabrication to obscure Gordon Koang's responsibility for the violence, and the responsibility of the Government in the attacks. Indeed, the Commission did not find credible information to establish that defectors from the SPLM/A-IO had in fact joined the Kitgwang Faction.⁴⁶ However, the Commission established that the SPLM/A-IO defectors were fighting in coordination with County Commissioner Koang and the armed youth under his command.



Map: Locations of SSPDF Military Bases (April, 2022)

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time, Kalany Mamuon, claiming that Kitgwang forces under the command of General Gatkhor Tut Chol had captured Mirmir. Facebook Post of Kalany Mamuon on 10 February 2022, available at: https://web.facebook.com/permalink.php?story_fbid=pfbid02JYjaXvSjorNC5gwvooN59zNuY17dWhN2N9GhcuDrJavGtQxiapc6bHrKfSnfUiQcl&id=101900244895514.

⁴⁴ Facebook Post of the Office of the Governor-Unity State Press Unit on 22 February 2022, available at: https://www.facebook.com/permalink.php?story_fbid=pfbid02ihX7pP7PtwnrQAJKuXQEMXpWrijJFDTheQo77NHcPkYrSbFRKk19dm3L2svzhxEmYl&id=100069186190282.

⁴⁵ Facebook Post of Lam Paul Gabriel on 11 February 2022, available at: <https://web.facebook.com/lampaul.gabriel/posts/pfbid02pXMpnPpoSzosh5HvLeWTGUZQKjw2sLvno5Ud2qcgie4fPgHYRiJQoTKiPL3kf6o9l>.

⁴⁶ In public reports, CTSAMVM, and UNMISS and OHCHR, noted that the defectors from the SPLM/A-IO had “declared themselves” or “self-declared,” respectively, as aligned to the Kitgwang Faction. Their reports did not assert a link one way or the other with the leadership of the actual Kitgwang group, which was led by Simon Gatwech.

3. County commissioners plan attacks and Leer is attacked, February 2022

52. On 14 February Koch County Commissioner Gordon Koang and Mayendit County Commissioner Gatluack Nyang Hoth met in person in Mirmir and planned coordinated attacks on civilians in Leer County. During the meeting, which took place shortly after Koch forces overran the SPLM/A-IO cantonment, it was suggested that further meetings between the County Commissioners would be held.

53. By 13 February 2022, County Commissioner Gordon Koang had arrived in Mirmir. Mayendit County Commissioner Nyang Hoth was in nearby Tutnyang area of Mayendit, where the SPLM/A-IO held positions, and were clashing with armed youth from the Mayendit area over cattle-raiding and illegal taxation collection.⁴⁷ Like Gordon Koang, Nyang Hoth also had frustrations with not being able to exercise full control in the county under his administration given the SPLM/A-IO presence.⁴⁸ On 13 February, Koang and Nyang Hoth spoke on the phone about the situation and arranged to meet the next day, in Mirmir.⁴⁹ Gordon Koang and Nyang Hoth met on 14 February along with members of the Koch forces, the Tahir militia from Mayendit, and the SPLM/A-IO defectors. In a speech at the meeting, Gordon Koang declared that Mirmir was again under Government control after his forces had overrun the SPLM/A-IO cantonment.

54. The Commission has reviewed and analysed a sound recording of Gordon Koang speaking at this event.⁵⁰ He characterized the Dok Nuer as allies of “the enemy” Riek Machar, the SPLM/A-IO leader. He declared that the Jagei Nuer of Koch and the Haak Nuer of Mayendit must unite to cleanse the SPLM/A-IO from the area and drive out the Dok Nuer civilians in Leer Country. To cement the alliance between the Jagei Nuer and Haak Nuer, a ceremony involving a cow sacrifice was to be held.⁵¹

55. Leer County Commissioner Stephen Taker Riek, a Government-appointee, seems to have become aware of these plans. He warned Leer residents that they should move with their cattle into Government-controlled Leer Town, to enjoy his protection, and many residents of surrounding areas moved there.⁵²

56. From 14 to 20 February 2022, parts of Leer County were hit hard in attacks by Government-aligned forces who pushed down from Mirmir, attacking the SPLM/A-IO forces and residents of villages. Residents displaced from the area reported to the Commission that they heard members of the forces discussing that they were searching for SPLM/A-IO soldiers who had fled from Mirmir.⁵³

57. Padeah Payam, which lies between Mirmir and Leer Town to the south, was an area to which SPLM/A-IO forces withdrew after being expelled from the cantonment. Villages in Padeah were attacked by armed men in civilian clothing carrying rifles and panga knives.⁵⁴ Witnesses identified the assailants as coming from Koch, and some survivors of attacks told the Commission that they recognized people in the forces as being Koch residents.⁵⁵ There were two attacks on Padeah in the span of one week. A female civilian described the attack:

“People fled in all directions. Many of us hid in the nearby swamp area, around 15 to 20 minutes from our village. I was in a group of more than 20 people who hid there in the water for more than seven hours. When some of us returned, we found the village deserted, with our houses burned and property looted.”⁵⁶

⁴⁷ M-100159, M-100098, M-100044.

⁴⁸ M-100103.

⁴⁹ 105156-105173, M-100103.

⁵⁰ 105211-105218, 105174-105179, 105393-105396, 105320-105332.

⁵¹ The Commission collected material to suggest that a second meeting took place involving the Koch and Mayendit County Commissioners, prior to the attacks on Leer County in April 2022. 105296-105304, 105131-105147, 105211-105218.

⁵² 105373-105378.

⁵³ 105388-105392.

⁵⁴ 105388-105392, D126703-D126714, M-100028, 105339-105346.

⁵⁵ 105339-105346, 105388-105392.

⁵⁶ 105388-105392.

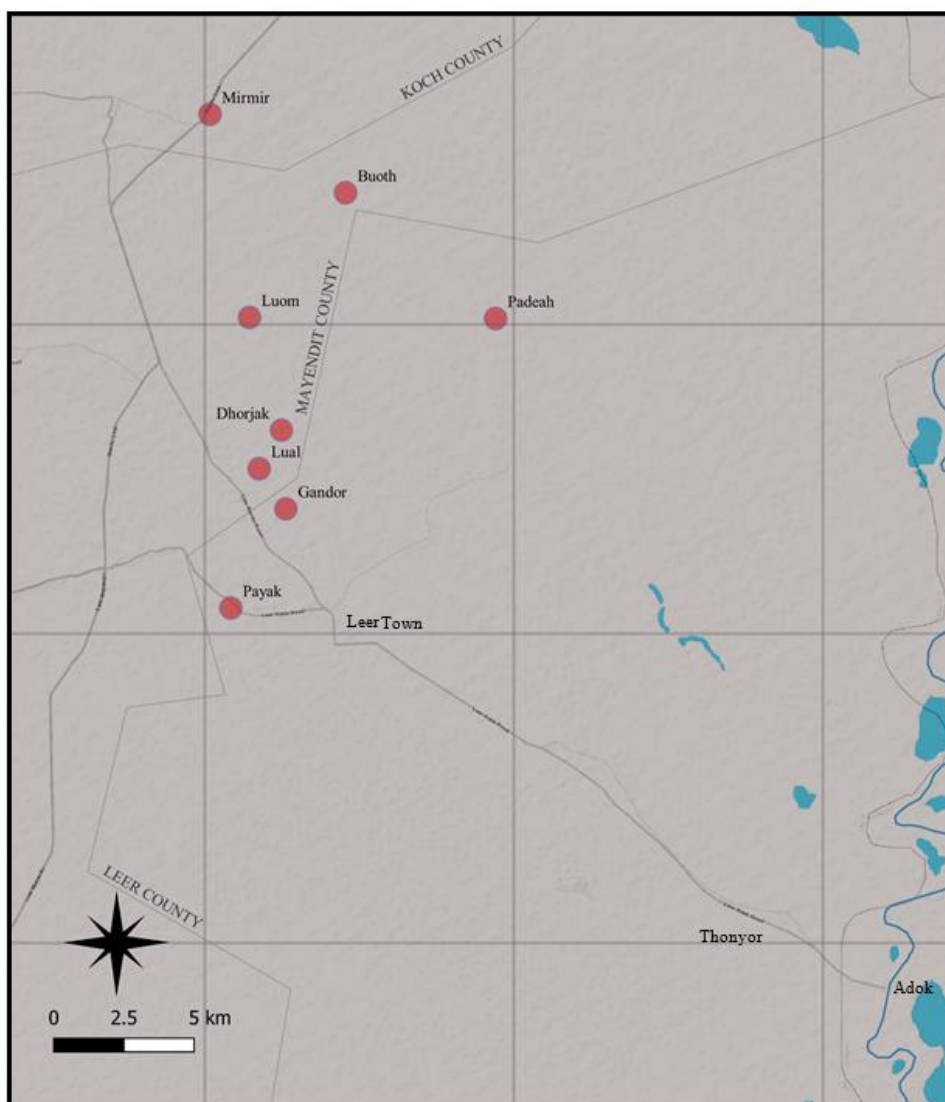
58. After the first attack on 14 February, many people returned to villages in Padeah, believing that the attacks had ended. Other residents stayed in hiding in the swamplands or proceeded southward to seek safety in Leer Town, where they remained in fear after learning of similar attacks in other villages.⁵⁷ On 17 February, a larger group of attackers returned to Padeah. Throughout the course of these attacks there were killings, assaults, destruction of homes and the looting of property including food held in a UN World Food Programme warehouse, ransacked on 20 February.⁵⁸ Women and girls from Padeah were then forced to carry the loot to Mimir (see below).

“We saw the armed men vandalizing our health facility, going inside and then throwing things out onto the ground. Some of them were laughing as they scattered the medical items around. Other armed men had captured goats and chickens. Some were carrying chairs and tables. The whole village was chaotic, with people and belongings spread everywhere.”⁵⁹



Map: Sites of Attacks (February, 2022)

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⁵⁷ 105339-105346.

⁵⁸ M-100044.

⁵⁹ 105339-105346.

4. Coordinated attacks on Leer, April 2022

59. After a lull in violence, early warning signs of renewed attacks turned out to be true in early April.⁶⁰ The Commission received credible reports that ammunition was brought to Koch County around 6 April, facilitated by Gordon Koang, and distributed to members of the forces under his command and to the Tahir force of Mayendit who had helped dislodge the SPLM/A-IO. Multiple testimonies corroborated that ammunition was brought to and distributed in Koch; this could not have been done without the knowledge of the SSPDF and senior Government officials.⁶¹ The timing of the inflow of arms may be understood in the context of rumours at the time that SPLM/A-IO forces were regrouping and planning to retake the cantonment in Mirmir.

60. Also in early April, an SPLM/A-IO Sector Commander who had redeployed from Panyijar County was rumoured to be mobilizing soldiers and armed Leer youth for a campaign to retake the Mirmir cantonment.⁶² Then on 6 April, SPLM/A-IO forces attacked Government-aligned forces in Mirmir and briefly regained control of the cantonment. Having pushed north from Leer County, the attack by the SPLM/A-IO followed several days of clashes between their forces and Koch forces at various sites between the cantonment and Bow in Leer County, around 26 kilometres south of Mirmir. After just several hours in control of the Mirmir cantonment, a mix of Government-aligned forces counterattacked and retook the site. By the end of the day the cantonment had been reoccupied, by Mayendit forces and the Koch forces which had returned after withdrawing toward Koch Town. The SPLM/A-IO soldiers and armed Leer youth who had launched the attack then retreated south into Leer County.⁶³

61. Following clashes with the SPLM/A-IO, the Government-aligned Koch and Mayendit forces launched a coordinated campaign of violent attacks on villages throughout Leer County, going further southward and at a greater scale than in February. For the County Commissioners of Koch and Mayendit, the campaign was in part for territorial control, by expelling the SPLM/A-IO from Mirmir and throughout Leer County. Yet most attacks were on civilian populations and infrastructure.

62. The attacks were most intense from 8 to 12 April. The Koch forces and Mayendit forces advanced concurrently but separately, with the Koch force on the eastern flank and the Mayendit force on the western flank. The exception to their separation was around 9 and 10 April when the two forces met in Pilieny Village, nearby Leer Town. They had met little resistance from SPLM/A-IO soldiers, who had mostly withdrawn from the area down to Adok in southern Leer County. The execution of the attacks was like those carried out in February, involving killings and rapes, destruction and looting of property, and mass displacement of residents. At each location, the Commission found that women and girls were captured, raped, and forced to carry stolen loot.

63. Pilieny Village was attacked on 8 April and occupied on and off for around five days. The village is situated adjacent to Bow on its western part, where the SPLM/A-IO had established a base following their eviction from the Mirmir Cantonment in February. Around three kilometres northeast is Muom, the site of a Necessary Unified Forces Training Centre, where many residents fled for safety. Witnesses described killings with assault rifles and knives, and gave accounts of dozens of women and children hiding in the shallows of the nearby river for days, surviving on river weeds for sustenance, with the children complaining of hunger. Survivors told the Commission that they recognized some of the attackers as

⁶⁰ UNMISS and OHCHR, *op cit.* 14, para. 26.

⁶¹ M-100038, M-100103, 105296-105304, IR-100035.

⁶² M-100034, 105180-105210. CTSAMVM found that General Ruot Chuol as the SPLM/A-IO Sector Unity State Commander carried responsibility for the clashes in April, see 2022/17, para. 25.

⁶³ 105115-105124, 105320-105332, 105211-1052182, 105156-105173, 105347-105356, 105365-105372, M-100030, M-100034, M-100098, M-100103, D126703-D126714. See also CTSAMVM, 2022/17, *op cit.* 27, paras. 8-9, and Facebook post of Lam Paul Gabriel on 4 April 2022, available at: <https://web.facebook.com/lampaul.gabriel/posts/pfbid02YEuoixWvkPmhX9ahxhPuyQANZXxi16e33xDaMAC14NDaqZS8sqkBhBypWB9GXzeNi>.

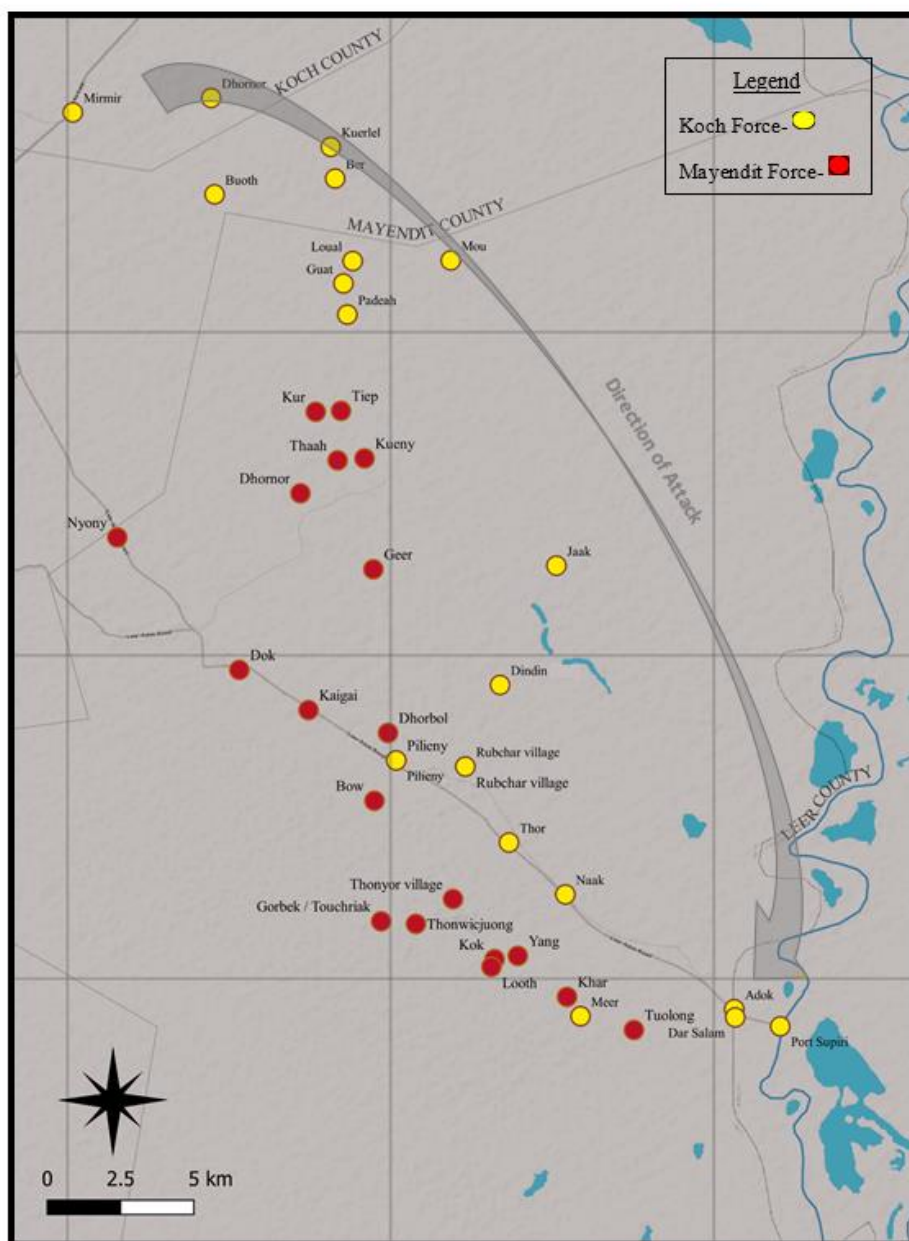
coming from Mayendit.⁶⁴ Eventually, most survivors walked to Muom for safety, except for the women and girls who had been captured and forced to carry loot toward Mirmir.

64. The village of Thonyor was attacked around the same time, by forces from Mayendit. A woman displaced from Thonyor told the Commission that she had recognized some of the attackers as being from Mayendit. When residents returned to inspect their village after the attacks, they found their homes destroyed by fire, and their food stores and health facilities ransacked.⁶⁵ They too went to Muom, as did many of the civilians displaced by attacks on various other villages in Leer County.



Map 3: Attacks by Koch and Mayendit Forces (9th-12th, April)

United Nations Commission on Human Rights in South Sudan



⁶⁴ M-100101, 105305-105319, 105104-105108.

⁶⁵ 105379-105383, 105393-105396.

65. Adok Town and its port area was a site of clashes between Koch forces and SPLM/A-IO forces. Koch forces attacked on 8 April and held the area for around four days, during which time they razed the town to the ground, causing mass displacement and temporarily ending commerce at the major river trading point.⁶⁶ As in other areas under attack, women and girls were captured and forced to carry loot toward Mirmir. When Koch forces withdrew, UNMISS peacekeepers soon established a Temporary Operating Base there, in part to provide protection for deliveries brought up the river by the UN World Food Programme, for distributions throughout Leer. Later SPLM/A-IO forces established a presence there, retaining control of the lucrative port throughout 2022.⁶⁷

66. Testimonies received by the Commission corroborated that attacks were well-planned and coordinated, starting on 8 April and moving from Mirmir southward toward Adok.⁶⁸ As in February, the Leer County Commissioner again put word out that residents should move to Leer Town with their cattle and property, reportedly saying that he would not be responsible for the protection of residents who remained outside the town.⁶⁹ Some residents had already received phone calls from relatives and friends in Koch and Mayendit, warning them to leave their villages before the impending attacks.⁷⁰

5. Human rights violations and alleged crimes

Killings and fatalities

67. Government-aligned forces deliberately targeted and killed civilians during coordinated attacks on villages in Leer between February and April. Evidence collected by the Commission shows patterns of killings consistent with a strategy to depopulate villages and terrorize their residents.

68. These attacks also exhibited a gendered pattern. Multiple testimonies and reports show that attackers intentionally and systematically targeted men and boys for killings.⁷¹ This pattern was well-understood by residents of Leer. Witnesses from multiple villages recounted how male residents were the first to flee when attacks started, in the knowledge they would likely be killed if they were in gunfire range or captured.⁷² They fled to Leer Town or other displacement camps. For these men and boys, this meant separating from female relatives and neighbours, who were left to care for their children and elderly relatives.

“The men feared being killed since the armed youths were shooting mostly at men. They fled without stopping, and some crossed the river... Women and children could not run as fast, that’s why we chose to hide in the waters by the nearby riverside.”⁷³

“When we were attacked, many men ran on foot, leaving the women and children behind.”⁷⁴

69. Most people killed during the attacks suffered trauma from gunshots fired from assault rifles and fatal stab wounds inflicted with panga knives (machetes). Several killings were beheadings or were followed by beheadings. All the victims known to the Commission are men. Multiple witnesses expressed their shock and horror at the beheadings, which took place in several locations.⁷⁵ Information about the killings was shared by word of mouth, through photos on social media and messenger applications, and in media reports. These beheading were highly public acts, understood in the context of these attacks as a tactic to terrorize the

⁶⁶ 105373-105378, M-100038. See also Coalition for Humanity South Sudan, op cit. 18.

⁶⁷ CTSAMVM 2022/17, op cit. 27, para 19.

⁶⁸ 105373-105378.

⁶⁹ 105393-105396.

⁷⁰ 105373-105378, 105384-105387, 105333-105338.

⁷¹ M-100101, 105305-105319, 105104-105108, 105379-105383, 105339-105346, 105093-105096, 105384-105387. OHCHR and UNMISS, op cit. 14, para. 33.

⁷² 105305-105319.

⁷³ 105305-105319.

⁷⁴ 105393-105396.

⁷⁵ 105174-105179, 105104-105108, 105305-105319, 105347-105356, 105357-105364, 105320-105332, 105384-105387, 105393-105396, 105373-105378, 105379-105383, M-100023, M-100046, M-100098.

civilian population. Their graphic character is particularly traumatic for families of victims, who must live with the images.

“At Adok Port we saw dead bodies scattered around, some beheaded. It was a sight I will never forget. There was chaos everywhere.”⁷⁶

“The two men were captured alive, chopped and slaughtered. While trying to run away they were followed by armed youth who caught them around the flooded area by the riverside. The men were beheaded, and a teenage boy with them was just shot dead.”⁷⁷

“In our culture, it is common to kill but we do not behead... As a tactic of war, it means that we are looking at a serious armed conflict, one which cannot be ignored.”⁷⁸

70. Women and girls were also victims of shootings and stabbings, and humanitarian agencies in the area treated multiple survivors.⁷⁹ Some trauma patients were evacuated by air to the Unity State capital Bentiu, where medical facilities are less basic than in Leer. Information received and reviewed by the Commission suggests that most fatalities of women and girls resulted from secondary causes, including drownings, and health complications related to hiding in waterways for days, and fleeing through water in an attempt to find safety.⁸⁰ Women and girls are also more vulnerable to nutrition and hunger-related deaths; mothers are more likely to prioritize the safety and nutritional needs of their families above their own.

“My sister was shot in the back, and people found her 10-month-old baby alive on her chest. The bullet had missed the baby. My sister died while holding her baby close to her heart.”⁸¹

71. Another aspect of the attacks on villages was the burning of people inside their thatched tukul huts. Most of these victims were children, disabled people, and elderly people who had remained in the villages during attacks because their cognitive or physical condition impaired their ability to escape.⁸² Multiple witnesses told the Commission that charred human remains were found inside tukuls by residents who returned to their villages after emerging from hiding.⁸³ Evidently, these discoveries add significantly to the cumulative trauma.

72. The Commission received and reviewed several lists of fatalities related to the attacks, produced by civil servants and organizations conducting investigations.⁸⁴ The UNMISS Human Rights Division, which has an established field presence in Unity State, confirmed in its investigations at least 173 civilian fatalities related to the attacks between February and May 2022.⁸⁵ Their reporting noted that severe flooding and weather conditions limited the ability of teams to access many locations, including the swamplands and islands to which many people had fled, and possibly died. In addition to the challenges of assessing the true scale of fatalities during the attacks and the immediate aftermath, it also takes a longer time to see the emergence of nutrition and hunger-related deaths resulting from the destruction of livelihoods and lack of access to food at displacement sites. The Commission previously documented the high number of drownings associated with conflict-related displacement in the Leer area during violence in 2018.⁸⁶ Due to access challenges, the number of fatalities may never be known, and the actual figures may well be much higher than those documented.

⁷⁶ 105333-105338.

⁷⁷ 105104-105108.

⁷⁸ 105320-105332.

⁷⁹ 105384-105387, 105393-105396.

⁸⁰ Of casualties documented by UNMISS and OHCHR, 19 percent were attributed to drownings. *Op cit.* 14, para. 34.

⁸¹ 105384-105387.

⁸² D126703-D126714, 105104-105108, 105305-105319, 105339-105346, 105357-105364, 105388-105392, 105393-105396, 105373-105378.

⁸³ M-100101, 105379-105383, 105305-105319, 105104-105108.

⁸⁴ D126703-D126714, 105131-105147, D126703-D126714, IR-100026.

⁸⁵ UNMISS and OHCHR, *op cit.* 14, para. 73.

⁸⁶ See A/HRC/40/CRP/1, paras. 702-718.

Rape and other forms of sexual violence

73. Sexual violence remained a disturbing feature of these attacks. The Commission found a pattern of systematic rape, often accompanied by other human rights violations perpetrated along gendered lines. Survivors, witnesses and family members described horrific violence perpetrated against women and girls in Leer by members of the Government-aligned Koch and Mayendit forces, and individuals in command roles.

74. In multiple incidents documented by the Commission, women and girls were held by armed forces for days or even weeks at a time. Many of them forced to carry heavy items, and many were raped repeatedly by multiple males.⁸⁷ As described above, most surviving men from their villages had fled from the areas, knowing they would be killed. This left women and girls who did not escape the attacks to be captured by the attacking forces. Those who had escaped the attacks were still not safe, as many were hunted down in nearby riverbank and swamp areas, or were captured after emerging from hiding in search of food. These captive women and girls were subjected to sexual violence at multiple locations.

75. For example, a mother recounted being in a group captured after leaving their hiding place to find food. She had spent several days submerged in a riverbank area with women and children, after fleeing an attack on their village. Just minutes after leaving the water, the group she was in were confronted by four males in civilian clothing carrying assault rifles. The males marched the women back from the riverbank to their village, stopping to rape three of them on the way while the others were forced to watch the rapes at gunpoint. They were then held in their village for several days, where some were raped further, and others were forced to cook for the captors. A survivor described part of her ordeal:

“As we walked, one of the men said he wanted to sleep with a woman, and he grabbed one of the girls and pushed her down at gunpoint. Three men each grabbed a woman and raped her, while another man pointed a gun at us. We were forced to watch.”⁸⁸

76. Illustrating the extent and impacts of sexual violence, a woman told the Commission that five of her relatives were raped, including girls aged nine and 15 years old.⁸⁹ Many of these assaults lasted for days at a time. Another survivor described how after being held for four days in a village, the attackers divided women and girls into two groups, with some forced to embark on the journey toward Mirmir while the other women and girls remained in the village. She believed that those left behind had been selected to be raped by the armed men remaining in the village.⁹⁰ Witnesses and survivors of rape told the Commission about pregnant women who lost their babies due to being raped.⁹¹

“I was in hospital with another lady who was pregnant when forced to carry food items. She was then raped for two nights, and she lost her baby.”⁹²

77. Throughout Leer County, women were forced by the armed captors to carry loot which had been stolen from their villages, from cereal bags to plastic chairs. The Commission documented instances involving both Koch and Mayendit forces forcing women to carry stolen loot at gunpoint. This included pregnant and lactating women, and survivors with injuries from rape and other forms of violence they had been subjected to. Most women and girls were hungry and weak; those who were slow, struggling or non-compliant were slapped or beaten by the captors.⁹³

“I pleaded with the men to allow me to carry light items because I was four months pregnant. They told me to shut up and carry a box of cooking oil... One of the girls fell, I think because the sorghum bag she carried was heavy for her. Two armed youths started beating her, telling her that if she was not strong enough, they would shoot her.

⁸⁷ 105379-105383, 105393-105396, 105373-105378, 105305-105319.

⁸⁸ 105305-105319.

⁸⁹ 105384-105387.

⁹⁰ M-100105.

⁹¹ 105339-105346, 105379-105383.

⁹² 105339-105346.

⁹³ 105384-105387, 105339-105346, 105388-105392, 105093-105096, M-100105.

I was also struggling with my load. We walked fast as per the orders of the men, despite our heavy loads.”⁹⁴

78. A survivor who had been forced to carry looted goods reported experiencing what amounts to an outrage on personal dignity. A leader in her community characterized the act to the Commission as severe psychological torture.

“One of the men brought a head that was cut off from a man and asked me to carry it. They forced two of us to carry beheaded heads. It was one of the most horrific things. Since I had no choice, I carried the head for around thirty minutes until one of the men took it from me and gave it to another woman to carry. I don’t know where they were taking the heads to.”⁹⁵

79. For many women and girls arriving in Mirmir exhausted and traumatized, and in many cases injured or in poor health, their horrific ordeal was far from over. Multiple witnesses described captives being subjected to rapes and other forms of sexual violence by the armed men encamped at the former SPLM/A-IO cantonment that had been captured by Government-aligned forces. There, and in attacks in Leer villages, pregnant women were gang raped, in some cases resulting in miscarriages.⁹⁶ A survivor described her experience:

“During the night I was told to go into a tukul where I was raped by three men, one after the other... I tried to plead with them that I was pregnant but they wouldn’t leave me alone... until each had a turn. My stomach was hurting and I was worried for the baby. The men did not use protection. I was not myself.”⁹⁷

80. As women and girls reached the site from other parts of Leer, Government-aligned forces released those captives whom they had already raped. The new arrivals were then raped, before eventually being released. This vicious cycle was then repeated. A survivor of multiple rapes recounted seeing groups of these women being rounded up while she was leaving the area after being released.⁹⁸ Credible investigations carried out by other organizations further corroborate their testimonies.⁹⁹

81. A survivor described to the Commission how after being released from Mirmir, she walked four hours to Leer Town with a group of around 19 survivors. They shared stories of similar experiences. Many had been raped, while others had been mistreated in other ways, including by being assigned to prepare and cook food, using the food aid looted from Leer.¹⁰⁰

82. These violations took place in the context of attacks on villages in February and April. Based on evidence collected, the Commission was able to establish that members of Koch forces were the primary perpetrators in February, while in April both Koch and Mayendit forces were involved. Community members in Pilieny Village, where the two forces had a rendezvous in April, claimed that all the women captured there were raped, in the village and by the riverside.¹⁰¹ Witnesses said the armed men in Mirmir wore a mix of civilian and military clothing, and they confirmed the presence of commanders and Government officials there overseeing the violence.¹⁰²

83. The husband of a survivor told the Commission that after his wife told him she had been raped by more than ten men, he learnt she had suffered a similar ordeal several years ago but had been too ashamed to tell him about it at the time. He lamented that he too felt shame and anger, and contemplated divorcing his wife, before ultimately resolving to support her in leaving South Sudan to seek safety and medical treatment abroad.¹⁰³ Their story

⁹⁴ 105339-105346.

⁹⁵ 105305-105319, 100101.

⁹⁶ 105339-105346, 105379-105383, 105384-105387, 105373-105378.

⁹⁷ 105339-105346.

⁹⁸ M-100105.

⁹⁹ UNMISS and OHCHR, 2022, op cit. 14, paras. 21-23 and 54. CTSAMVM, “Sexual and Gender Based Violence in Koch and Leer Counties of Unity State, report 2022/16, 23 May 2022.

¹⁰⁰ 105373-105378.

¹⁰¹ M-100105.

¹⁰² 105373-105378, 105379-105383, 105339-105346.

¹⁰³ 105379-105383.

illustrates the havoc that acts of sexual violence wreak on affected families and communities, and of the absence of timely and adequate medical care for women and girls in the country, particularly in its extremely poor and remote areas.¹⁰⁴ Furthermore, such accounts illustrate the cyclical and repetitious character of extreme violence.

84. The sexual violence and accompanying coercion related to cooking and carrying in Leer during 2022 is a repeat of violations perpetrated by armed forces at the height of South Sudan's armed conflict from 2013-2018. These crimes have been repeatedly documented by the Commission and other organizations over many years, yet there has been no form of accountability.¹⁰⁵

85. While the perpetration of sexual violence in Leer was evidently widespread and systematic, the true scale of crimes and suffering is difficult to quantify, given the significant challenges of access to the area, and the prevalence of underreporting to both medical and judicial institutions. Reports received and reviewed by the Commission put the number of victims as high as 320 women and girls.¹⁰⁶ The Human Rights Division of UNMISS was able to verify 131 cases of rape, involving 113 women and 18 girls, perpetrated in the context of the attacks between February and April 2022.¹⁰⁷ The actual figures may well be much higher.¹⁰⁸

Destruction of civilian property, looting and pillage

86. The Commission has established a pattern of widespread and systematic looting and destruction of property by Government-aligned forces during the attacks on villages of Leer. Any item of civilian property was vulnerable to be removed from people's homes, before they were then burnt down.

“We witnessed the armed men burning our houses, looting property including chairs, mattresses, and goats. They were going inside houses, bringing out personal belongings and then setting the house on fire.”¹⁰⁹

87. Medical facilities were destroyed in multiple villages, with medical supplies typically strewn across the ground. These deliberate acts of wanton vandalism contributed to destroying the ability of communities to sustain themselves, encouraging displacement while discouraging return.

“Clearly the attackers wanted to destroy the whole village. Everything was looted and nothing was left behind. The health facility was vandalized, with medical equipment destroyed and scattered all over.”¹¹⁰

88. Captive women and girls were forced to carry food to Mirmir for the Government-aligned forces. Based on the Commission's investigations, it was established that Koch forces engaged in this practice in February 2022, while in April 2022 both Koch and Mayendit forces were involved.¹¹¹ A middle-aged woman captured in Padeah described arriving in Mirmir and being directed to deposit her load into a specially designated building, which she saw housed multiple bags of sorghum and boxes of cooking oil that had been carried up from

¹⁰⁴ See A/HRC/49/CRP/4, paras. 149-156.

¹⁰⁵ A/HRC/40/CRP.1, paras. 688-718. African Union Commission of Inquiry on South Sudan, op cit. 2, pp 178. Amnesty International, “‘Anything that was breathing was killed’ War Crimes in Leer and Mayendit, South Sudan,” 2018, pages 14-16, available at: <https://www.amnesty.org/en/documents/afr65/8801/2018/en/>.

¹⁰⁶ D126703-D-126714.

¹⁰⁷ UNMISS and OHCHR, op cit. 14, para. 5.

¹⁰⁸ For a detailed discussion of underreporting of sexual violence, see the conference room paper of the Commission, “Conflict-related sexual violence against women and girls in South Sudan,” A/HRC/49/CRP.4, paras 18, 175, 194 and 222, available at: https://www.ohchr.org/sites/default/files/2022-03/A_HRC_49_CRP_4.pdf.

¹⁰⁹ 105339-105346.

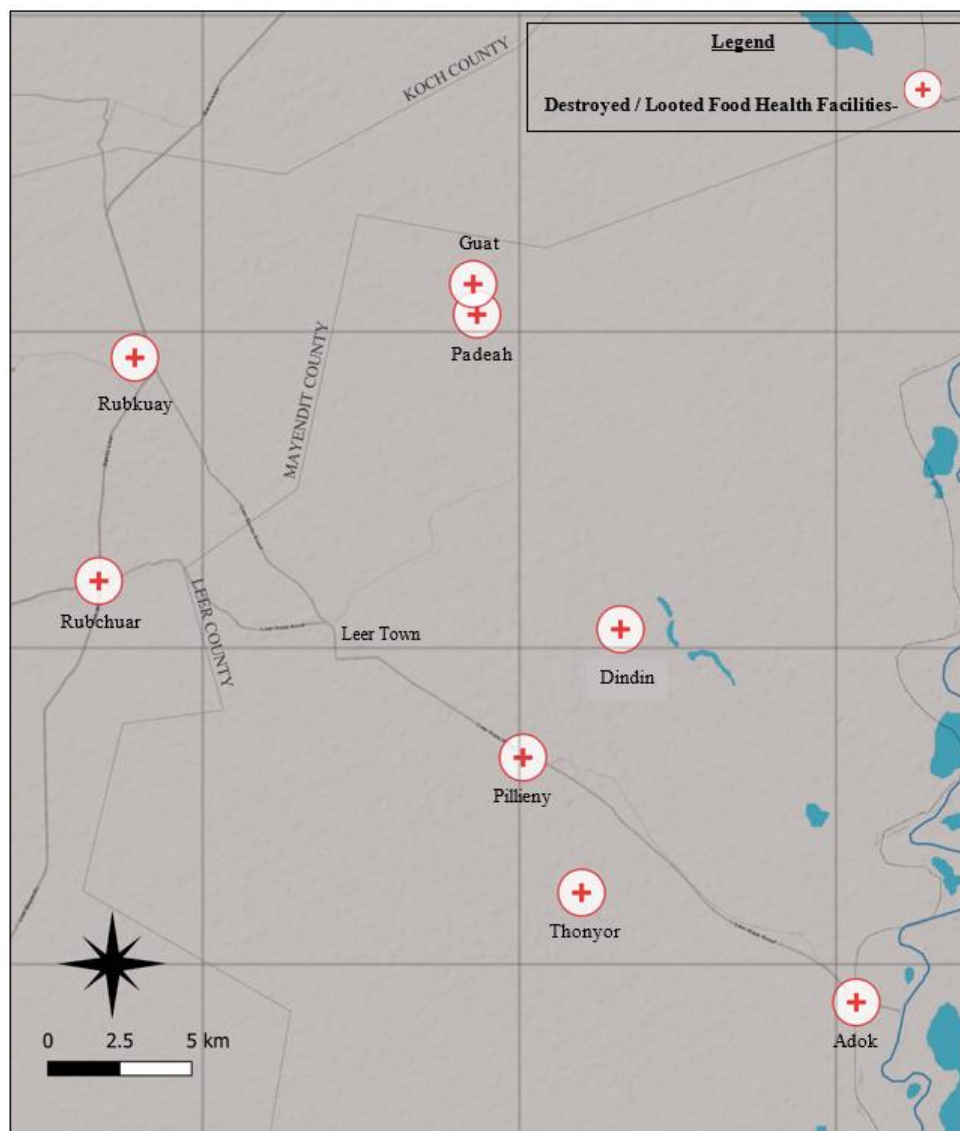
¹¹⁰ 105379-105383.

¹¹¹ 105339-105346, 105388-105392. As noted above, this finding based on the Commission's investigations does not necessarily preclude the involvement of Mayendit forces during February; further inquiries are necessary to duly examine this.

Leer villages.¹¹² A family member said Koch forces captured two sisters, forcing them to carry food items across the 40-odd kilometres from Adok to Mirmir. There, they saw other women arrive with food and cooking oil.¹¹³



Map: Attacked / Looted Health Facilities (April, 2022)
United Nations Commission on Human Rights in South Sudan



89. The food was stolen systematically across multiple locations. The food carried to Mirmir on the backs of captive women and girls was used to sustain the forces encamped there, while other loot was taken by the armed youth who largely comprised the Government-aligned forces. The Commission heard that looting was widespread and was employed by Government officials as a reward, as part of mobilizing armed groups.¹¹⁴

¹¹² 105339-105346.

¹¹³ 105373-105378.

¹¹⁴ 105131-105147, M-100028, M-100030, M-100031, 105320-105332, 105305-105319, 105347-105356, 105339-105346, 105357-105364, 105384-105387, 105388-105392, D126703-D126714, 105373-105378, 105379-105383.

“The youth were excited to attack Leer, as they were told they would get cows and supplies held by the NGOs. When they have such loot, they can get married. In the past there was a practice of raiding the Dinka, but now they are raiding other Nuer.”¹¹⁵

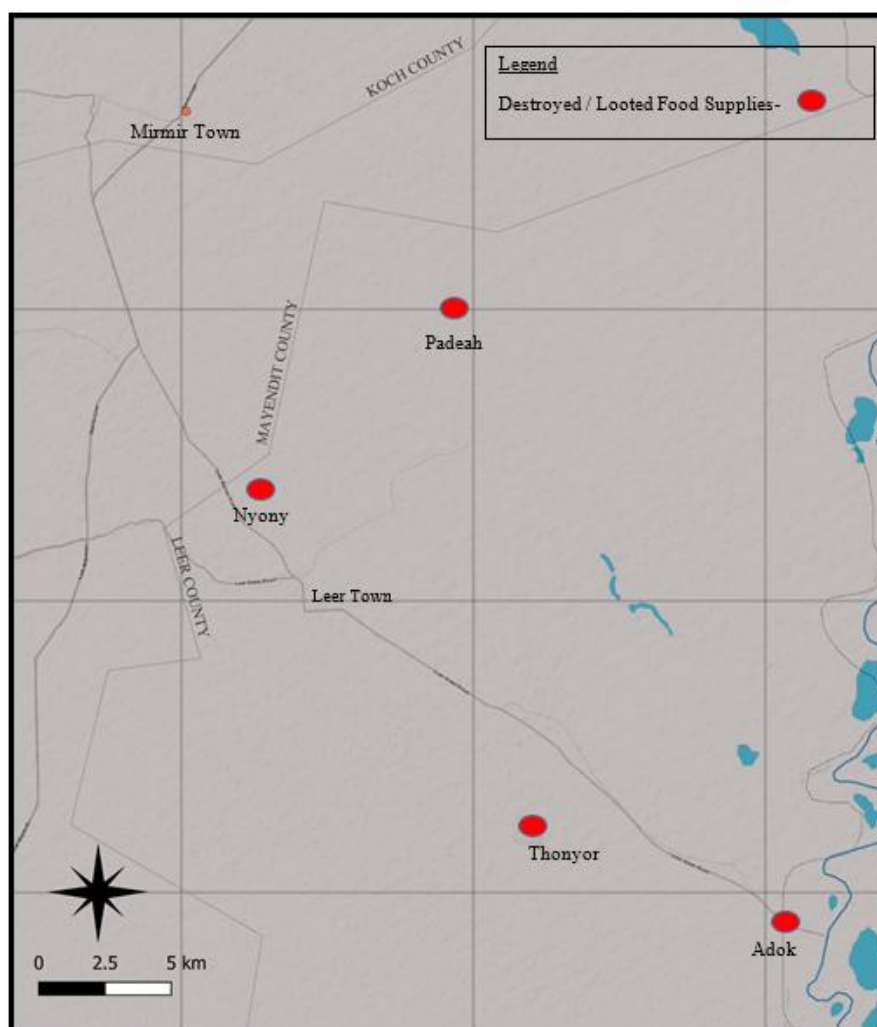
“The attackers kept repeating that the instructions from their bosses were to loot items, destroy property and health facilities, to rape the women and girls, and kill the men.”¹¹⁶

90. The Commission also received and reviewed reports of large numbers of cattle being stolen from villages in Leer and moved up to Koch County.¹¹⁷ The cattle owned by residents of Leer, which is a significant financial and cultural asset for communities, as well as being a source of nutrition (particularly milk for infants and children), were only saved if they had been moved to areas where the government exercised control, namely Leer Town and the training centre for the Necessary Unified Forces located in Muom. The Commission heard, but was not able to verify independently, credible reports that property stolen from Leer appeared in Koch markets later in April 2022.¹¹⁸



Map: Destroyed / Looted Food Supplies (April, 2022)

United Nations Commission on Human Rights in South Sudan



¹¹⁵ 105296-105304.

¹¹⁶ 105305-105319.

¹¹⁷ 105093-105096, 105226-105233, 105373-105378, M-100046.

¹¹⁸ 105373-105378, M-100043,

Starvation as a method of warfare, and violation of the right to food

91. The Commission found that during attacks on villages, Government-aligned forces looted or destroyed all assets required for the community's food and nutrition needs, stealing anything from cows to cooking utensils. In other words, civilians were 'deprived of objects indispensable to their survival'. Coupled with an intention to starve civilians as a method of warfare, in times of armed conflict such acts constitute war crimes. Residents were unable to save anything of worth given the imperative to flee rapidly on foot. When they returned to their villages, everything of value had been destroyed or removed, including farming equipment and fishing nets. This method of warfare has been carried over from the time of the 2013-18 armed conflict.¹¹⁹

92. Following attacks, groups of women and children in hiding from rapes and killings resorted to eating wildflowers and water lilies. During attacks they had had to leave their villages with such haste that nothing could be saved. When some returned to their villages, all the food had been looted.

93. Food insecurity in Leer is also in large part linked to legacies of previous campaigns of violence against civilians and their livelihood assets and stocks, while for humanitarians the insecurity makes access extremely difficult, if not impossible. Several humanitarian agencies thus withdrew or suspended their assistance in the area during the attacks, when the needs of communities were at the highest levels, due to the insecurity and threats to their assets and staff. UNMISS peacekeepers provided for the evacuation of humanitarians from these areas. This is a repeat of the situation in these areas documented by the Commission in 2018.¹²⁰ In May 2022, the UN World Food Programme also suspended its operations in Mayendit County, citing insecurity.¹²¹

94. The Commission found, through its investigations and by reviewing the data published by humanitarian agencies, that Government-aligned forces systematically looted food supplies stored in villages throughout Leer County. Furthermore, after looting, these forces destroyed infrastructure for food storage through vandalism and arson. This indicates that the intention was not only to repurpose food to sustain the attackers and the forces based in Mirmir; the purpose was also to destroy the assets required for communities to store their own produce and house food stocks provided by humanitarian aid agencies.

"I saw the warehouse of the WFP compound looted, with armed youths carrying items out and piling them outside... some items we carried were from that warehouse."¹²²

95. Leer County was in a situation of acute food insecurity and acute malnutrition even prior to the violent attacks and resulting displacement occurring from February to April 2022. Prior to these attacks, humanitarian agencies using the global Integrated Food Security Phase Classification (IPC) system had gathered data, and experts predicted "catastrophic" (famine-like) food insecurity would be experienced by residents of Leer and Mayendit counties between February and July 2022.¹²³ This is the worst possible classification that can be applied to a food situation, globally.

96. The IPC findings attributed the catastrophic classification to several chronic factors affecting food security, including climatic and conflict shocks, and the persistence of a "lean season" occurring each year from around April to July, where food- and nutrition-related morbidity peak.¹²⁴ Access to food, including food produced from local livelihoods activities,

¹¹⁹ See A/HRC/40.CRP.1 paras. 702-218 and Amnesty International, op cit. 105.

¹²⁰ A/HRC/40/CRP.1, para. 718.

¹²¹ WFP, "South Sudan Situation Report #300," 20 April 2022, available at: <https://www.wfp.org/publications/South-Sudan>.

¹²² 105339-105346.

¹²³ IPC, "Acute food insecurity and acute malnutrition analysis, February – July 2022, 9 April 2022, available at: https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/South_Sudan_IPC_Key_Messages_February-July-2022_Report.pdf.

¹²⁴ The Government of South Sudan has previously disputed and undermined the expert reports of the technical working group that uses the IPC to warn of famine-like conditions. See A/HRC/49/78, para. 54.

and imports through emergency humanitarian aid, has been limited in Leer for many years. Irregular weather patterns linked to the global climate emergency have affected cropping cycles. This includes persistent unseasonal flooding, further exacerbating food access vulnerabilities throughout Unity State. In its report of July 2022, the IPC found that Leer and Mayendit were amongst the counties of the most extreme concern country-wide, for having 80 per cent of the total population facing crisis or acute crisis food insecurity, in large part attributed to the conflict and violence.¹²⁵

97. The famine-like situation in Leer County and the extreme vulnerability of communities to shocks is well known and well-documented.¹²⁶ And this is particularly the case during the lean season, that precedes the building of dykes and planting of crops around April and May, activities which are critical to enable food access in the following months. It is in this context that Government-aligned forces planned and executed attacks on villages throughout Leer County in 2022.

98. Especially in the context of severe food insecurity and disruption of the planting season, these attacks on civilians have made return particularly difficult if not impossible, given the lack of livelihood and food options available to community members.¹²⁷ This has served as an apparent objective of moving people out of population areas associated with the SPLM/A-IO, as part of a continued strategy to further diminish SPLM/A-IO forces, in spite of the peace agreement.

99. The Commission found that the Government-aligned forces systematically attacked, looted, destroyed, and rendered useless objects indispensable to the survival of the population. Denying access to food was used as an instrument to target and punish communities perceived to be supportive of the SPLM/A-IO, while rewarding members of the Koch and Mayendit forces by allowing, and even encouraging, them to retain loot stolen from communities in Leer County. The Commission has previously documented this method of warfare during armed conflict in the period 2013-18.¹²⁸

Forced displacement and persecution

100. The Commission found that killings, rapes and other forms of sexual violence, looting, forcing women to carry food and other loot, and the destruction of civilian property, all facilitated or contributed to the forced displacement of communities in Leer County in 2022. Most of these gross human rights violations are consistent with a plan and strategy to depopulate villages of residents, while making return extremely difficult. These acts appear to have been designed to terrorize civilian communities from Leer.

101. As detailed above, experiences of displacement were violent and horrific, with men and boys running for their lives, while women and girls were captured or hid to avoid gross violations. For example, the Commission met a pregnant woman whose foetus died after she spent five days hiding in a riverbank area, spending long periods of time submerged underwater. Two months later she was struggling to access the medical attention needed to remove the dead child from her womb.¹²⁹

¹²⁵ IPC phase 3, and phase 4. IPC, “Acute food insecurity and acute malnutrition analysis, July 2022 – July 2023,” 23 November 2022, available at: https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_South_Sudan_Acute_Food_Insecurity_Malnutrition_22July_23July_report.pdf.

¹²⁶ UNMISS and OHCHR, “Indiscriminate attacks against civilians in southern Unity, April-May 2018,” 2018 and A/HRC/40.CRP.1

¹²⁷ See also REACH, “Leer County Rapid Assessment: Unity State, South Sudan, August 2022,” December 2022, available at: <https://reliefweb.int/report/south-sudan/leer-county-rapid-assessment-unity-state-south-sudan-august-2022>.

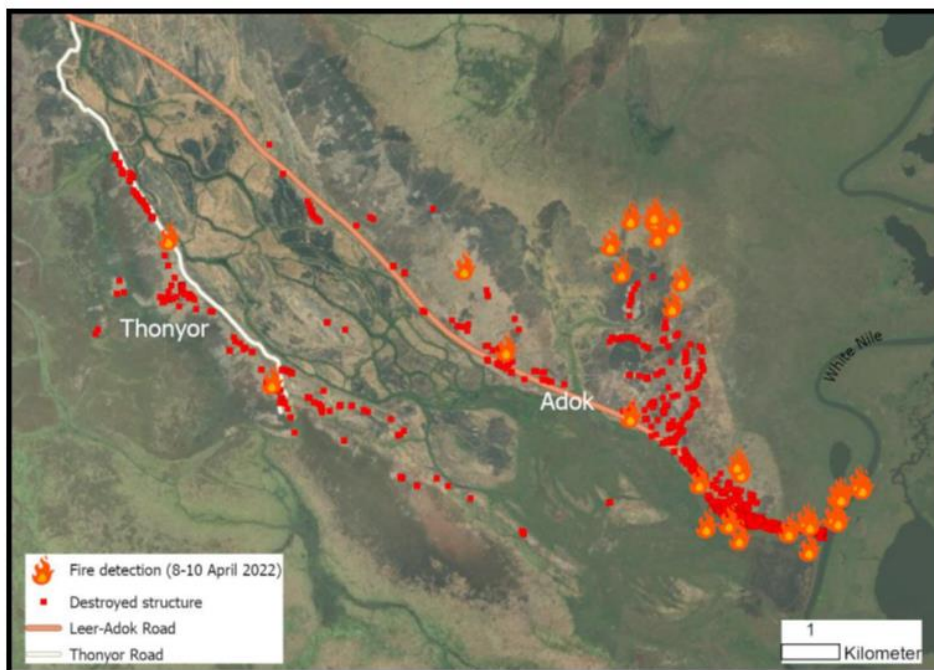
¹²⁸ See A/HRC/45/CRP.3.

¹²⁹ M-100105.



Map: Satellite Detection of Fires in Adok and Thonyor, Unity State (April, 2022)

United Nations Commission on Human Rights in South Sudan



Satellite image analysis established a minimum number of 1,128 destroyed structures in the Adok and Thonyor areas of Unity State (UNOSAT)



Satellite Imagery Analysis: Evidence of Burning in Adok and Thonyor Villages, Unity State

United Nations Commission on Human Rights in South Sudan



102. The realization that their livelihoods had been destroyed weighs heavily on survivors in displacement camps. Nonetheless, people displaced shared with the Commission their desires to return home.

“Some people are returning to their villages and re-building their lives because they do not want to be IDPs (internally displaced persons). People of Leer are proud, they want to provide for themselves and not to rely on handouts”.¹³⁰

“Us displaced people want to rebuild our lives, but we continue to live in fear”¹³¹

103. Multiple survivors and witnesses explained to the Commission that they believed they had been targeted, once again, for being residents of areas associated with the SPLM/A-IO.

“They told us they wanted to punish us because our town supported the IO, and that Leer was the birthplace of Riek Machar.”¹³²

“We believe the armed youths were hired to destroy SPLA-IO areas and clear the SPLA-IO from villages around Leer town. That the armed youths were ordered to destroy, take whatever they wanted, including grabbing women as their wives”¹³³

6. Individual responsibility

104. Evidence gathered by the Commission, and corroborated by credible organizations, identifies several individuals who may bear individual criminal responsibility for serious crimes under domestic law and crimes under international law for acts and omissions in Leer. The Commission has compiled a list of persons of interest that it considers warrant individual investigation with a view to prosecution for their roles in serious crimes perpetrated in southern Unity State in 2022, in the context of or associated with armed conflict and attacks on civilians.

105. The Commission has established that attacks on civilian populations between February and April 2022 were both widespread and systematic, and involved acts constituting crimes against humanity. Crimes against humanity in Leer may include: murder; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty; rape; sexual violence; and persecution. These were widespread as they occurred in villages throughout Leer County over a three-month period. These appeared systematic for having been planned and coordinated, with meetings taking place where the attacks were discussed, followed by the Government-aligned forces moving in the same direction carrying out the same acts in an evidently coordinated manner.

106. In the Commission’s view, international humanitarian law applied to the non-international armed conflict in southern Unity State during the period under scrutiny from January to April 2022. There was protracted and intense confrontation between Government-aligned forces and SPLM/A-IO forces. The parties were clearly identifiable as the Koch forces, Mayendit forces and SPLM/A-IO forces. The Koch and Mayendit forces were each cohesively organized, meeting with identified leaders to plan attacks, receiving organized ammunition distributions to sustain their operations, and launching coordinated attacks characterized by the same tactics and acts. The SPLM/A-IO forces, too, are evidently cohesively organized with a command structure. Witnesses to clashes and survivors of attacks against civilian populations clearly identified each of these armed groups. The Commission established that there is a basis for the investigation and prosecution of the war crimes perpetrated in the context of an armed conflict in southern Unity State in 2022, including, but not limited to: crimes in the draft statute of the Hybrid Court: attacking the civilian population as such/ attacking individual civilians not taking direct part in hostilities; ordering the displacement of the civilian population; destruction and seizure of property;

¹³⁰ 105333-105338.

¹³¹ 105347-105356.

¹³² 105305-105319.

¹³³ 105333-105338.

pillaging; starvation; rape and other forms of sexual violence; attacking personnel or objects involved in humanitarian assistance.¹³⁴

107. Most of the gross human rights violations documented in southern Unity State amount to crimes under the national laws of South Sudan. They include for example the crime of murder and the crime of rape, amongst many others. National law requires effective investigations and prosecutions in line with the Penal Code and the Code of Criminal Procedure, in competent courts exercising jurisdiction. The Commission also notes that the draft statute of the Hybrid Court includes within the jurisdiction of the Court Serious Crimes under the Relevant Laws of South Sudan.¹³⁵

108. In January 2022, Gordon Koang mobilized under his command Koch forces comprised of armed young males from Koch County and soldiers who had defected from the SPLM/A-IO Cantonment at Mirmir in late 2021. As described above, during a meeting held in Mimir on 14 February 2022, with Koch forces and Tahir armed forces from Mayendit (the Mayendit forces), Koang incited attacks against the SPLM/A-IO and violence against the civilian Dok Nuer population of Leer. He then organized a cultural ceremony to form a blood pact between the Koch and Mayendit forces prior to the joint attacks. The Commission received credible reports that Koang arranged for ammunition distributions to Koch and Mayendit forces in early April 2022, before they conducted coordinated attacks targeting civilians. Koang maintained a physical presence at Mirmir from February until at least May 2022, during which time he oversaw the use of food aid stolen from Leer villages to sustain the forces encamped there. Multiple eyewitnesses saw Koang in Mirmir, and heard him ordering the rape of women and girls who had been captured in Leer. The Commission thereby finds that Koang commanded widespread and systematic attacks against civilians by Koch forces, during a campaign connected to an armed conflict, and that many of these acts amount to crimes against humanity and war crimes. The Commission had previously established Gordon Koang's command role in planning and instigating attacks against civilians by militia under his command during the southern Unity State offensive in 2018.¹³⁶ Despite these known findings, in 2021 Unity State Governor Monytil reappointed Koang as the Government's nominee to the post of Koch County Commissioner.

109. Mayendit County Commissioner Gatluack Nyang Hoth was present with Gordon Koang at the meetings in Koch County on 14 February 2022, and the subsequent blood pact ceremony, where Koch and Mayendit forces planned attacks against SPLM/A-IO soldiers and civilian populations of Leer County. Nyang Hoth acted in close coordination with, or in command over, Tahir youth from Mayendit (Mayendit forces) who attacked villages in Leer County during 2022 and brought loot along with captive women and girls to Mirmir. He knew about the planned attacks, and appeared to exercise a superior or command relationship with the Mayendit forces. His role in the attacks, including acts by Mayendit forces amounting to crimes against humanity and war crimes, requires further investigation, given the evidence suggesting his individual responsibility. Like Koang, Nyang Hoth had been appointed as a County Commissioner by Governor Monytil in early 2021.¹³⁷

¹³⁴ See articles 4 and 5.

¹³⁵ Article 6 of the draft statute of the Hybrid Court: 'For the purposes of this Statute, serious crimes under the laws of South Sudan shall include, but not be limited to: a) torture; b) gender-based crimes and sexual violence; c) crimes against children; and d) other serious crimes against persons or property.'

¹³⁶ A Jagei Nuer, Gordon Koang had previously served in the County Commissioner role and at the time of his reinstatement in 2021 he was working in the government in Bentiu. During the civil war, he commanded armed militia from Koch who fought against the SPLM/A-IO and Gojam. The Commission documented his role in several violent campaigns in which civilians were targeted, including during the southern Unity Offensive of April to June 2018, when he was serving as then-Gany County Commissioner. By September 2018, he had been integrated into the SSPDF with the rank of General, and the Commission has established that he still has a command relationship with SSPDF forces. See A/HRC/40/CRP.1, pages 142- 151 and Panel of Experts, 9 April 2019, S/2019/301, page 51.

¹³⁷ A Haak Nuer representing the South Sudan Opposition Alliance (SSOA); this was his first appointment to public office. Gatluack Nyang Hoth was viewed as an outsider, not well-known and not from a military background unlike the other two commissioners. He is not known to have had a history of criminality.

110. Based on evidence collected by the Commission, the Commission also found that the following individuals merit further investigations for their possible roles in criminal acts: Guor Gatkuoth Ruot, deputy Koch County Commissioner and Santino Riek Biel, deputy Mayendit County Commissioner. The Commission also has a list of other individuals, including members of the Koch and Mayendit forces, as well as members of the government and security forces in the southern Unity State area. The Commission also found that SPLM/A-IO members may also warrant investigation for crimes, which may also implicate Government officials.

7. State responsibility

111. Officials in positions of higher authority, including Unity State Governor Monytil, failed to direct lower-ranking members of the armed forces to desist from the attacks, nor did they institute any form of sanction against them for their role in the serious crimes committed. In other words, they failed to prevent or punish the crimes. After the attacks, national authorities, including in the Office of the President, have taken no decisive action whatsoever to call to account lower-ranking Government officials responsible for the human rights violations. Nor have any meaningful steps been taken to improve the situation for the residents of Leer, many of them displaced, who are suffering trauma and acute food insecurity. Not one single public official has been suspended or stood down from their posts, despite responsibility having been attributed to them by multiple credible organizations: the Council of States of South Sudan (the upper house of the Transitional National Legislature) has also noted this inaction.¹³⁸

112. Government officials at County Commissioner-level instigated the violence and gross human rights violations, and they have not faced any known form of censure whatsoever from their superiors. The Governor was aware of the situation but took no genuine action to intervene. In the case of Gordon Koang, Government officials were aware of his past actions, but rewarded rather than punished him for carrying out gross human rights violations and associated crimes. The lack of any form of sanction of government officials known to have perpetrated crimes, as well as violations of the Revitalized Agreement, infers the acceptance, if not support of, their superiors, thereby pointing to their continuing responsibility.

113. The Commission has established that Unity State Governor Joseph Monytil was in contact with the County Commissioners of Koch, Mayendit and Leer as well as local security forces throughout the period in which attacks on Leer County were planned and implemented.¹³⁹ He knew or ought to have known that such attacks would take place in February 2022; he knew that they would be carried out in April 2022. The Commission found no evidence to suggest that Governor Monytil did anything to discourage or prevent ceasefire violations or gross human rights violations. None of the County Commissioners involved have been censured, in any way. Instead, Governor Monytil misleadingly suggested that the conflict was the result of an internal fight within the SPLM/A-IO. It was not until June 2022 that the Governor convened the County Commissioners of Koch, Mayendit and Leer to discuss the situation in southern Unity State. He did so at the urging of UNMISS, and the Commission is unaware of any censure against those officials who appear to be responsible for the violence. All the Governor's appointees remained in post as of early March 2023. The Governor's actions and omissions contributed to the failure of the State to fulfil its obligations under international human rights law, and he himself may also warrant investigation for his superior or command responsibility in relation to the crimes committed.

114. On 13 April 2022, the President of the Republic appointed an Investigation Committee to investigate incidents in Koch, Leer and Mayendit counties. As of early March 2023, no investigations appear to have been conducted, and no prosecutions or trials have been initiated (see further detail regarding this Investigation Committee in section VI(B), below).

¹³⁸ See findings regarding responsibility in section II(B), below.

¹³⁹ Based in the administrative capital Bentiu, Monytil is an SPLM member who has served as the top government official there since 2013, as Governor of Unity State from 2013 to 2015, and as Governor of Northern Leich State from 2015 to February 2020.

115. The SSPDF had infantry companies and a brigade stationed in Koch and Leer counties, respectively, but no soldiers were deployed to protect civilians from prolonged attacks by the Government-aligned Koch and Mayendit forces. SSPDF forces failed to act to protect civilians, and their role in allowing the violence merits further investigation. By contrast, soldiers at the training centre for the necessary unified forces in Muom, including South Sudan People's Defence Forces and SPLM/A-IO soldiers, provided protection to more than 20,000 displaced civilians from Leer. This illustrates the potential for State security forces to protect civilians if transitional security arrangements are implemented meaningfully.

B. Mayom County, Unity State

116. On 8 August 2022, a video shared widely on social media showed three men being shot dead execution-style by a firing squad of soldiers from the SSPDF.¹⁴⁰ A second video and accompanying photos depicted a fourth man detained by SSPDF soldiers, who appears to have been burnt alive inside a tukul (thatched hut).¹⁴¹ The victims were officers of the South Sudan People's Movement/Army (SSPM/A), a non-State armed group.¹⁴²

117. The four victims were killed by SSPDF soldiers in retaliation for a SSPLM/A attack on Mayom Town in the previous month, when members of the SSPLM/A killed members of Government security forces and the Mayom County Commissioner Chuol Gatluack Manime, who was an ally of Unity State Governor Joseph Monytil and the brother of Tut Gatluak, the National Security Adviser to the President.

118. Governor Monytil, who had also been appointed as an SSPDF Lieutenant General by President Kiir in 2015, was among the Government officials and military officers responsible for the military operations that resulted in the extrajudicial killings.¹⁴³ There has been no accountability for the extrajudicial killings despite them being captured on camera. The imagery sent shockwaves across a country which is not unfamiliar with brutal violence.

Image: still captured from the firing squad video



1. Background and context

119. Early in the morning of 22 July 2022, Mayom County Commissioner Chuol Gatluack Manime was killed and his body was reportedly burnt inside his house during an SSPM/A attack on Government buildings and residences in Mayom Town. A document issued by local authorities reported a total of 12 fatalities in the attack, including police, SSPDF soldiers and military intelligence personnel.¹⁴⁴ The attack took place amidst clashes between SSPDF and SSPM/A forces. Later during the day of the attack in Mayom, Governor Monytil travelled

¹⁴⁰ On file.

¹⁴¹ On file.

¹⁴² Also known as the South Sudan Patriotic Movement. SSPM/A Press Release, 8 August 2022.

¹⁴³ The Commission has previously noted that in South Sudan it is commonplace that generals have become governors and governors have become generals, with rank and appointment reflecting loyalty, rather than achievement and conduct. A/HRC/37/CRP.2, para. 263. On Governor Monytil's appointment as a Lieutenant General, see also S/2016/70, para. 32.

¹⁴⁴ Document issued by the Mayom County Executive Director's Office, 22 July 2022, on file.

to the site of the killings, and he had a persistent presence in the area until at least 8 August. At this time, Governor Monytil and other politicians publicly claimed that the SSPM/A forces were using Sudan as an operational base for activities in Unity State.¹⁴⁵

120. The SSPM/A claimed responsibility for the 22 August attack in a press statement on the same day, and characterized the operation as a retaliation to a deadly SSPDF attack on the SSPM/A the day before.¹⁴⁶ Established by Stephen Buay in August 2021, SSPM/A forces operate in parts of Unity and Upper Nile states, under his overall command.¹⁴⁷ The SSPM/A is not a Party to the Revitalized Agreement, nor have they participated in the “Rome” peace talks.¹⁴⁸ Buay is a former SPLA and SSPDF commander from Mayom. He had been ousted from government forces and imprisoned, after running afoul of Governor Monytil and President Kiir, and appeared before a military court in 2019. He was later released. In a media interview on 22 July 2022, Buay was quoted declaring that Manime’s home in Mayom was attacked and destroyed with an RPG (Rocket Propelled Grenade) fired by SSPM/A forces.¹⁴⁹ The story reported in media and elsewhere was that Manime was burnt alive in his house.¹⁵⁰

121. Clashes between SSPM/A and SSPDF forces continued following the 22 July incident.¹⁵¹ Early on 26 July 2022, an SSPM/A ambush on an SSPDF convoy in Mayom County had resulted in scores of fatalities.¹⁵² Later that day, Governor Monytil appeared in the area in military fatigues at a large rally, directing soldiers on the conduct of counter insurgency operations, according to his official Facebook page.¹⁵³

122. On 27 July, SSPDF Mobile Infantry Units attacked several SSPM/A units and captured weapons, according to a press statement issued from SSPDF Headquarters.¹⁵⁴ The statement included assurances from “the leadership of the SSPDF,” including:

“That surgical offensive operations will continue to bring justice [to the] bandits’ field commanders that include, Spiritual Leader Lt. Gen. Gai Macheak, Maj. Gen. Gatluack Majok and their subordinates.”¹⁵⁵

¹⁴⁵ “Mayom County attackers came from Sudan’s direction: Governor,” Sudan Tribune, 22 July 2022. “Lawmaker claims Gen. Buay receiving support from Sudan, threatens war against rebel leader,” 26 July 2022.

¹⁴⁶ SSPM/A Press Release, 22 July 2022, on file. S/2022/884, annex 17. They also threatened to shoot down any aircraft in the area, affecting peacekeeping and humanitarian operations.

¹⁴⁷ “Gen. Stephen Buay abandons Malong, forms new rebel group,” Sudan Post, August 2021, <https://www.sudanspost.com/gen-stephen-buay-abandons-malong-forms-new-rebel-group/>.

¹⁴⁸ The “Rome peace talks” involve several opposition groups not party to the Revitalized Agreement.

¹⁴⁹ “Gen. Buay speaks to Radio Tamazuj after Mayom incident,” Radio Tamazuj, 22 July 2022, <https://radiotamazuj.org/en/news/article/audio-gen-buay-speaks-to-radio-tamazuj-after-mayom-incident>.

¹⁵⁰ While the Commission did not verify these accounts, the narrative itself was to prove significant. See for example: “SSPDF intelligence officer who defected to Buay behind deadly Mayom violence,” Sudan Post, July 2022, <https://www.sudanspost.com/sspdf-intelligence-officer-who-defected-to-buay-behind-deadly-mayom-violence/>.

¹⁵¹ “SSPDF claims it ‘killed 65 rebels’ in Mayom as army declares full offensive,” Eye Radio, 28 July 2022, <https://www.eyeradio.org/sspdf-killed-65-rebels-in-mayom-as-army-wages-war-on-buays-forces/>.

¹⁵² Council of States’ Resolution No. 10/2022, 1.13. See also “Weapons captured by Gen. Buay were taken without army chief’s knowledge – source,” Sudans Post, 2022, <https://www.sudanspost.com/weapons-captured-by-gen-buay-were-taken-without-army-chiefs-knowledge-source/> and “Rebel forces ambush military convoy in Mayom, 22 dead,” Radio Tamazuj, 26 July 2022, <https://www.radiotamazuj.org/en/news/article/rebel-forces-ambush-military-convoy-in-mayom-22-dead>.

¹⁵³ Facebook Post of the Office of the Governor-Unity State Press Unity on 28 July 2022, available at: https://web.facebook.com/permalink.php?story_fbid=pfbid0WQUvs6PcFNrNT3Bsuncbv7AduXyPDKLFFimGS4J1b8G4LeM2oVi9622jFmDKCo8A1&id=100069186190282.

¹⁵⁴ Office of the SSPDF Spokesperson, “Press Statement on Security Situation in Mayom County,” 29 July 2022. On file. See S/2022/884, annex 18.

¹⁵⁵ Office of the SSPDF Spokesperson, “Press Statement on Security Situation in Mayom County,” 29 July 2022. On file. See S/2022/884, annex 18.

123. Soon after County Commissioner Manime's killing, local media quoted Tut Gatluack saying that he would seek peace instead of revenge for the killing of his brother.¹⁵⁶ According to inquiries conducted by the UN Security Council Panel of Experts, around this time senior Sudanese officials visited family members of Tut Gatluack and his deceased brother who reside in Khartoum, and promised they would capture the killers.¹⁵⁷ A Sudanese ministerial delegation travelled to South Sudan to discuss the attack, and on 27 July met President Kiir and Tut Gatluack in the President's Office in Juba.¹⁵⁸

Image: Facebook post of the Office of the President



2. Capture of the victims

124. Two series of photographs showing the capture and transfer of the victims were published in the media and on the official Facebook page of Governor Monytil. They show four males in detention. Three of the men could be verified as victims appearing in the videos: two of the three firing squad victims, and the man in a tukul. Analysis indicates the other male is highly likely to be the third firing squad victim.

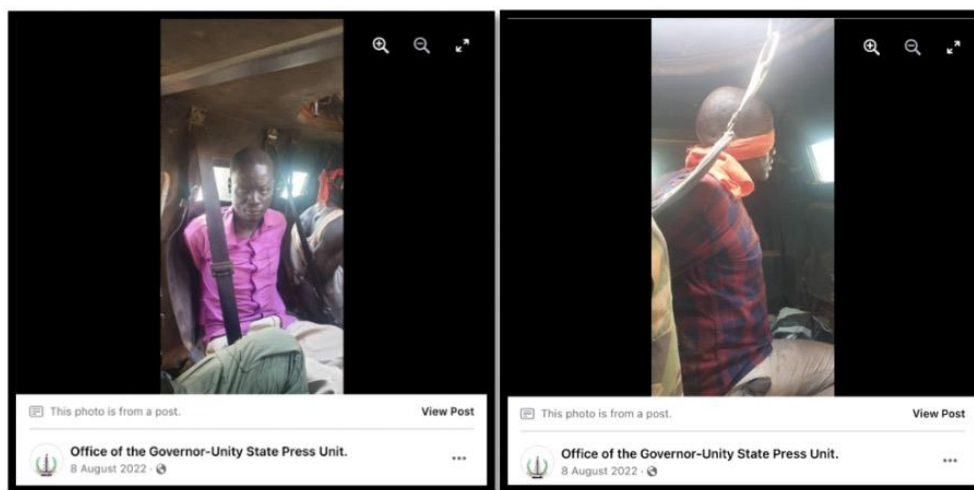
¹⁵⁶ See "Kiir's security advisor Tut Gatluack: I forgive my brother's killers if this will bring peace," Sudans Post, 21 July 2022, <https://www.sudanspost.com/kiirs-security-advisor-tut-gatluack-i-forgive-my-brothers-killers-if-this-will-bring-peace> and "S. Sudan presidential aide rules out quitting over brother's death," Sudan Tribune, 25 July 2022, <https://sudantribune.com/article261860/>.

¹⁵⁷ S/2022/884, para. 31. Manime's brother Tut Gatluack has particularly strong connections to Sudan. There is an extensive catalogue of publicly available literature and social media content affirming Gatluack's close historical and contemporary connections to Khartoum, including to Sudanese officials and South Sudanese family there. In 2022 alone he frequently travelled to and spent time in Sudan, and was a key player in bilateral government meetings. He is known to act as a conduit for negotiations and the relay of messages between President Kiir and top Sudanese officials. See for example, SSBC evening news broadcast, "Sudan and South Sudan have vowed to implement peace agreements signed with different armed and non-armed-political groups," 19 September 2022.

¹⁵⁸ Facebook Post of the Office of the President – South Sudan on 27 July 2022 (see the screen capture), available at: [https://www.facebook.com/StateHouseJ1/posts/pfbid028RZj9LZ44yNr9wN4uSX9s9SfUr5vhzE4rimNazEchXDLbcPq6uLn9G96Ho5UfP841?__cft__\[0\]=AZWzOVLpmOesLNA43NMmwbyoKKaULAZV LuS7eTvJDDxYxBIL8hUjrL6z0lu00BbqNUWJtfN2BBNMTaCEBI62BjqXpKcSMfnPgoPd2AHg2A1hi-SjXA7lqvG4WHw1QhELfIoq7vGUqxCNxKcii0gbdEo6uHgA9CJr3J_PuTOPJDs4Ek1vY7rikG4IjN1SyrddzzWf9aAUpfXITUuwp0qO7u7&__tn__=%2CO%2CP-R](https://www.facebook.com/StateHouseJ1/posts/pfbid028RZj9LZ44yNr9wN4uSX9s9SfUr5vhzE4rimNazEchXDLbcPq6uLn9G96Ho5UfP841?__cft__[0]=AZWzOVLpmOesLNA43NMmwbyoKKaULAZV LuS7eTvJDDxYxBIL8hUjrL6z0lu00BbqNUWJtfN2BBNMTaCEBI62BjqXpKcSMfnPgoPd2AHg2A1hi-SjXA7lqvG4WHw1QhELfIoq7vGUqxCNxKcii0gbdEo6uHgA9CJr3J_PuTOPJDs4Ek1vY7rikG4IjN1SyrddzzWf9aAUpfXITUuwp0qO7u7&__tn__=%2CO%2CP-R).

125. The first series of photographs was published in media.¹⁵⁹ Four men are held in the back of pickup trucks in the presence of soldiers, with their hands bound behind their backs. Two sit on the tray of a white pickup truck; the other two sit on the tray of an army-green pickup truck.¹⁶⁰ The Commission verified that the four males were at the time in the custody of soldiers from Sudan, who also appear in the photos. Sudan's flag is in view on the uniform of a soldier who appears to be higher ranked than others. These soldiers were reported as including members of Sudan's Rapid Support Forces, including by the UN Panel of Experts.¹⁶¹ The Panel found that 11 SSPM/A soldiers had been located by the Rapid Support Forces, of whom seven were killed in Sudan, and the other four detained.¹⁶²

Image: Facebook posts of the Office of the Governor-Unity State Press Unit



126. The second series of photographs was published on the Facebook page of Governor Monytil's offices on the morning of 8 August.¹⁶³ In these photographs, the same four men have changed vehicle, and appear to be sitting inside a closed-top military vehicle. Each has their hands bound behind their back, and two appear blindfolded.¹⁶⁴ The photographs on Facebook are attached to a press release dated 8 August 2022 from the Office of the Governor, entitled "The Arrest of four key Criminals Commanders Loyal to Stephen Buay Rolnyang on 6th August 2022." A press release attributed to the SSPM/A, issued that same day, condemned the execution of "three SSPM/A senior officers."¹⁶⁵

3. Video recording of the firing squad

127. In the firing squad video, three adult males in civilian clothing sit closely together on the ground, in an open field surrounded by large trees. They are crudely blindfolded and appear to be untied. Analysis conducted by the Commission established the presence of at least 21 males in addition to the three victims. Of these, 16 are dressed in various military uniforms, including SSPDF soldiers armed with AK-47 assault rifles, and three unarmed

¹⁵⁹ See for example: "South Sudan executes rebels deported from Sudan: sources," Sudan Tribune, 8 August 2022, <https://sudantribune.com/article262520/> and "Sudan hands over 3 rebel officers to Kiir," Sudans Post, August 2022, <https://www.sudanspost.com/sudan-hands-over-3-rebel-officers-to-kiir>.

¹⁶⁰ In one image seen by the Commission, two of the men are also lying down on their sides, immobilized.

¹⁶¹ S/2022/884, para. 43 and annex 20.

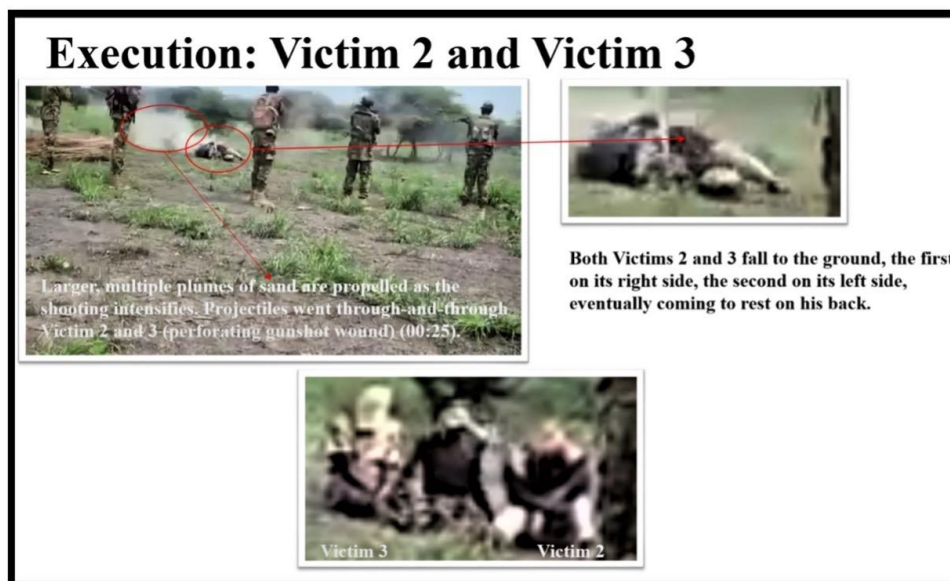
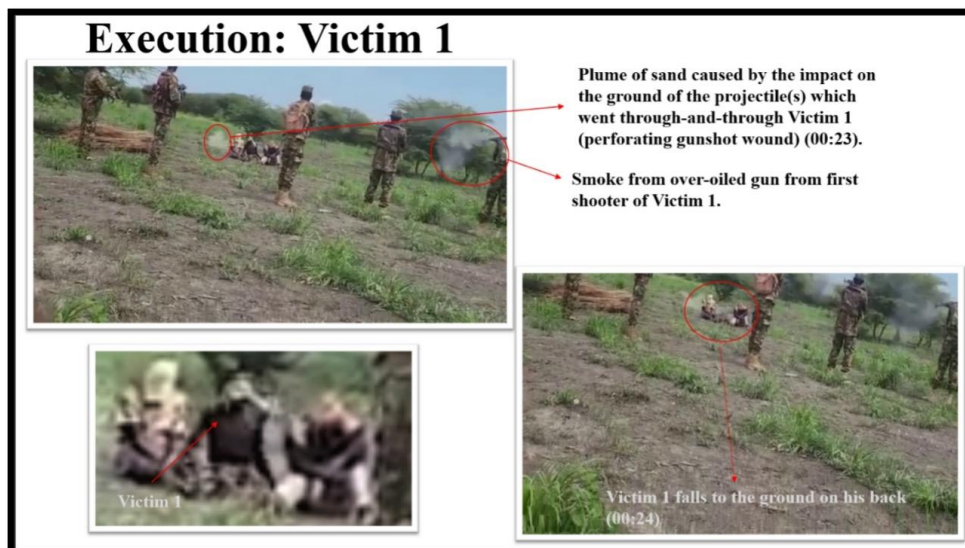
¹⁶² Ibid.

¹⁶³ Facebook post of the Office of the Governor-Unity State Press Unity on 8 August 2022 (see the screen capture), available at: [https://web.facebook.com/permalink.php?story_fbid=pfbid0FrHeMEee7bQHbgd3Guytas8VRVGQXWQGePdZ5sU9KPTqNxiJtzC3XLodQdhVAjbl&id=100069186190282&__cft__\[0\]=AZUyPmu_v_jnSuN0rwt6oy5EOqYEd0FrXPO4wTWXUA3nIqxNw4jR_ylnXvMBGmSpfqiHa-jEynn7TZwPl50g4vrIYK7WAUr-rSrU7FhBwKwIQ_i9iayalp_F08jxsQt319okO7Wc8oop9QH9-uq-Gv9AWypaNMpd5GkDa_uCmRfkbDECTFiU3xfTKTDKmemA&__tn__=%2CO%2CP-R](https://web.facebook.com/permalink.php?story_fbid=pfbid0FrHeMEee7bQHbgd3Guytas8VRVGQXWQGePdZ5sU9KPTqNxiJtzC3XLodQdhVAjbl&id=100069186190282&__cft__[0]=AZUyPmu_v_jnSuN0rwt6oy5EOqYEd0FrXPO4wTWXUA3nIqxNw4jR_ylnXvMBGmSpfqiHa-jEynn7TZwPl50g4vrIYK7WAUr-rSrU7FhBwKwIQ_i9iayalp_F08jxsQt319okO7Wc8oop9QH9-uq-Gv9AWypaNMpd5GkDa_uCmRfkbDECTFiU3xfTKTDKmemA&__tn__=%2CO%2CP-R).

¹⁶⁴ Note the upper garment of two of the men have been swapped in between the two photograph series being taken.

¹⁶⁵ On file, 8 August 2022.

soldiers seeming to be of higher rank.¹⁶⁶ A man dressed in blue appears to be a policeman. Three men dressed in civilian clothing are observed mingling amongst the soldiers, walking around the scene, and issuing instructions. Their demeanour and actions strongly suggest that they are not civilians; one who is holding a stick stands out as having considerable authority. The man holding the recording device also appears to be in a commanding or supervisory role, as he gives orders, and is taking the incriminating video.



128. At least eight soldiers line up in a row to form the firing squad, where they stand to attention in military formation with rifles by their right side. A commander is heard giving orders in Arabic to prepare their weapons (at 00:15 seconds of the 47 second video). In synchronized fashion, the soldiers bring their rifles to the left side of their body, before raising them, cocking them, and taking aim. All members of the squad then open fire in the direction of the three adult males. The shooting lasts for ten seconds (00:23-00:33), with each soldier in view emptying their magazine.¹⁶⁷

129. The victim in the centre is the first to fall, with a plume of sand indicating that a gunshot perforated through his body. Larger, multiple plumes of sand are propelled as the

¹⁶⁶ Several variants of the AK-47 are present, including the Chinese-made Norinco Type 56.

¹⁶⁷ Soldier 1 fires at least 7 rounds; soldier 2, at least 8; soldier 3, at least 7; soldier 4, at least 8; soldier 5, at least 8. Soldiers 6, 7 and 8 are not fully visible so the number of rounds fired by them cannot be precisely determined. The Commission's analysis found that if soldiers 6, 7 and 8 also emptied their magazines, a minimum total of 65 rounds were discharged toward the three victims.

shooting intensifies, and the bodies of the second and third victims are perforated by gunshots from the firing squad. The victim on the right side of the firing squad falls second, followed by the victim on the left side. When the firing concludes, one of the men in civilian clothing snatches a soldier's rifle, possibly to inspect if the magazine is empty. Many of the shots had missed their targets, and at this point several members of the group appear to realize that one of the victims may still be alive. A military officer begins to give an order, pointing with a stick in the victims' direction. A soldier wearing a light red beret is seen and heard loading a round into the chamber of his AK-47 rifle and walking toward the victims. The man in blue who appears to be a policeman seems to do the same. As the camera points to the ground, a single shot is heard at 00:46 seconds. It is very likely that this was a final execution shot. The video ends at 00:47 seconds. The evidence strongly suggests that these three victims suffered multiple fatal gunshot wounds, which wounded multiple vital organs.

4. Video and imagery of a victim's immobilization and apparent immolation

130. The related video shows Majok sitting on the ground inside a tukul. He is being tied up by soldiers who are in dialogue with him and discussing burning him alive. The footage was shared accompanied by photos of a tukul that has been burned down.

131. In the video, two soldiers in military uniform are clearly in view, while a third soldier holds the recording device, filming.¹⁶⁸ One soldier focuses on immobilizing the captive. Although the captive is already bound with handcuffs, his arms are also tied to his legs with a strap, which is more than would be required if the sole intention were to prevent an escape. The other soldier in clear view is holding one, and then two, mobile phones close to the left side of the captive's face. The manner in which he holds the phones suggests there are people on the other end of the lines who are listening and even participating in the dialogue. The man holding the recording device orders the soldiers to tie the captive's legs with rope, inferring that the rope will burn in fire. He says the captive had killed great men from his clan, and he says that he had come to the area by plane, which suggests he was on an important mission. These statements and the act of recording itself suggest that the man with the device is in an authority position, and, as noted, is on a mission of importance.

Image: still captured from the immobilization video, and related photograph



132. Despite being taunted and facing death, the captive remains defiant throughout the video. He makes jokes about his captors and accuses them of taking bribes. He asks if they are undertaking an act of revenge, and queries if they are acting independently or on Government orders. The captive warns that his men will kill each of his captors. It seems that they may already be familiar with each other. The recording concludes at two minutes and fifty-five seconds, with the captive and soldiers still inside the tukul. After being taunted and humiliated, Majok was apparently left to perish in the burning hut.

¹⁶⁸ A fourth soldier, unidentified, is seen entering the tukul in the final seconds of the video.

133. Through opensource analysis, the Commission identified photographs that were taken in front of the same tukul prior to and following the video recording. One photo shows a captor standing over the sitting captive; another shows a soldier adding dry grass to the burning tukul.¹⁶⁹ Widespread reporting suggests that the captors burnt the captive alive in the tukul that day. The Commission found nothing to indicate these reports are incorrect, and notes that the authorities have not denied this version of events. This method of killing may explain the excessive immobilization of the captive in both handcuffs and straps. The method of his apparent killing in fire resembled the way the Mayom County Commissioner had reportedly died, indicating that this was a revenge killing.

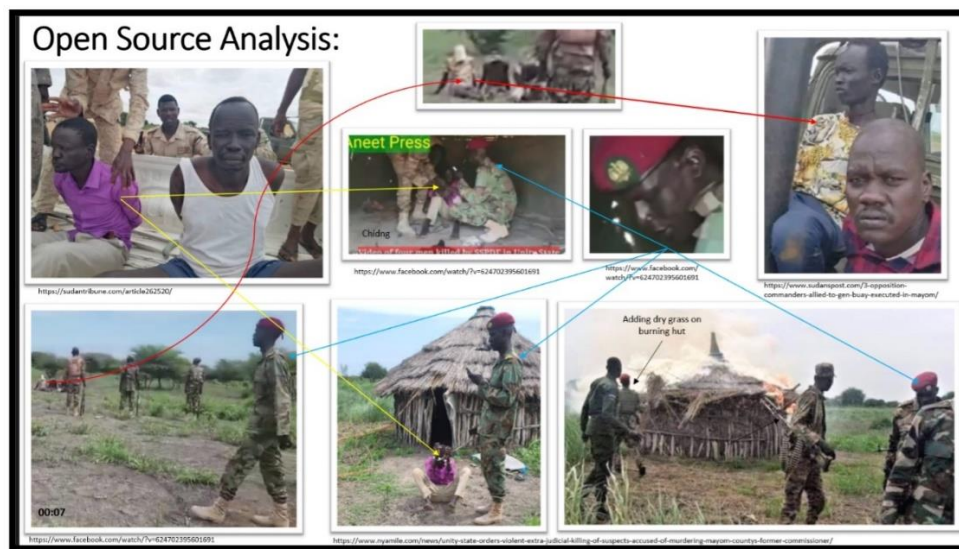
5. Findings on video and photographic documentation

134. The authenticity of the videos and accompanying photographs have not been challenged, and the responses from the State authorities indicate acceptance that the detention, transfer and killings took place.¹⁷⁰ Nothing was found to counter information that the victims were detained in Sudan on 6 August 2022 by Sudanese security forces and transferred across the border into the custody of South Sudanese security forces.

135. The videos and photographs of the capture, transfer and extrajudicial killings of the SSPM/A officers were clearly filmed openly with the knowledge of the perpetrators. This suggests that members of armed forces believed that they would not face justice for carrying out such crimes, indicating that the acts have been sanctioned by the authorities. It is unclear how or why the videos entered the public domain, and so quickly after the acts. The purpose of filming is also unclear, but is consistent with the objective of recording proof of acts that may have been ordered by individuals not present at the site.

136. The video of Majock being tied up in the tukul shows that there were individuals who were communicating with the soldiers as well as the victim at the time, seen by the appearance of two telephones being used in the scene, with which the soldiers appear to be talking to people elsewhere, and facilitating conversation between those at the other end of the phoneline with the victim.

Graphic: Opensource Analysis by the Commission on Human Rights in South Sudan



137. The Commission concluded through image comparison that two of the three firing squad victims are captives seen in the photographs with Sudanese security forces and then, later, with South Sudanese security forces. Available information strongly suggests the firing

¹⁶⁹ On file. See also "Unity State orders violent extra-judicial killing of suspects accused of murdering Mayom county's former commissioner," Nyamilepedia, 8 August 2022, available at: <https://www.nyamile.com/news/unity-state-orders-violent-extra-judicial-killing-of-suspects-accused-of-murdering-mayom-countys-former-commissioner/>.

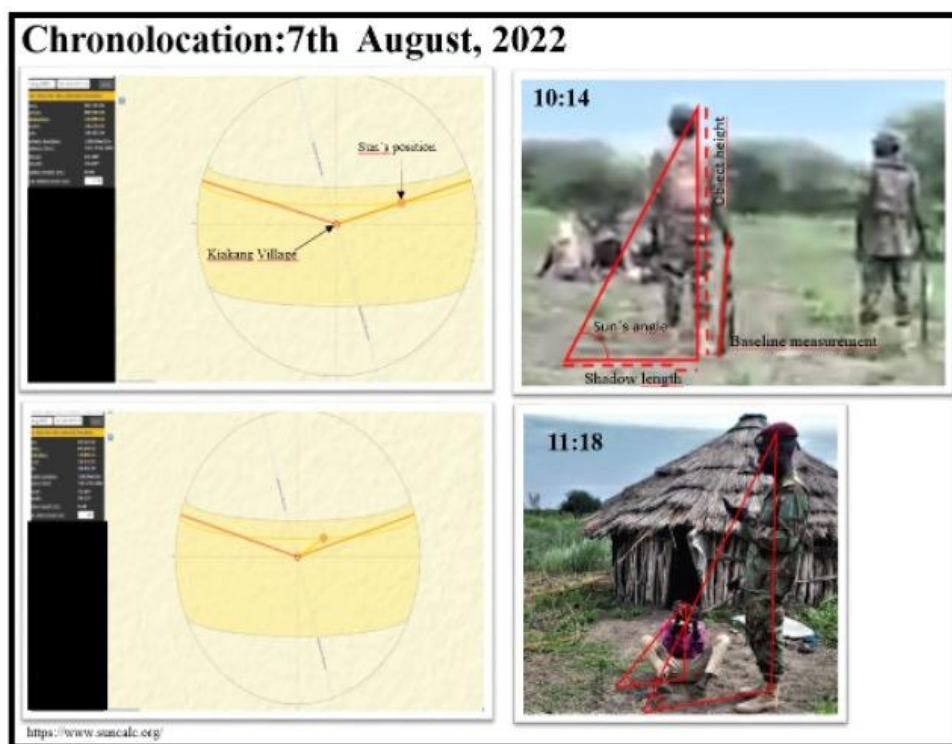
¹⁷⁰ This includes statements from the SSPDF Headquarters, the Minister of Defence, the Council of States and the Office of the President between August and September 2022.

squad's third victim also appeared as a captive in these photos, but this could not be verified due to the limited image quality and available perspectives in the video. Their names have been published in media and UN reporting, but these have not been verified by the Commission.¹⁷¹

138. Majok was the victim of the immobilization and apparent immolation in the tukul. He is also identifiable as a captive in the photographs with Sudanese security forces, South Sudanese security forces, and in the video taken inside the tukul. As noted above, Majok had been accused of leading the SSPLM/A attack that killed County Commissioner Manime in Mayom on 22 July, including in the SSPDF's statement of 29 July (see above). Given that he had been identified as leading the attack, his special treatment involving the burning of the tukul makes sense. He could have been executed by firing squad with the other victims. Instead, he was taunted, humiliated and tortured, then apparently left tied up to perish in the burning tukul. This is consistent with the characteristics of a revenge killing.

139. The Commission established with reasonable grounds to believe that the two videos were filmed in the morning of 7 August 2022, in the area of Kiakang Village in Mayom County, which is located around 43 kilometres south of the Sudan border. The firing squad is estimated to have taken place at around 10:14. The immobilization outside and then inside the tukul took place after, from around 11:18. Available information strongly suggests that the immobilized victim was subsequently burnt alive in the tukul that is in the video and photographs. Several soldiers are seen present at both events; as noted above, there is an SSPDF base in this area, where high ranking officials were present. These findings were made using chronolocation, geolocation and extensive advanced opensource analysis.¹⁷²

Graphic: Chronolocation by the Commission on Human Rights in South Sudan



¹⁷¹ See S/2022/884, para. 43. See also for example “Government summarily executed 3 rebel officers in Mayom”: SSPM/A,” Radio Tamazuj, 8 August 2022, <https://radiotamazuj.org/en/news/article/government-summarily-executed-3-rebel-officers-in-mayom-sspm-a>.

¹⁷² Although metadata was not available in the video recordings received by the Commission because it had been stripped by the social media platforms used to share them, through an extensive opensource review, and the use of trigonometry and calculation software, the approximate location could be established.

6. Individual responsibility

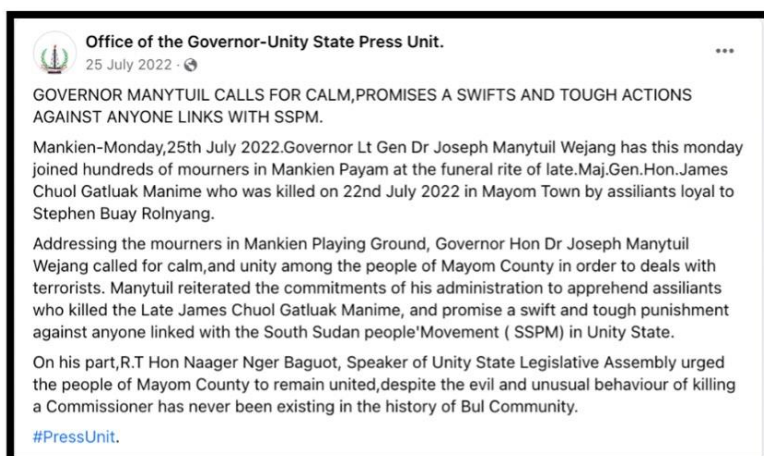
140. The Commission found that individual responsibility for the revenge killings is shared by multiple public officials and military officers, including senior personnel. It is also significant that the deaths were caused by actions of the State while the individuals were being detained by its agents. The killings thereby invoke both individual criminal responsibility for crimes and State responsibility for violations of international human rights law. These serious crimes and the violations of the State's international law obligations remain unaddressed.

141. The extrajudicial killings in Mayom give rise to various crimes and modes of individual criminal liability under the domestic laws of South Sudan. These include the crime of murder in the Penal Code. The draft statute of the Hybrid Court for South Sudan also includes within its jurisdiction serious crimes under the relevant laws of South Sudan, including torture and other serious crimes against persons or property.¹⁷³

142. Overall, the Commission established the presence of 21 individuals in the firing squad video. Many of them were readily identifiable or carry a high likelihood of identification if a dedicated competent investigation were to be conducted. Some of these individuals were identified at the scene of the firing squad and the tukul immobilization and immolation. There is also information to indicate the involvement of individuals who were not present at the crime scenes. For example, the cross-border coordination of the capture of the four victims, and the lack of accountability or higher-level Government intervention, suggest the involvement of individuals with capacity and connections to implement a plan that has a transboundary nature. Separately, acts by SSPM/A members, including killings during the attack on Mayom Town on 22 July 2022, may also amount to crimes warranting independent investigations.

143. In line with its mandate from the UN Human Rights Council,¹⁷⁴ the Commission has compiled a non-exhaustive list of persons of interest that it considers warrant individual investigation for their roles in serious crimes perpetrated in Mayom. These names include individuals present at the crime scenes. The list also includes individuals who may not have been physically present but may bear other forms of individual criminal liability. This list of names and the related evidence forms part of the Commission's archives, which are preserved for purposes of criminal accountability. Given the need to address the prevailing impunity enjoyed by senior members of Government and military in South Sudan, the Commission decided to publicly name two key individuals who are included in its list of alleged perpetrators of the crimes in Mayom.

Image: Facebook posts of the Office of the Governor-Unity State Press Unit



¹⁷³ Article 6.

¹⁷⁴ Human Rights Council resolution 46/23, para. 25 (b) and resolution 49/2, paras. 8-10.

144. Unity State Governor Joseph Monytil at least in part directed the military operations against the SSPM/A and persons associated with the group, including by giving direct orders to soldiers in the Mayom area while in military fatigues. Statements about apprehending SSPM/A members “dead or alive” and calls for “swift and tough punishment” contributed to a sanctioned or permissive environment for the killings. At best, the Governor knew or ought to have known that SSPDF soldiers there would carry out extrajudicial killings; at worst, he instigated or ordered them. It is well understood that Governor Monytil yields significant political authority in Unity State, having been the Governor in various incarnations for most of the period of South Sudan’s independence. As noted above, he is also a Lieutenant General appointed by President Kiir, and his speech and directives are to be understood and received in this context, including by soldiers.

145. After travelling to Mayom on 22 July, Governor Monytil appeared at gatherings and rallies in different parts of the county over the course of the next week.¹⁷⁵ On 25 July 2022, he addressed a gathering and pledged “swift and tough punishment against anyone linked with the (SSPM/A).”¹⁷⁶ On 26 July he appeared in military fatigues addressing a large group of soldiers, “giving directives to the counter insurgency force,” according to an official Facebook post.¹⁷⁷ At the time, media quoted the Governor instructing soldiers to “bring him dead or alive,” SSPM/A members.¹⁷⁸

Image: Facebook posts of the Office of the Governor-Unity State Press Unit



¹⁷⁵ Facebook Post of the Office of the Governor-Unity State Press Unity on 22 July 2022, available at: https://web.facebook.com/permalink.php?story_fbid=pfbid02e9zRtXG1fhn1qFrSTGjqzx2wYkyLMumT1gSKX4xJaRbDWLgc9TJGpcQEQFk6xGKtl&id=100069186190282.

¹⁷⁶ A reported by the Governor’s press unit. Facebook Post of the Office of the Governor-Unity State Press Unity on 25 July 2022 (see the screen capture), available at: [https://web.facebook.com/permalink.php?story_fbid=pfbid0pbEUZDyrbx4ez5NtfqrpS6P4HtB6XFidqCYquF5vEWxGAy6diEuibNKvPNGhcvxil&id=100069186190282&__cft__\[0\]=AZUWr47DtbA0LRCOpSlaoE2n2wkgFakJ0jOj1rReh4tzm8o7qkcOA9RNJFnop5TdiVzCX-h7Q7Xi5-TXeOnS2dmXlyd4SekWnuPpLDKIMUVZUw-H5p39R4puIvUyeSTwkvK1_2bogMoUrAazInigxNC5QF4rRTH5grGQdcKCZWYw73OiuTF9PXbn2StcI5o&__tn__=%2CO%2CP-R](https://web.facebook.com/permalink.php?story_fbid=pfbid0pbEUZDyrbx4ez5NtfqrpS6P4HtB6XFidqCYquF5vEWxGAy6diEuibNKvPNGhcvxil&id=100069186190282&__cft__[0]=AZUWr47DtbA0LRCOpSlaoE2n2wkgFakJ0jOj1rReh4tzm8o7qkcOA9RNJFnop5TdiVzCX-h7Q7Xi5-TXeOnS2dmXlyd4SekWnuPpLDKIMUVZUw-H5p39R4puIvUyeSTwkvK1_2bogMoUrAazInigxNC5QF4rRTH5grGQdcKCZWYw73OiuTF9PXbn2StcI5o&__tn__=%2CO%2CP-R).

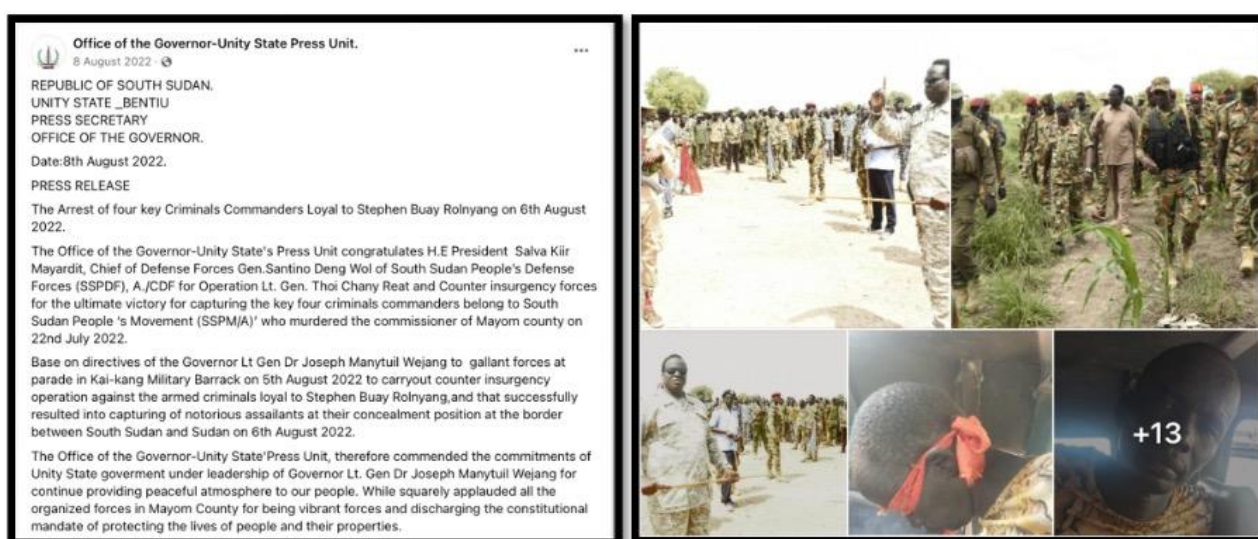
¹⁷⁷ Facebook Post of the Office of the Governor-Unity State Press Unity on 28 July 2022 (see the screen capture), available at: https://web.facebook.com/permalink.php?story_fbid=pfbid0WQUvs6PcFNrNT3Bsuncbv7AduXyPDKLFFimGS4J1b8G4LeM2oVi9622jFmDKCo8A1&id=100069186190282.

¹⁷⁸ ““Bring him dead or alive”: Unity State governor orders manhunt for Gen. Buay,” Sudans Post, July 2022, <https://www.sudanspost.com/bring-him-dead-or-alive-unity-state-governor-orders-manhunt-for-gen-buay/>.

146. The whereabouts of Governor Monytil are unclear on 7 August, when the killings took place. He is known to have been at the SSPDF barracks in Kaikang Village, where the killings were to take place, on 5 August.¹⁷⁹ Three days later, on 8 August, he was in southern Mayom County, chairing a meeting of administrators and chiefs in Mankien.¹⁸⁰ In a 15-page written response to a letter from the UN Panel of Experts on South Sudan, Governor Monytil emphatically stated that he could not have been at the scene of a crime on 8 August 2022 because he was in Mankien; his whereabouts on 7 August however, which is when the Commission has determined the killings most likely took place, remains unexplained.¹⁸¹

147. As noted above, at 08:55 on 8 August a press release was issued by the office of Governor Monytil, applauding the capture of the victims and taking credit for involvement in the operation (no reference was made here to their ultimate fate).¹⁸² The press release was accompanied by 17 photographs. Of these, six photographs feature the victims in captivity. Eleven photographs show Monytil walking around with soldiers, including two where he is inspecting what appears to be a rudimentary gravesite. In most photographs, Monytil is gesticulating or otherwise commanding attention.

Image: Facebook posts of the Office of the Governor-Unity State Press Unit



148. The post welcomed and endorsed the capture of the four victims, in fact attributing to the Governor credit for involvement in their capture. Governor Monytil has so far said nothing to condemn the killings, nor has he taken any disciplinary or other action to punish

¹⁷⁹ Facebook post of the Office of the Governor-Unity State Press Unit on 5 August 2022, available at: [https://web.facebook.com/permalink.php?story_fbid=pfbid0HPWg6pGWbG9r75f6p7u6LkNWkr5dUzCS23dZ3JPNYRDQ5qVpHQYb8KXdxjmHbzE7Cl&id=100069186190282&__cft__\[0\]=AZWAX9QOz-Mfn0mV8qJZ1gupnHBdTBtY6ditSXBDOxgSldZXE-dllsG3XiHM-EKED2KntqfYxzdTqqEMx6gK20YFHJ-o2LXJTXMEqw-bghkGwee-DRUfawehqxLIN1tvmdP1g_x7lbL7kvPeiXhuF3V__ifDF4mPod0TrZmuB71YntO-YiQ50fqN2gRAK-gMSIM&__tn__=%2CO%2CP-R](https://web.facebook.com/permalink.php?story_fbid=pfbid0HPWg6pGWbG9r75f6p7u6LkNWkr5dUzCS23dZ3JPNYRDQ5qVpHQYb8KXdxjmHbzE7Cl&id=100069186190282&__cft__[0]=AZWAX9QOz-Mfn0mV8qJZ1gupnHBdTBtY6ditSXBDOxgSldZXE-dllsG3XiHM-EKED2KntqfYxzdTqqEMx6gK20YFHJ-o2LXJTXMEqw-bghkGwee-DRUfawehqxLIN1tvmdP1g_x7lbL7kvPeiXhuF3V__ifDF4mPod0TrZmuB71YntO-YiQ50fqN2gRAK-gMSIM&__tn__=%2CO%2CP-R).

¹⁸⁰ Facebook Post of the Office of the Governor-Unity State Press Unity on 9 August 2022, available at: [https://web.facebook.com/permalink.php?story_fbid=pfbid02TgnJdDetFeuvBXzzKcS5h2hJ3zg4YzK3aY68fkjpuBRJd5sgfdGFpn64GitZfVD2l&id=100069186190282&__cft__\[0\]=AZX4IwB4WndMi_Xfy7TThc78LrDcQEZYFnyzzMPFD7xd4fnZZ1z6YrWHxbBrXPkOW-ByLLCrxzGJuKWSAj3ruxStXZt0NluvDEhnKD85gU9Ueo2p9JT8hz4OvCtO1rKXvOkGtmTlpIME5E SIV6mvh8uGXu8QGK_WuLo1HGOTC5Wapr3vXp-JFTUM1K_IFvbrk0w&__tn__=%2CO%2CP-R](https://web.facebook.com/permalink.php?story_fbid=pfbid02TgnJdDetFeuvBXzzKcS5h2hJ3zg4YzK3aY68fkjpuBRJd5sgfdGFpn64GitZfVD2l&id=100069186190282&__cft__[0]=AZX4IwB4WndMi_Xfy7TThc78LrDcQEZYFnyzzMPFD7xd4fnZZ1z6YrWHxbBrXPkOW-ByLLCrxzGJuKWSAj3ruxStXZt0NluvDEhnKD85gU9Ueo2p9JT8hz4OvCtO1rKXvOkGtmTlpIME5E SIV6mvh8uGXu8QGK_WuLo1HGOTC5Wapr3vXp-JFTUM1K_IFvbrk0w&__tn__=%2CO%2CP-R). See also S/2022/884, pp. 74.

¹⁸¹ S/2022/884, annex 28.

¹⁸² Facebook Post of the Office of the Governor-Unity State Press Unit on 8 August 2022 (see the screen capture), available at: [https://web.facebook.com/permalink.php?story_fbid=pfbid0FrHeMEee7bQHbgd3Guytas8VRVGQXWQGePdZ5sU9KPTqNxiJtzC3XLodQdhVAjbl&id=100069186190282&__cft__\[0\]=AZUyPmu_v_jnSuN0rwtk6oy5EOqYEd0FrXPO4wTWXUA3nIqxNw4jR_ylnXvMBGmSpfqiHa-jEynn7TZwPl50g4vrlYK7WAU-rSrU7FhBwKwIQ_i9iayalp_F08jxsQt319okO7Wc8oop9QH9-uq-Gv9AWypaNMpd5GkDa_uCmRfkbECTFilU3xfTKTDKmemA&__tn__=%2CO%2CP-R](https://web.facebook.com/permalink.php?story_fbid=pfbid0FrHeMEee7bQHbgd3Guytas8VRVGQXWQGePdZ5sU9KPTqNxiJtzC3XLodQdhVAjbl&id=100069186190282&__cft__[0]=AZUyPmu_v_jnSuN0rwtk6oy5EOqYEd0FrXPO4wTWXUA3nIqxNw4jR_ylnXvMBGmSpfqiHa-jEynn7TZwPl50g4vrlYK7WAU-rSrU7FhBwKwIQ_i9iayalp_F08jxsQt319okO7Wc8oop9QH9-uq-Gv9AWypaNMpd5GkDa_uCmRfkbECTFilU3xfTKTDKmemA&__tn__=%2CO%2CP-R).

these crimes. In contrast, Governor Monytil was quick to condemn violence in selected other contexts in 2022,¹⁸³ and he also selectively punished subordinate public officials for transgressions during the year, although these did not include addressing the responsibility of County Commissioners for the attacks against civilians in Leer County, detailed above.¹⁸⁴

149. The Commission has also established that Unity State Governor Joseph Monytil played a role in SSPDF military operations against SSPM/A forces between late July and early August 2022, and the Commission has reasonable grounds to believe that he bears responsibility for the extrajudicial killings of the four individuals associated with the SSPM/A. The President should immediately remove Governor Monytil from public office, and a truly credible and independent investigation should be initiated, with a view to establishing responsibility.

150. In addition to Governor Monytil, Assistant Chief for Operations of the SSPDF, Lieutenant General Thoi Chany Reat, was specially deployed from Headquarters at Bilpam, Juba following the deadly SSPM/A attack in Mayom on 22 July 2022.¹⁸⁵ He is known to have been present in Kaikang on 5 August 2022, two days before the date of the extrajudicial killings, as he is photographed together with Governor Monytil and other senior SSPDF officers.¹⁸⁶ It is significant that the site of the extrajudicial killings is in close proximity to the SSPDF base in Kaikang where Lt. General Thoi Chany Reat was seen two days before with Governor Monytil. As the most senior military officer present around the time of the extrajudicial killings, the Commission has reasonable grounds to believe that Lt. General Thoi Chany Reat either ordered, or failed to prevent or punish, crimes by soldiers under his command and effective control and therefore he too may be responsible, and should be investigated.

7. State responsibility

151. The Commission found that the planning of, implementation of, and lack of accountability for the extrajudicial killings by State organs are gross violations of the State's obligations under international law to respect and protect the right to life. Unlawful killings by State agents, including its security forces, constitute gross violations of the State's international human rights law obligations to respect the right to life. Under international human rights law, persons accused of crimes have the right to a fair trial, and protection from arbitrary deprivations of life; these rights continue to apply in conflict situations. Moreover, in addition, under international humanitarian law, executions without a proper court affording judicial guarantees for fair trial rights constitute war crimes, including under the draft statute of the Hybrid Court.¹⁸⁷ The failure to effectively investigate, prosecute and punish these acts are further violations of the State's obligations under international human rights law.

152. When the firing squad video emerged on 8 August 2022, it was recognized by a range of State agents. The SSPDF Headquarters promptly acknowledged the extrajudicial killings

¹⁸³ For example, Governor Monytil issued condemnation letters about attacks on civilians in Warrap State, on 18 and 20 May. See for example Facebook Post of the Office of the Governor-Unity State Press Unit on 18 May 2022, available at:

[https://web.facebook.com/permalink.php?story_fbid=pfbid0ib5nMNwQGQyjah6cUug8Bk8Wsp6nEAhxa3TSjCBcQmtcGcHRNF8UEjaaW69gWZmYl&id=100069186190282&__cft__\[0\]=AZW4EOCedfLpNS3HNgwF1m5_p8RXOKcIwcRPZkJOtwkHrCYUQcgp4Ia3LdPUR1jPvAD_hrsElrJf4TzaOhPZ8HFKNzZvUMNJBjEYAgOLEygdWlkgVgU7O3M1YAZWoE9KBR_95t3PnlboZ-EXnG3KCT3RDZHlyaPrGCEilRIVXgQ&__tn__=%2CO%2CP-R](https://web.facebook.com/permalink.php?story_fbid=pfbid0ib5nMNwQGQyjah6cUug8Bk8Wsp6nEAhxa3TSjCBcQmtcGcHRNF8UEjaaW69gWZmYl&id=100069186190282&__cft__[0]=AZW4EOCedfLpNS3HNgwF1m5_p8RXOKcIwcRPZkJOtwkHrCYUQcgp4Ia3LdPUR1jPvAD_hrsElrJf4TzaOhPZ8HFKNzZvUMNJBjEYAgOLEygdWlkgVgU7O3M1YAZWoE9KBR_95t3PnlboZ-EXnG3KCT3RDZHlyaPrGCEilRIVXgQ&__tn__=%2CO%2CP-R).

¹⁸⁴ In November, Monytil suspended the Panyijiar County Commissioner, an SPLM/A-IO appointee. "Unity State Governor Suspends Panyijiar County Commissioner," Juba Echo, 2 November 2022, available at: <https://jubaecho.com/unity-state-governor-suspends-panyijiar-county-commissioner/>.

¹⁸⁵ He was reportedly appointed deputy Chief of Defence Forces position in April 2021. "South Sudan president appoints new military leadership," Sudan Tribune, 16 April 2021, available at: <https://sudantribune.com/article67557/>. He retained a high position when the necessary unified forces structure was announced in April 2022. See "Full List: Kiir unifies command structure," Eye Radio, 13 April 2022, available at: <https://www.eyeradio.org/full-list-kiir-unifies-command-structure/>.

¹⁸⁶ Facebook post of the Office of the Governor-Unity State Press Unity, 5 August 2022, op cit. 182.

¹⁸⁷ See article 4(g): "The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees for fair trial under African regional instruments and general international law."

and announced the immediate formation of an investigation committee, promising that the perpetrators would be held accountable.¹⁸⁸ The Minister of Defence and Veterans Affairs Angelina Teny was quoted in media describing the killings as barbaric and unacceptable.¹⁸⁹ In Unity State, Security Adviser Stephen Salaam Maluit was quoted characterising the killings as a just response to the victims having killed other people.¹⁹⁰

153. On 17 August 2022, the SSPDF announced that a report on the situation had been produced and submitted to the Chief of Defence Forces, who would share it with the President.¹⁹¹ A media report indicated its author was Thoi Ghany Reat, who had been leading the SSPDF military operations in the Mayom area, as highlighted above. Also on 17 August, Governor Monytuil met President Kiir in Juba.¹⁹² State media characterized the meeting as Governor Monytuil having been “summoned to explain the incident that happened in Mayom County, Unity State that led to extrajudicial killings.”¹⁹³ The Office of the President and the Office of the Governor subsequently noted that in the meeting Governor Monytuil had described the current situation in Unity State as “back to normalcy,” and “normal and calm”.¹⁹⁴

154. The Council of States, the upper house of South Sudan’s transitional national parliament, called upon Governor Monytuil to address its members on 22 August.¹⁹⁵ A report on Mayom was first delivered by the Council’s Security and Defence Committee Chairperson, who addressed the killing of its County Commissioner, the SSPM/A ambush on an SSPDF convoy, and the related extrajudicial killings. Questions asked of the Governor included why a meeting of the State Security Committee had apparently not been

¹⁸⁸ The SSPDF statement from Headquarters acknowledged the videos and allegations of SSPDF involvement in the acts, and announced: “[T]he immediate formation of [sic] investigation committee to ascertain circumstances under which such heinous crime was committed. (Continuing.) The leadership of the SSPDF would like to assure people of South Sudan that the perpetrators will be held accountable.” The statement was also read out on state broadcaster SSBC. See Facebook Post of Akobo TV on 9 August 2022, available at:

https://m.facebook.com/story.php/?story_fbid=pfbid0JWpbKiX3GriqeuDy99aeJP1n4G7hGdZWTsSPSM9RaEz2E4qKmFLB86FrzMppHol&id=102133288236458. SSPDF spokesperson Lul Ruai Koang, in a radio interview on 9 August which he said he had been requested to do by the Chief of the Defense Forces, made similar comments, adding that: “The most important thing that the people of South Sudan should hear, is that... a thorough investigation, is going to be carried out. And there will be no sacred cow... We’ll act... on the findings and the recommendations of the investigation committee when it comes out.” See Facebook Post of Tom Eye on 9 August 2022 (capturing “SBS Dinka Radio”), available at:

https://web.facebook.com/watch/?ref=search&v=525160179407954&external_log_id=0cb7118d-4a3a-48e8-ba9c-8adf49d55d1e&q=mayom%20sspdf%20report.

¹⁸⁹ “South Sudan regrets execution of rebel officers, orders probe,” Sudan Tribune, 9 August 2022, available at: <https://sudantribune.com/article262589/>. The Minister was also quoted declaring that the killings had not been ordered by the Ministry or by the SSPDF.

¹⁹⁰ The report quoted him saying, “If you know you have done a very bad thing and then you made a mistake to be caught, you will face the law... If you make a mistake you will lose your life like the people you have killed.” “Unity state gov’t confirms summary executions, SSPDF promises to investigate,” Radio Tamazuj, 9 August 2022, available at: <https://radiotamazuj.org/en/news/article/unity-state-govt-confirms-summary-executions-sspdf-promises-to-investigate>.

¹⁹¹ “Army report into Mayom extrajudicial killings presented to Chief of Defense Forces,” Radio Miraya, 17 August 2022, available at: <https://audioboomb.com/posts/8140757-army-report-into-mayom-extrajudicial-killings-presented-to-chief-of-defense-forces>.

¹⁹² “Kiir handed report on Mayom summary execution,” Eye Radio, 18 August 2022, available at: <https://www.eyeradio.org/kiir-handed-report-on-mayom-summary-execution/>.

¹⁹³ South Sudan Broadcasting Corporation, televised evening news, 17 August 2022.

¹⁹⁴ Facebook Post of the Office of the President – Republic of South Sudan on 17 August 2022, available at: <https://www.facebook.com/StateHouseJ1/posts/pfbid0VgipZicVhSJWbt4e4r6PtrrDkhJAE6vnVN7gBtCYn9Gzx4nqckUiq6iMiZzgePhXI>.

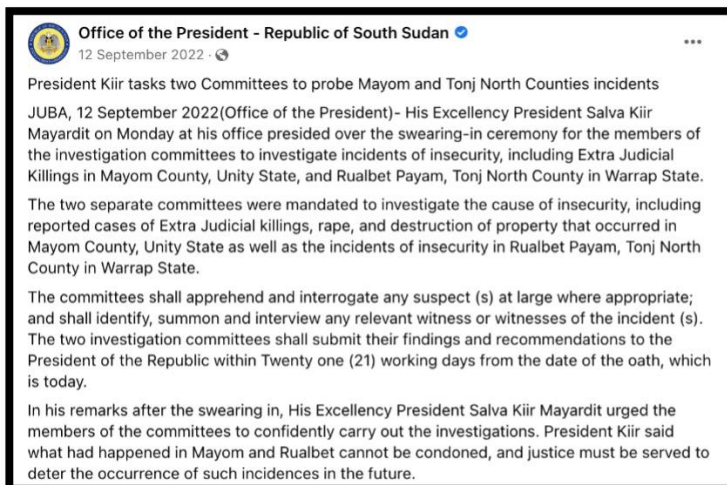
¹⁹⁵ The decision to discuss the situation in Unity State had been decided at an extraordinary sitting of the business committee of the Council on 18 or 19 August 2022. Three issues featured in the discussions of the committee: who killed County Commissioner Manime; who authorized the subsequent extrajudicial killings; and whether the SSPDF was involved in the executions. Governor Monytuil was also asked to speak about the situation in Leer County, Unity State. Council of States Business Committee Resolution No. 8/2022. On file.

convened.¹⁹⁶ In a rare formal challenge to gubernatorial authority, the Council issued a resolution recommending the President remove Governor Monyтуil as the Governor of Unity State, for failing to address several crises, including:

“The Extra-judicial killing of the suspects in Mayom County on 8th August, 2022 which is against the Constitution and International Humanitarian Law that tarnished the image of our country, and its leadership.”¹⁹⁷

155. The motion to remove Governor Monyтуil as Governor was dismissed by the Office of the President, on the stated basis that the Council of States had acted beyond its authority in making the resolution.¹⁹⁸ But on 12 September, the President established an investigation committee to investigate the events in Mayom County.¹⁹⁹

Image: Facebook posts of the Office of President



156. As of February 2023, the activities and status of the President-mandated investigation committee remained unclear (see further detail in section VI(B), below). The Committee does not appear to have submitted its first mandated report, and the Commission was unable to establish what work its members had conducted, if any. In recognition of the State’s primary duty to conduct investigations with a view to prosecutions, the Commission sought further information from the Government about the mandate, conduct, challenges and any outputs

¹⁹⁶ As Governor, Monyтуil has the authority to convene the State Security Council for Unity State, as its chairperson. The Council is comprised of key public officials and security officials and the armed forces and its stated purpose is to coordinate and respond to security matters.

¹⁹⁷ Council of States’ Resolution No. 10/2022, Re: Withdrawal of Confidence from the Governor of Unity State Hon. Dr. Joseph Monyтуil Wejjang, 22 August 2022. On file.

¹⁹⁸ Between 23 August and 1 September, a series of letters were exchanged between the Office of the Speaker of the Council of States and the Ministry of Presidential Affairs. After receiving the Council’s resolution on 23 July, the Ministry responded with a published legal memorandum on 25 July, arguing that the Council had overstepped its constitutional authority by seeking to issue a withdrawal of confidence in Governor Monyтуil. The Minister’s memorandum also explained that in any case, security matters are exclusively the executive power of the National Government rather than of states. The Council of States’ Acting Speaker then submitted a detailed rebuttal to these points to the Minister, on 1 September. The resolution was sent to the President on 23 August 2022. Speaker of the Council of States letter to the Minister of Presidential Affairs, 1 September 2022, on file. Ministry of Presidential Affairs letter to the Speaker of the Council of States, 25 August 2022, on file. See also Facebook Post of the Office of the President – Republic of South Sudan on 25 August 2022, available at: <https://web.facebook.com/StateHouseJ1/posts/pfbid02Sn9Gz19iTbQ9tfYzpoFkLBJNwdGHUfCLGhgQvWSTdfLjhDDBjkHuxgbRTLvbVnZgl>.

¹⁹⁹ Facebook Post of the Office of the President – Republic of South Sudan on 12 September 2022, available at: [https://web.facebook.com/StateHouseJ1/posts/pfbid032Qxr2FysvVJBmVctCNZve7gwrblNU98AuhLq73CNHZUPqTduBLoPBbWSLccG5oMHI?_cft__\[0\]=AZXQZt9SQ1IXsIKelmkNPZ6HVmHaSC3keQfoypzwh3aele4ucQLmxsE9bloTC_61Lw_tRzp_WiaCzLF1RpaopuQCILWIT69URAQWhtxJwU6Sj0JEXwy8H3iB1ZppbRx43iVygxyChPaH0ScLKEq1RxiI6PHs3QEMsNnGDmDBuRG8ZpkzBQqEMw4o_MDQ43HNjk&__tn__=%2CO%2CP-R](https://web.facebook.com/StateHouseJ1/posts/pfbid032Qxr2FysvVJBmVctCNZve7gwrblNU98AuhLq73CNHZUPqTduBLoPBbWSLccG5oMHI?_cft__[0]=AZXQZt9SQ1IXsIKelmkNPZ6HVmHaSC3keQfoypzwh3aele4ucQLmxsE9bloTC_61Lw_tRzp_WiaCzLF1RpaopuQCILWIT69URAQWhtxJwU6Sj0JEXwy8H3iB1ZppbRx43iVygxyChPaH0ScLKEq1RxiI6PHs3QEMsNnGDmDBuRG8ZpkzBQqEMw4o_MDQ43HNjk&__tn__=%2CO%2CP-R).

or outcomes of the investigation committee.²⁰⁰ As part of its correspondence with the Government, the Commission sought assurances that any victims and witnesses engaging with the Committee would be guaranteed safety and protection. Individuals and members of South Sudanese civil society, particularly in the Unity State capital Bentiu, have faced severe harassment for calling for accountability for the extrajudicial killings in Mayom. Some have reportedly been detained, beaten, tortured, and even forced to leave the country in fear for their life. Relatives of the executed men have also faced harassment.²⁰¹ At the time of the finalization of this report, no response had been received from the Government about the Commission's queries or expressed concerns.

157. Overall, the executive has taken no genuine action to address insecurity in Unity State, despite being asked to do so by the Council of States. Other senior members of the State and National Executive have not taken commensurate actions. Military officers and public officials who are reasonably suspected as warranting individual investigation have not been stood down, instead retaining their positions. There has been no genuine or effective action by the State to facilitate truth or accountability, despite the crimes having been caught on camera. Given that Unity State does not host a permanent prosecutor or judge with jurisdiction to try the crime of murder, a special initiative would be required to duly enable criminal trials, but the Presidential and SSPDF processes do not appear to have been designed or intended for such purposes.

158. The State has therefore manifestly failed in its duty to conduct prompt, impartial, independent and effective investigations and prosecutions for the extrajudicial killings in Mayom in August 2022, in violation of the State's obligations under international human rights law. The killings are of themselves unlawful and a violation of the State's duty to respect the right to life. The failure to investigate unlawful killings is a further violation, of the State's duty to protect the right to life. For the family members of victims, their anguish is amplified by the lack of access to truth, remedy and redress.

159. The absence of accountability and justice in Mayom County takes place against a backdrop of pervasive and prevailing impunity throughout South Sudan, particularly in Unity State where atrocity crimes were carried out in early 2022 by repeat perpetrators who continue in office. This atmosphere of fear and lawlessness emboldens perpetrators and enables the repetition of crimes, wreaking havoc on individuals, families and communities. The brazenness of the killings in August, and the lack of accountability, have left in their wake an even more disillusioned populace. Despite the existence of a peace agreement, and institutions to review and draft legislation, the stark reality is that powerful officials can get away with murder without seeing any consequence. This injustice adds fuel to existing grievances and may lead to violent conflict, underscoring the urgency of prioritizing criminal and transitional justice processes as the bedrock of any lasting peace.

C. Upper Nile State and northern parts of Jonglei State

160. The increasing violence throughout the latter half of 2022 in Upper Nile State and northern parts of Jonglei State ranks amongst the most concerning human rights situations in years, characterized by mass displacement linked to human rights violations. Sparked by the breakdown of the "Kitgwang" alliance between former SPLM/A-IO generals Simon Gatwech and Johnson Olony, heavy clashes ensued, and widespread attacks were carried out against civilians along Nuer and Shilluk ethnic lines. What had started as political violence over contestation for power and territory also became a conflict taking on ethnic dimensions, as armed forces used ethnic identity as a strategy to mobilize armed Nuer youth. The violence spread from the riverbanks of settlements in southwestern Upper Nile State and northwest parts of Jonglei State up to Fashoda in Upper Nile's interior.

²⁰⁰ The Commission requested further information about the work of the investigation committee. Letter from the Commission to the Government of South Sudan on 1 November 2022.

²⁰¹ S/2022/884, para 46.

1. Background

161. The conflict has roots in the political contestation between key parties to the Revitalized Agreement. In August 2021, senior SPLM/A-IO generals had declared that their new “Kitgwang” faction had split from forces under Riek Machar’s command, including then-SPLM/A-IO Chief of Staff Simon Gatwech. Skirmishes followed in Upper Nile between forces loyal to Machar and those loyal to Kitgwang leader Simon Gatwech and his deputy Johnson Olony. Significantly, in the deadly fighting that followed, Kitgwang forces of Gatwech and Olony defeated SPLM/A-IO forces which then retreated from northern Upper Nile.²⁰² The split weakened the SPLM/A-IO militarily and subsequent fighting in Upper Nile State significantly weakened its presence there.

162. In January 2022, Gatwech and Olony defected to the SPLM-IG, agreeing to integrate their forces with the Government forces. On 16 January 2022, they signed the “Khartoum Agreement” with the SPLM-IG.²⁰³ An additional agreement was signed between the SPLM-IG and Olony, who commands the nominally ethnic-Shilluk Agwelek forces (Gatwech is Nuer and forces under his command have been predominantly Nuer).²⁰⁴ Under this agreement, the SPLM-IG pledged to resolve longstanding Shilluk land claims. However, cracks soon emerged in this already-tenuous alliance. Gatwech’s rapid marginalization by the SPLM-IG was exemplified in his exclusion from the command structure of the Necessary Unified Forces, announced on 3 April 2022.

163. In July 2022, Shilluk Agwelek forces under Olony’s command expelled Gatwech’s predominantly Nuer forces from their joint bases in Panyikang and Manyo counties. Gatwech-aligned forces withdrew from their bases, including to Fangak County in northwest Jonglei State.²⁰⁵ As a result, Agwelek forces were temporarily left in control of Tonga Payam in Panyikang, a White Nile port that is significant for controlling movement and income from taxation, which would change control several times.²⁰⁶ On 9 August, Gatwech declared Olony’s expulsion from the Kitgwang faction, although by then the split had been realized.²⁰⁷

164. The defections of Gatwech and Olony and the subsequent disintegration of their alliance should be viewed as part of the political contestation between the SPLM-IG and the SPLM/A-IO, which has manifested in proxy fighting in different parts of the country. The ongoing fracturing of the SPLM/A-IO is in part instigated or facilitated by the SPLM-IG, in a clear effort to weaken the opposition. The sponsoring of violence to pursue political ends not only results in violations against civilians but also poses a threat to the implementation of the Revitalized Agreement and the credible conclusion of the transitional period.

2. Attack on Agwelek forces and Shilluk civilians by Nuer forces in Panyikang

165. After the Gatwech-aligned forces withdrew to the south side of the White Nile, in the northwest part of Jonglei State, they mobilized Nuer youth in Fangak County, which is under SPLM/A-IO administration. Witnesses who spoke to the Commission referred to these Nuer

²⁰² A/HRC/49/78, para. 17.

²⁰³ Agreements on file. For the SPLM-IG, the agreements were negotiated by NSS Director Akol Koor Kuc and signed by Presidential Security Adviser Tut Gatluack. Former SPLM/A-IO General Thomas Mabor Dhoal from Jonglei State also signed onto the agreement for the Kitgwang but subsequently left the faction along with Olony.

²⁰⁴ Note the Shilluk are also known as “Chollo.” The focus of the Agwelek is primarily the defence of Shilluk lands. See A/HRC/37/CRP.2, para. 276. See also S/2022/156, paras. 8—9 and Joshua Craze, “The Periphery Cannot Hold: Upper Nile since the Signing of the R-ARCSS,” 2022, Small Arms Survey, pages 37—44.”

²⁰⁵ Some Kitgwang forces also moved to Sudan.

²⁰⁶ See also Ken Matthyssen and Peer Schouten, “Checkpoint economy: the political economy of checkpoints in South Sudan, ten years after independence,” International Peace Information Service and Danish Institute for International Studies, 10 December 2021, available at: <https://ipisresearch.be/publication/checkpoint-economy-the-political-economy-of-checkpoints-in-south-sudan-ten-years-after-independence/>.

²⁰⁷ “Gatwech expels Olony from SPLM-IO Kitgwang,” Sudans Post, August 2022, available at: <https://www.sudanspost.com/gatwech-expels-olony-from-splm-io-kitgwang/>.

youth as part of the “White Army.”²⁰⁸ On 15 August, Gatwech-aligned and White Army forces attacked Agwelek forces and Shilluk civilians in Tonga Payam, Panyikang County. Witnesses described armed males in military and civilian clothing killing civilians, as Shilluk civilians fled into nearby waterways and neighbouring villages.²⁰⁹

“The Nuer followed us as we ran. After spending a day in Nyijw village, I heard the Nuers were coming again. When we heard the sound of guns we moved to Pakwa. The next morning, we heard the Nuer were still coming so we ran. Any place that we went to they followed and attacked us.”²¹⁰

“I had stayed at home, thinking the military would protect us... When I ran from the attackers I was shot in the stomach. The bullet is still inside me. I lost consciousness... and eventually walked to Malakal. It took three days to reach there.”²¹¹

166. Shilluk civilians were pursued by armed forces from village to village through Panyikang. Witnesses described the attackers who pursued as being in a mix of green military uniforms and civilian clothing. Survivors described being shot at as they ran from the attacking forces, and the Commission inspected the wounds of multiple gunshot victims who had managed to escape and seek medical treatment.²¹² After several days on the run, civilians heading toward Malakal were directed by Government officials to a makeshift displacement camp at Adidiang, Panyidwoi Payam.

“We fled to another village with our cows and goats, but the attackers chased us. I was shot in my left leg. A man carried me on his back because my leg was completely damaged. It was bleeding so much I couldn’t walk...”²¹³

3. Attack on Nuer civilians by Shilluk Agwelek forces in Fangak County

167. Days after the attack on Tonga, opposing Shilluk Agwelek forces began attacking Nuer settlements on the Jonglei side of the river which is under SPLM/A-IO administration. The attacks started after the Agwelek forces had called in reinforcements on their well-armed barges. After the barges had passed through Malakal to arrive in the area around 18 August 2022, Agwelek forces shelled settlements including in Atar, New Fangak and in Diel – where an SPLM/A-IO military base was located.²¹⁴ The ceasefire monitoring body, the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM), reported that a senior SSPDF commander in Upper Nile confirmed that the SSPDF had escorted these barges down the White Nile river, and that they had done so after having “received orders from Juba to facilitate the movements”.²¹⁵

²⁰⁸ The Commission has previously noted that gatherings of Nuer youth are inevitably referred to as the “White Army” regardless of the accuracy of the label. See A/HRC/37/CRP.2, para. 275. In this report, the Commission has adopted the term “White Army” given this reflects the way in which these forces were described by witnesses. At the same time, it is important to note that term has been contested and can be ambiguous largely for being applied inconsistently by different actors at different points in time, which has had implications for efforts to determine responsibility for the actions of individuals involved in grave violations against children. For example, in the United Nations Secretary General’s annual report on children in armed conflict in 2014, the White Army was defined as “a paramilitary organized group comprising primarily members of the Lou Nuer ethnic group.” From 2014 to 2018 the White Army was listed in these annual reports for grave violations against children. In 2019, the White Army was delisted from the Secretary General’s reports on children in armed conflict on the basis that “the group no longer showed evidence of clear leadership or structure and ceased to exist.” See S/2014/884, para. 6 and A/73/907 S/2019/509, para 248. As a result, the White Army is no longer monitored for grave violations against children as part of the United Nations’ reporting on children in armed conflict. The Commission received information that forces described as the White Army were recruiting children in 2022. M-100122.

²⁰⁹ 105695-105699, 105703-105704, 105710-105711.

²¹⁰ 105710-105711

²¹¹ 105738-105741.

²¹² 105758-105761, 105742-105747, 105738-105741.

²¹³ 105742-105747

²¹⁴ 105754-105757, M-100158, D126905-D126918.

²¹⁵ “CTSAMVM REPORT 2023/01 – VIOLENCE IN UPPER NILE STATE AND NORTHERN JONGLEI STATE FROM JULY 2022,” January 2022, para. 10.

168. Nuer civilians from Diel described uniformed Agwelek forces coming ashore, uttering hate speech against Nuers and carrying out killings, rape and arson. Men were shot dead in church, a woman was raped by ten men and left to die, and residents were made to strip off their clothing which was then set on fire. The Commission heard testimony from a woman who was taken to a moored boat with four neighbours and raped over several days.²¹⁶ Residents who returned months later found their goods destroyed and had to rely on wild plants for food.²¹⁷

“The soldiers set ablaze my house... and then took my grandmother from her house which was then also set on fire. Then they shot her and left her there.”

“The (Shilluk soldiers) were piercing through the swamp with the fishing spears. In the process, they pierced one of the woman’s buttocks with the spear from her hiding place in the swamp. The woman screamed.... They took her out of the swamp to the side without water where they gang raped her.”²¹⁸

4. Attacks on Shilluk civilians at the Adidiang camp in Panyikang

169. Following the Shilluk Agwelek attacks on SPLM/A-IO areas in Fangak, SPLM/A-IO soldiers crossed to Panyikang County and joined the Gatwech-aligned and White Army forces in attacks on Shilluk civilians.²¹⁹ These forces moved toward the makeshift displacement camp at Adidiang in Panyidwoi Payam, around 20 kilometres south of Malakal Town, to where the Government had directed more than 5,000 fleeing Shilluk to stay.²²⁰ The Shilluk civilians were among an estimated 22,000 civilians had been displaced during August in Tonga, in other parts of Panyikang County, and in neighbouring areas of Jonglei State.²²¹

170. On 7 September the Adidiang camp was attacked by the mixed forces of Nuer ethnicity who had moved from Tonga.²²² Attackers fired weapons at civilians, assaulted and civilians with machetes and spears, resulting in deaths. They destroyed temporary shelters and looted all humanitarian aid, including a high volume of food.²²³ Indicating that the attack had been well-planned, a witness described to the Commission how attackers armed with machine guns moved to strategic positions in the camp before they started firing, which appears designed to result in maximum casualties.²²⁴

“My children ran to us shouting, ‘The Nuer are coming!’ I ran with them to the river... as we hid in the water, the Nuer kept shooting at us. A bullet hit my 14 year old girl... entering through the mouth and exiting at the back. She died immediately and I carried her body to (a village) where she was buried.”²²⁵

171. A survivor of sexual violence said the attackers told her that Shilluk do not belong in the area.²²⁶ Shilluk civilians who fled into the river spent hours immersed in water and in fear

²¹⁶ 105723-105728, 105678-105682, 105700-105702.

²¹⁷ M-100152. See also UNHCR, “Thousands displaced by escalating conflict in South Sudan’s Greater Upper Nile Region,” 7 December 2022, available at: <https://www.unhcr.org/news/press/2022/12/63905eca4/thousands-displaced-escalating-conflict-south-sudans-greater-upper-nile.html>.

²¹⁸ 105723-105728

²¹⁹ M-100213. CTSAMVM REPORT 2023/01 – VIOLENCE IN UPPER NILE STATE AND NORTHERN JONGLEI STATE FROM JULY 2022, January 2022.

²²⁰ 105661-105664, 105687-105690.

²²¹ UN OCHA, “Tonga Response Situation Report No 1,” 1 September 2022, available at: <https://www.humanitarianresponse.info/en/operations/south-sudan/document/tonga-clashes-flash-update-no-1-1-september-2022>.

²²² “Humanitarian Coordinator for South Sudan condemns the latest violence against civilians and calls for immediate cessation of hostilities,” 8 September 2022, available at: <https://reliefweb.int/report/south-sudan/humanitarian-coordinator-south-sudan-condemns-latest-violence-against-civilians-and-calls-immediate-cessation-hostilities>.

²²³ 105687-105690, M-100152, D126969-D126980.

²²⁴ 105687-105690.

²²⁵ 105691-105694.

²²⁶ 105695-105699.

as Nuer men on the shore fired shots at them.²²⁷ An elderly woman recounted nursing a gunshot wound through the night while standing in water up to her neck, after seeing another wounded woman die in the water.²²⁸

“One of the Nuers took me and wanted to rape me... He beat me in the vagina with the butt of his gun, but I continued fighting him. He managed to take off my underwear and rape me... Now when I want to urinate I can still feel the pain.”

“From my hiding place, I could hear them saying in Nuer language, ‘You come out!’ and ‘You come out to fight!’ As they were shouting they were looking for people in the water. When they found them, they killed them... When they captured us, they said to us in Nuer ‘This place is for Shilluk but now we will take it for Nuer... if you go to Malakal we will also come attack you there.’²²⁹

172. Despite the clear dangers, including the potential for looting following humanitarian aid distributions, no military force had been put in place to protect the civilians at Adidiang.²³⁰ There was an SSPDF military base around 10 kilometres away in Owech and an UNMISS base around 25 kilometres away near Malakal.

5. Attacks on Shilluk continue, in Fashoda County

173. By October 2022, Gatwech-aligned and White Army forces had moved through Government-controlled areas into Fashoda, a predominantly Shilluk county north of Malakal.²³¹ These included “White Army” forces mobilized under the Nuer “prophet” Makuach, who appear to have entered the conflict following the Agwelek attacks on Nuer settlements and SPLM/A-IO positions in northern Jonglei State.²³² As a result, thousands of fearful Shilluk civilians fled to Kodok where UNMISS has a company operating base, and to the nearby Aburoc displacement site.²³³

174. In late November, the joint Nuer forces attacked the Aburoc displacement camp. There were reports of killings and other human rights violations during the attack, which resulted in further displacement.²³⁴ More Shilluk fled to Kodok, which as of mid-December 2022 hosted an estimated 21,000 displaced persons, in dire conditions.²³⁵ As in Adidiang, displaced civilians at Aburoc had been particularly vulnerable to attack, yet SSPDF soldiers did not provide them with protection, nor did UNMISS peacekeepers.

175. On 7 December, the President’s office announced that the Defence Force Chief had been directed “to deploy unified SSPDF in the area to protect the civilians.”²³⁶ The SSPDF military operation resulted in White Army forces withdrawing from Fashoda, thereby

²²⁷ 105707-105709, 105710-105711.

²²⁸ 105707-105709.

²²⁹ 105695-105699.

²³⁰ 105687-105690, 105691-105694, 105695-105699, M-100152.

²³¹ “UNMISS Statement on Fresh Fighting in Fashoda County, Upper Nile State,” 11 October 2022, available at: <https://reliefweb.int/report/south-sudan/unmiss-statement-fresh-fighting-fashoda-county-upper-nile-state>.

²³² M-100156, M-100213. The White Army are also known by the Central Nuer as Nyabojok.

²³³ As of 11 October 2022, the UNMISS COB was estimated to be hosting 8,000 displaced persons. See “Kodok, Upper Nile Flash Update,” OCHA, 11 October 2022, available at: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ocha_kodok_upper_nile_-_flash_update_11_oct_2022.pdf.

²³⁴ M-100156.

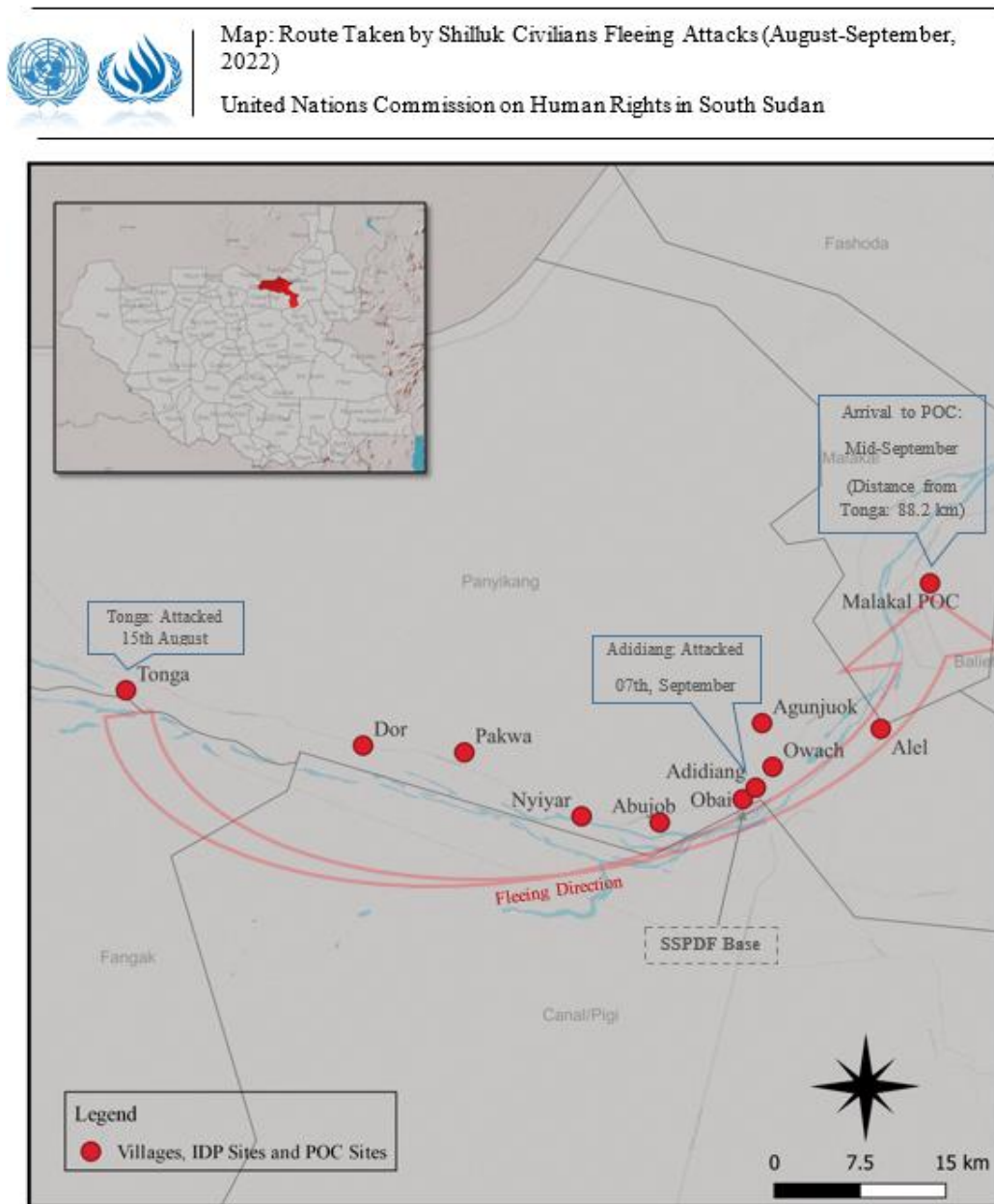
²³⁵ UN OCHA, “South Sudan: Upper Nile Flash Update No. 1,” 10 December 2022, <https://reliefweb.int/report/south-sudan/south-sudan-upper-nile-flash-update-no-1-10-december-2022>.

²³⁶ It was not clear if the operation involved soldiers who graduated as member of the Necessary Unified Forces in a graduation ceremony held in Malakal on 21 November 2022. See Facebook Post of the Office of the President – Republic of South Sudan on 7 December 2022, available at: <https://web.facebook.com/StateHouseJ1/posts/pfbid0LTsjiUHuxJyfSTxiqEgST6EmGhzPK66mUphW Xx6y5KC6RnLyy8KqwSzgy6CYt2W8l>.

protecting Shilluk civilians from a potential attack on Kodok.²³⁷ Agwelek forces also clashed with the White Army in Fashoda, and Makuach reportedly retreated south toward Jonglei with some of his forces.

6. Displacement

176. As of December, more than fifty thousand civilians had been displaced in the clashes and attacks across multiple counties. In mid-December, a statement from the United Nations High Commissioner for Human Rights said that at least 166 civilians had been confirmed killed and 237 injured over the course of four months.²³⁸



²³⁷ D126905-D126918. See also “Military operation against armed militia underway in Chollo Kingdom – SSPDF,” Eye Radio, 8 December 2022, available at: <https://www.eyeradio.org/military-operation-against-armed-militia-underway-in-chollo-kingdom-sspdf/>.

²³⁸ “South Sudan: UN Human Rights Chief urges end to violence in Upper Nile State,” 14 December 2022, available at: <https://www.ohchr.org/en/press-releases/2022/12/south-sudan-un-human-rights-chief-urges-end-violence-upper-nile-state>.

177. As a result of the conflict, the population of the UNMISS Protection of Civilians (POC) site in Malakal increased by an estimated 64 percent.²³⁹ Service provision and security have been severely impacted, with UNMISS leadership describing the site as “congested beyond its capacity.”²⁴⁰ Increased tensions between Nuer and Shilluk POC residents have been described as a ticking time bomb, and the situation remained volatile.²⁴¹ While some Nuer fear retaliation for attacks against Shilluk outside the POC, there is also concern that a Nuer exit from there would leave Shilluk exposed to attacks.²⁴²

178. In September the World Food Programme publicly called for safe river passage after repeatedly suspending cargo movements due to access denials, clashes, or unacceptable risk levels.²⁴³ This came at a time when humanitarian data collection organizations and aid agencies were highlighting that all the affected areas were already experiencing emergency levels of acute food insecurity, driven by flooding, the violent disruption of livelihoods and destruction of goods, and the lack of access to timely and adequate aid.²⁴⁴

7. Responsibility

179. It is the Commission’s assessment that the State manifestly failed in its duty to protect civilians, particularly at Shilluk displacement sites designated by the Government. The SSPDF effectively facilitated attacks against Nuer civilians, by supporting the passage of Agwelek barges along the White Nile, from where they also shelled the positions of Gatwech-aligned forces in SPLM/A-IO administered areas.²⁴⁵ CTSAMVM reported in January 2023 that the SSPDF escorted the Agwelek barges enabling them to attack SPLM/A-IO positions and civilian settlements including that at Diel, Fangak County. This appears to constitute the use of proxy forces as part of broader SPLM-IG efforts to erode opposition.

180. The State took no action to protect civilians in northern Jonglei or Upper Nile State between July and November 2022. On 7 December, an SSPDF military operation addressed an immediate threat to lives of Shilluk civilians posed by the White Army, but the intervention was needed months earlier. Moreover, the SSPDF had not addressed the initial mobilization of the White Army, who passed freely through certain Government-controlled areas over a period of several months.²⁴⁶

181. The Commission found that Agwelek forces under Olony’s command and Gatwech-aligned forces perpetrated human rights violations during attacks carried out against civilians.

²³⁹ The population was estimated as 34,396 in May 2022, with an estimated minimum number of 22,000 additional, new, arrivals as of 10 December 2022. UN OCHA, op cit. 235.

²⁴⁰ “Briefing to the United Nations Security Council by the Special Representative of the Secretary-General and Head Of UNMISS Mr. Nicholas Haysom, 13 December 2022,” 14 December 2022, available at: <https://reliefweb.int/report/south-sudan/briefing-united-nations-security-council-special-representative-secretary-general-and-head-unmiss-mr-nicholas-haysom-13-december-2022-delivered>.

²⁴¹ M-100156, 105723-105728.

²⁴² M-100156, D126983-D126985, D126969-D126980.

²⁴³ “WFP calls for access to conflict-affected communities in Upper Nile and Jonglei States,” 16 September 2022, available at: <https://www.wfp.org/news/wfp-calls-access-conflict-affected-communities-upper-nile-and-jonglei-states>.

²⁴⁴ Integrated food security Phase Classification (IPC), 23 November 2023, available at: https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_South_Sudan_Acute_Food_Insecurity_Malnutrition_22July_23July_report.pdf. Note Panyikang County was not assessed in the IPC because it was inaccessible during data collection. See also “Conflict in Greater Upper Nile impedes assistance to people already devastated by flooding,” *Médecins Sans Frontières*, available at: <https://www.msf.org/conflict-greater-upper-nile-impeding-humanitarian-aid-thousands-people-already-devastated-flooding> and “County Profile, Fashoda,” REACH, September 2022, available at: https://www.impact-repository.org/document/reach/95513ab3/REACH_SSD_CountyProfile_Fashoda_Sept2022.pdf.

²⁴⁵ D126969-D126980, D126905-D126918, D126919-D126968.

²⁴⁶ M-100156, M-100154, D126969-D126980.

Furthermore, the Commission received credible information that SPLM/A-IO forces joined Gatwech-aligned and White Army forces in attacks on Shilluk civilians.²⁴⁷

182. Information gathered by the Commission indicates that elements of the White Army operated in coordination with, and at times with support from, Gatwech-aligned forces and SPLM/A-IO forces. The prophet Makuach played an important role in mobilizing these forces, and played a key role in the attacks on Shilluk civilians in Fashoda County.

183. The Commission found that some of these human rights violations may amount to crimes under international law, including crimes against humanity as well as ‘Serious Crimes under the Relevant Laws of South Sudan’ as defined in the draft statute of the Hybrid Court for South Sudan. Where individual members bear criminal responsibility for human rights violations amounting to crimes, the State has a duty to effectively investigate and prosecute perpetrators as part of its obligations under international human rights law.

D. Warrap State

184. For several years, the Commission has documented the destructive impacts of cyclical attacks involving armed cattle-keeping youth in the Tonj counties of Warrap State, and how interventions by the State have been counterproductive and even fuelled human rights violations.²⁴⁸ Violence between rival Dinka sections in Warrap continued in 2022, and interventions by State actors again worsened the human rights situation.²⁴⁹

185. The proliferation of weapons, including heavy calibre guns, and incoming flows of ammunition enable intra-communal violence to be carried out at great intensity and scale. Disputes related to family conflicts, cattle-theft or isolated incidents have sparked retaliatory attacks, resulting in the destruction and displacement of whole communities. But disarmament initiatives in the Tonj counties have failed to address this, and even contributed to conflict. The Commission has previously highlighted how in 2021 the then-Governor of Warrap State armed civilians from one community while at the same time attempting to disarm civilians from another area, and that the NSS Director also undermined disarmament prospects by helping to facilitate the ongoing flow of ammunition into the State.²⁵⁰ Disarmament initiatives have continued to be selective and incomplete. Moreover, they have not addressed issues related to the sources, transfers, and markets for these arms.²⁵¹

186. The violence involving communities from Rualbet and Awul payams in Tonj North County is emblematic of this mix of weapons proliferation, lawlessness, intercommunal conflict and counterproductive interventions by influential political figures. This was again demonstrated in 2022 when the heads of the Government’s three main security forces deployed to the area: SSPDF Chief of Staff Santino Deng Wol, NSS Director General Akol Koor (who is from Awul Payam) and National Police Inspector General Majak Akec. Forces

²⁴⁷ M-100213, D126969-D126980, D126905-D126918, D126919-D126968, D126981-D126982. See also “CTSAMVM REPORT 2023/01 – VIOLENCE IN UPPER NILE STATE AND NORTHERN JONGLEI STATE FROM JULY 2022,” January 2022.

²⁴⁸ A/HRC/46/CRP.2, paras. 116–125. A/HRC/49/78, para. 77. The counties are Tonj East, Tonj North and Tonj South.

²⁴⁹ Sections and subsections are Dinka identity groups, often corresponding to administrative units.

²⁵⁰ A/HRC/46/CRP.2, paras. 116–131, A/HRC/49/78, paras. 77–80.

²⁵¹ M-100134, M-100136, M-100129. Since 2020, disarmament initiatives in the Tonj counties have been at best piece-meal and at worse partisan. These initiatives have been associated with human rights violations and have triggered increased violent conflict. Government officials and armed forces have sought to selectively disarm certain communities, while concurrently leaving rival neighbours well-armed further fuelling the distrust in the State that makes people think it even more wise to hold onto their weapons. Furthermore, authorities including the NSS Director and then-Governor of Warrap State have been involved in arming civilians in the area, as previously found by the Commission. A/HRC/49/78, para. 79. See A/HRC/46/CRP.2, paras. 172 and 200. See also Joshua Craze, “‘And Everything Became War,’ Warrap State Since the Signing of the R-ARCSS,” Small Arms Survey, December 2022, pp. 10, available at: <https://www.smallarmssurvey.org/resource/and-everything-became-war-warrap-state-signing-r-arcss>.

under their command then inflicted a campaign of retaliatory violence against civilians from Rualbet, which was sparked by a dispute over stolen cows.

187. In early June 2022, cattle-keepers from Rualbet Payam had participated in a cattle raid that resulted in the theft of around 100 cows from rival neighbouring Awul Payam.²⁵² At the time of the cattle raid, several community leaders from Rualbet were being held in NSS detention after State authorities had sided with the Awul community in its ongoing conflict with Rualbet. In this context, a politically-connected cattle owner affected by the June cattle raid reportedly requested authorities to intervene and recover the cows. Senior State Cabinet members agreed to do so.²⁵³ On 25 June, soldiers from SSPDF Division 11 sought to take cows in Rualbet by force, and there was a standoff with cattle-keeping youth from the area; gunfire started and the SSPDF soldiers and youth clashed throughout the day.²⁵⁴ The SSPDF was outnumbered, and several dozen of its soldiers were reportedly killed during the 25 June clash, including a high number of officers.²⁵⁵

“People whose cows were about to be seized protested that they never participated in the looting (from Awul), they asked that the community be given time to look for the cows. When the authorities refused this, the community members perceived it as unfair. This led the youth in the community to pick their guns and fight the SSPDF.”²⁵⁶

188. Following the heavy losses to the SSPDF, a high-level security committee was established by President Kiir, who is from Warrap, and it deployed to the area on 3 July 2022. This was composed of chiefs of the Government’s three main security forces, named above.²⁵⁷ An advance team was sent to prepare for the delegation, which reportedly occupied the Rualbet Primary School for several days.²⁵⁸ Members of Government forces from several other states also deployed to the Rualbet area around this time. The heads of the security forces stayed in Warrap for around three weeks before returning to Juba, where they provided a briefing at the President’s Office on 26 July.²⁵⁹ In his Independence Day address on 9 July, Kiir had noted the deaths of the SSPDF officers and declared that “the government will not met[e] out collective punishment, but it will hold those who have killed others accountable for their crimes.”²⁶⁰

“Soldiers picked me up and transported me to an area around where they were stationed in Rualbet where they detain youths that are arrested from the community. The soldiers used sticks and batons to beat me severely I still have marks on my body.

²⁵² While most reports indicate that approximately 100 cows were taken from Awul Payam, the Commission also received reports that the number may have been far higher. M-100131, 105542-105546, 105536-105541.

²⁵³ 105495-105500, 105505-105510.

²⁵⁴ M-100132, M-100137, 105491-105494, 105542-105546, 105495-105500, 105505-105510, 105536-105541. Witnesses told the Commission that the Commander deployed with the SSPDF Division 11 soldiers had been engaged in discussions with community leaders to find an agreed outcome, but that those negotiations ended when he decided to go ahead capture the cattle by force.

²⁵⁵ M-100136, M-100131. Casualty figures reviewed by the Commission varied significantly and could not be verified. One published list included names of 32 officers reportedly killed on 25 June 2022. See S/2022/884, p. 41. See also “Armed civilians kill dozens of soldiers in Warrap State,” Eye Radio, 27 June 2022, available <http://www.eyeradio.org/armed-armed-civilians-kill-dozens-of-soldiers-in-warrap-statecivilians-kill-eighteen-soldiers-in-warrap-state>.

²⁵⁶ 105505-105510.

²⁵⁷ “Top security chiefs vow to restore security in Tonj North,” Eye Radio, 3 July 2022, available at: <https://www.eyeradio.org/top-security-chiefs-vow-to-restore-security-in-tonj-north/>. “Warrap gov’t, security chiefs on a fact-finding mission to Tonj North,” Radio Tamazuj, 5 July 2022, available at: <https://radiotamazuj.org/en/news/article/warrap-govt-security-chiefs-on-a-fact-finding-mission-to-tonj-north>.

²⁵⁸ M-100132, M-100131.

²⁵⁹ Facebook Post of the Office of the President – Republic of South Sudan on 26 July 2022, available at: <https://www.facebook.com/StateHouseJ1/posts/pfbid02DYxhvcHPbtaq1iw6r8C7zA8VQkgfTyuAMyj1cBZWDQdQKRc59swLQTmBivAaG7tSl>.

²⁶⁰ Facebook Post of the Office of the President – Republic of South Sudan on 9 July 2022, available at: <https://www.facebook.com/photo?fbid=1098108967483828&set=pcb.1098109734150418>.

The male youths were more physically assaulted as several of the SSPDF soldiers held grievances against the youths over the killings of their colleagues.”²⁶¹

189. As of early July and coinciding with the visit of the three heads of security forces, reports emerged of soldiers perpetrating human rights violations in the area, and humanitarian agencies temporarily suspended operations in Rualbet due to insecurity.²⁶² In villages throughout Rualbet, soldiers conducted house-to-house visits, raped women and girls,²⁶³ detained civilians particularly male youth,²⁶⁴ looted and destroyed civilian property,²⁶⁵ and threatened killings.²⁶⁶ Some residents reported being visited multiple times by soldiers and being compelled to hand over livestock and property on each occasion.²⁶⁷ As a result of these human rights violations and the harassment, many residents fled their villages.²⁶⁸

190. Rapes of women and girls were common during SSPDF attacks on villages that started from July 2022.²⁶⁹ The Commission received official information that more than 53 cases of sexual violence were recorded between July and September, including against young girls, and that survivors had no access to health care.

“The first need for the community is the medication for the women who are raped. We also need food, as we did not cultivate. The soldiers have taken everything.”²⁷⁰

191. Males from Rualbet were targeted with arbitrary detention in both villages and towns.²⁷¹ The Commission spoke with multiple men who were detained by SSPDF soldiers or NSS personnel, and transferred to prison and detention sites including in Kuajok Town and Tonj South County. Some had been subjected to severe beatings and torture, and the Commission documented their injuries.²⁷² One man recounted enduring torture over several days of interrogation by different security forces.²⁷³ Beyond Rualbet Payam, Government forces searched medical clinics and detained wounded civilians suspected of participating in the 25 June clash. Multiple witnesses saw NSS personnel involved in these operations, as well as SSPDF soldiers.²⁷⁴

“I am avoiding going to Rualbet because I know if I go, I will be arrested. The soldiers are still arresting people from the area. My relatives are there but there is no way to access them the mobile network is very bad in the area.”²⁷⁵

192. Displacement linked to SSPDF operations in Rualbet further interrupted the planting season and was likely to exacerbate the food crisis already present in the Tonj counties.²⁷⁶ An estimated 12,000 people were displaced in July alone, disrupting the planting season in an

²⁶¹ 105542-105546

²⁶² 105505-105510.

²⁶³ M-100131, 105542-105546, M-100138, 105491-105494.

²⁶⁴ M-100137, M-100136, M-100132, M-100131, 105542-105546, 105536-105541, 105505-105510, 105495-105500.

²⁶⁵ M-100131, 105491-105494, 105501-105504, 105542-105546, 105536-105541, 105505-105510.

²⁶⁶ 105501-105504, 105495-105500.

²⁶⁷ 105491-105494, 105501-105504.

²⁶⁸ M-100131, 105501-105504, M-100137, M-100138, 105491-105494.

²⁶⁹ The intensity of SSPDF operations in Rualbet appeared to be highest in this period. The Commission conducted its investigation mission to Warrap State in November. M-100131, M-100138, 105542-105546.

²⁷⁰ 105491-105494.

²⁷¹ 105491-105494, 105495-105500, 105501-105504.

²⁷² 105505-105510, 105542-105546, 105536-105541, 105495-105500.

²⁷³ 105495-105500. The Commission also received information that soldiers bartered for the release of detainees, threatening that they would be killed if relatives or others did not make a payment.

²⁷⁴ 105505-105510, 105536-105541, M-100131.

²⁷⁵ 105495-105500.

²⁷⁶ East, South and North Tonj counties were all assessed as having acute food insecurity, with residents experiencing an emergency situation during the period between October to November 2022. See https://www.ipcinfo.org/fileadmin/user_upload/ipcinfo/docs/IPC_South_Sudan_Acute_Food_Insecurity_Malnutrition_22July_23July_report.pdf. IPC reporting has found that climate and conflict are the key drivers of food crises.

area already facing emergency levels of acute food insecurity.²⁷⁷ An inter-agency humanitarian assessment conducted in August 2022 found that limited access to food, already affected by flooding, would worsen if violence continued.²⁷⁸ The Commission received multiple reports of access restrictions linked to flooding as well as government-imposed restrictions, which also affected the ability to access and gather information about the human rights situation.²⁷⁹

193. On 12 September 2022, the Office of the President announced the formation of an Investigation Committee to examine the situation in Rualbet.²⁸⁰ On 6 January 2023, the Office of the President announced that the Committee had presented its report, which reportedly included a recommendation on the prosecution of civilians and soldiers involved in the violence, in separate trials. As of March 2023, it was not clear if prosecutions would ensue, nor if high level officials would face scrutiny (see detailed discussion in section V(B), below).

194. The Commission found that members of the joint Government forces carried out human rights violations against the community of Rualbet Payam, and that some acts amount to crimes including under South Sudan's Penal Code.

195. The role of State agents as provocateurs in the violence, and the lack of meaningful accountability, constitute violations of the State's obligations under international human rights law to respect and to protect human rights. The joint operations of SSPDF soldiers and NSS personnel suggests coordination and orders from the highest levels of command, and must be viewed in the context of the SSPDF and NSS chiefs' presence in Rualbet during the first three weeks of the joint operations. Their roles, and the instructions of any other senior public officials, must be subjected to further scrutiny.

196. Without providing for truth, accountability and remedies, the Investigation Committee in itself does not nearly meet the State's obligations to properly investigate human rights violations. Any justice process would need to examine the criminal liability for all crimes carried out in the context of the situation in Rualbet. In line with the recommendations of the Investigative Committee, the state should, with respect to violations across the country, institute formal investigations and conduct trials of civilians, officials and military personnel through a combination of civilian and military courts. Given the actors involved, and the limited effective options available for accountability, the situation further underscores the need to implement the transitional justice arrangements under chapter V the Peace Agreement, which together provide a holistic response that is best equipped to deal with these challenges.

E. The Equatorias

1. Western Equatoria State

197. In Western Equatoria State, civilians continued to endure the impact of politically motivated violence and displacement that centred around Tambura County in 2021, when civilians from Azande and Balanda communities were attacked by armed forces and militia along ethnic lines. The prospects for peace and recovery in Tambura are severely undermined by the State's failure to address the causes and impacts of that violence, including the lack of any form of accountability for the gross human rights violations perpetrated during the course of the violence. One such failure is the lack of protection and support offered to boys and

²⁷⁷ Integrated food security Phase Classification (IPC), 23 November 2022.

²⁷⁸ Note that the operational conditions for humanitarian agencies in South Sudan are often very difficult, and the Commission has observed that pressure by the government is often applied to dissuade them from linking humanitarian crises to conflict, particularly when State actors are involved. See also "IRNA Report: Tonj North Inter-agency needs assessment in Awul, Akop, Rualbet and Manlor Payam in Tonj North from 02-09 August 2022," <https://reliefweb.int/report/south-sudan/tonj-north-inter-agency-needs-assessment-irna-awul-akop-rualbet-and-manlor-payam-tonj-north-02-09-august-2022>.

²⁷⁹ M-100137, M-100136, M-100134, M-100132, M-100129.

²⁸⁰ Facebook Post of the Office of the President – Republic of South Sudan on 12 September 2022, available at: <https://www.facebook.com/StateHouseJ1/posts/pfbid032GxB3q34uzpenTa7NtzmV6yizDmNzYVWjXPmpDPP4HoN9VCpDphBQcgXWUeGC151>.

girls associated with armed forces in Western Equatoria, including individuals who were involved in the conflict in Tambura (see section below). Without meaningful initiatives to address the legacies of the conflict there is a great risk that the violence will be repeated.

198. The Commission and other entities have previously documented widespread human rights violations and abuses in Tambura between May and October 2021. This period was characterized by extreme levels of sexual violence, and in turn led to mass displacement and a fracturing of communities along ethnic lines.²⁸¹ The violence was sparked by political conflict, when SPLM-IG members who are Azande refused to accept power-sharing arrangements in the Peace Agreement. In particular, they opposed the appointment of General Alfred Futuyo as State Governor, who is an SPLM/A-IO member and Balanda.²⁸² The conflict in Tambura subsided following an intervention of the Joint Defence Board in late October 2021. The Commission has previously highlighted the complicity of public officials in the violence, and the demobilization of boys involved in it, as key issues that would need to be addressed to enable peace and recovery.²⁸³ Since the violence subsided, rather than taking meaningful steps to enable people to return home in safety and hold the perpetrators of the violence accountable, SPLM/A-IO and the SPLM-IG leaders have prioritized ongoing political battles for power in the state. This included SPLM-IG politicians suspending participation in the state Government on 8 October 2022, following protracted disagreements over the state budget and the alleged mismanagement of funds under the administration of Governor Futuyo.²⁸⁴ Meanwhile, residents of the state continue living in a miserable and volatile situation marked by insecurity.

199. Displaced residents of Tambura told the Commission that trust between Azande and Balanda communities was at an all-time low, and ongoing ethnic-based segregation resulting from displacement in 2021 appears to be entrenching social divisions and insecurity. Displaced civilians identifying as members of Azande or Balanda ethnic groups, as well as people of mixed descent or in families of mixed ethnicity, told the Commission that insecurity and impunity makes them fear going home. Residents fear being subjected to further human rights violations based on their ethnic affiliation.²⁸⁵ The Commission was told that tensions are particularly high between males from Azande and Balanda communities, while there is an absence of initiatives necessary to address this. Communities are deeply traumatized by the recent horrific violence and new social divisions. This is having social impacts that risk being multi-generational, including reduced attendance in school, and increased frustration amongst idle male youths.²⁸⁶ Livelihoods are significantly impacted as many people avoid travel between residences, farms and markets because they do not feel safe.²⁸⁷ Many are instead cultivating close to displacement sites because they say that humanitarian aid is insufficient to sustain them.²⁸⁸ Fear of attacks based upon their ethnic affiliation has caused protracted displacement while entrenching forms of ethnic-based segregation, which undermine the prospect of re-establishing trust and co-existence between communities.

“The armed conflict in Tambura was nonsense... Balanda and Zande married each other, and there was no reason to hate each other. Most of us produced Zande and Balanda children. People were deceived to fight each other... the two tribes must work together.”²⁸⁹

²⁸¹ A/HRC/49/78, paras. 63-76 and A/HRC/49/CRP.4, paras. 107-121. See also UNMISS and OHCHR, “Attacks on civilians in Tambura County: June—September 2021,” March 2022.

²⁸² Western Equatoria has one of the country’s three gubernatorial posts appointed by the SPLM/A-IO.

²⁸³ A/HRC/49/78, paras. 63—76 and A/HRC/49/CRP.4, paras. 107—121.

²⁸⁴ Within one month, SPLM-IG members had re-joined the state government. “SPLM-IG, SSOA, OPP and FDs withdraw from Western Equatoria state government,” Sudans Post, 7 October 2022, available at: <https://www.sudanspost.com/splm-ig-ssoa-opp-and-fds-withdraw-from-western-equatoria-state-government/>.

²⁸⁵ 105654-105660, M-100160, M-100162.

²⁸⁶ M-100160, M-100162.

²⁸⁷ M-100161.

²⁸⁸ 105654-105660

²⁸⁹ M-100161.

200. Displaced women from Tambura told the Commission that women and girls collecting firewood in bushland areas were subjected to multiple rapes by armed males, whose presence is a remnant of the 2021 crisis. When the Commission spoke to women in Tambura, they reported multiple instances from that week alone of rape and attempted rape perpetrated by armed men against women and girls collecting firewood.²⁹⁰

201. Sexual violence by members of armed groups persisted in neighbouring Yambio County. A mother reported that her very young daughter was severely traumatized by an attempted rape by an SPLM/A-IO soldier while she was walking to school, and she shared the case of a girl student who had been raped by unknown armed men and left for dead.²⁹¹ Also in Yambio, the Commission recorded details from a witness to an alleged abduction of a young woman by SPLM/A-IO soldiers, who attempted to force her into a forced marriage at their military base during 2022.²⁹²

202. The gravity of the human rights situation remained dire. Vulnerabilities, trauma, community divisions and displacement are moving in the direction of becoming more entrenched, in the absence of any significant and meaningful measures taken by the government and armed groups to improve the situation. The situation of boys and girls recruited or abducted into the armed forces is of particular concern, as discussed above.

203. People that the Commission engaged with in Western Equatoria lamented that while political leaders have participated in several high-level workshops and events to discuss the situation in Tambura, these have not yielded concrete measures to address the protection concerns of different communities, or to enable return and reintegration of displaced persons. Most glaringly is the total impunity for violent crimes carried out during the violence in Tambura during 2021, which continues to shape daily life for its communities. Again, the Commission received reports of known perpetrators of serious crimes walking around and moving freely between population centres.²⁹³ This situation contributes to insecurity, and adds to the fear and trauma experienced by community members, while also discouraging the reporting of crimes due to the evident risks of retaliation.

204. Furthermore, at the top levels, including in Government and the armed forces, public officials and commanders implicated in the violence and in gross human rights violations remain in their positions, without censure from the SPLM-IG or the SPLM/A-IO. This prevailing impunity foments ethnic-based divisions. Alongside a lack of investment in reintegration of former soldiers, and increasing desperation, impunity is added to form a potent mix which might trigger further serious human rights violations.

2. Central Equatoria State

205. The human rights situation in Central Equatoria remained affected by armed conflict between the SSPDF (the armed forces of South Sudan) and the National Salvation Front (NAS), which is not a signatory to the Peace Agreement. Although the scale of human rights violations appears to have diminished in 2022, the gravity of the human rights situation remains. The Commission heard from residents that the ongoing presence and operations of multiple armed forces fosters insecurity and fear throughout the state.²⁹⁴ The SSPDF views rural settlements as potential support bases for NAS. Despite several years of Government offensives and defections, NAS remained engaged in clashes and in ambushes on civilian vehicles in the state's interior, although it has a more significant presence in the southern border areas.²⁹⁵ The conflict is the backdrop for a broader military culture of predation on civilian populations, and exploitation of natural resources. Civilians are trapped between the parties to this armed conflict, and many basic livelihood and life opportunities are rendered unviable.

²⁹⁰ M-100160.

²⁹¹ 105639-105643.

²⁹² 105644-105648.

²⁹³ M-100160, M-100162.

²⁹⁴ 105398-105402, 105411-105416, 105458-105463, M-100112,

²⁹⁵ Most recently this includes a commander who defected to the SSPDF along with forces under his command in 2022. M-100106, M-100109, D126759-D126790, D126791-D126816.

206. The Commission received reports of SSPDF operations involving the same types of human rights violations against civilians as have been documented in previous years.²⁹⁶ Soldiers continued to conduct house inspections, perpetrating rape and other forms of sexual violence, beatings, killing and threats of killing, looting, and destruction of civilian property by arson.²⁹⁷ Witness testimonies indicate these violations were consistent with established tactics by the SSPDF to clear populations from village areas which are perceived as being potential support bases for NAS.²⁹⁸

207. Residents of several villages in Mukaya Payam, Lainya County were displaced in October 2022 as a result of attacks carried out by SSPDF soldiers.²⁹⁹ Some residents reported fleeing their homes when they heard gunfire near their villages.³⁰⁰ An older resident told the Commission that soldiers saw him and threatened to kill him if he ran, so he stayed put and watched the armed men loot his animals and household goods.³⁰¹ Residents of nearby villages recounted that when residents thought the military operation was over, some men returned to their homes only to be captured and beaten badly by SSPDF soldiers still in the area, who accused them and their children of being rebels. They also testified that the attacks saw their villages looted of household goods, food and livestock. After beatings, some residents were made to assist carrying stolen loot for the soldiers; the Commission inspected wounds from these beatings, including scarring from knife blades.³⁰²

208. SSPDF soldiers often accused civilians of being members or supporters of NAS,³⁰³ and multiple survivors of the attacks in Mukaya Payam recounted their experiences of this. Men were beaten, threatened with death, and told to move to the Atende Displacement Camp near Yei Town.³⁰⁴

“He told me, ‘We told you to stay in Atende, so why are you here?’ I responded that I wanted to farm food for my family... They made me lie down and continued beating me with a stick on my back... I still feel pain.”³⁰⁵

“One of the soldiers said to me, ‘I don’t want to see any civilian here in Mukaya because they are feeding NAS... Move your family to Atende IDP Camp or Limbe.’ Another one said ‘If we come back and find (anyone), we will kill everyone.’”³⁰⁶

209. In addition to acts intended to instil fear in communities and force displacement, the lack of accountability for serious crimes perpetrated by soldiers also discourages any return home, in spite of recent military courts in the area (discussed below). Women and girl survivors of sexual violence in previous years told the Commission they had not returned to their villages for fear of seeing the perpetrators there or experiencing horrific violations again.³⁰⁷ The persistence of SSPDF soldiers in these areas looting food and animals from civilians further indicates that the soldiers themselves lack access to basic supplies, and have been badly neglected by the Government, as the Commission has previously reported.³⁰⁸

“The soldiers start looting when people are about to harvest. When they are deployed, the Government must take responsibility for feeding them.”³⁰⁹

“What causes soldiers to loot is hunger, as they are not given food by the military.”³¹⁰

²⁹⁶ A/HRC/49/78, paras. 60-61.

²⁹⁷ 105393-105396, 105398-105402, 105403-105410, 105411-105416, 105452-105457, M-100107.

²⁹⁸ See also A/HRC/49/78, para. 60 and A/HRC/49/CRP.4, para. 84.

²⁹⁹ M-100107.

³⁰⁰ 105393-105396, 105403-105410.

³⁰¹ 105411-105416.

³⁰² 105393-105396, 105403-105410.

³⁰³ M-100109.

³⁰⁴ 105403-105410.

³⁰⁵ 105393-105396.

³⁰⁶ 105411-105416.

³⁰⁷ 105447-105451, 105464-105468.

³⁰⁸ A/HRC/49/78, para. 61.

³⁰⁹ 105458-105463.

³¹⁰ 105398-105402.

210. Rather than protecting the population, soldiers prey upon communities, acting in the knowledge that they will not be held accountable, given the prevailing culture of impunity for crimes perpetrated by members of armed forces.

211. NAS continues to abduct civilians, including children, to bolster its forces (discussed further below).³¹¹ Former abductees recounted experiences of being made to participate in military operations, and having to undertake farming and cooking activities to sustain the members of the armed group.³¹² Some had been subjected to torture and beatings, including as a method to make abductees submit to carrying out military operations or other tasks for NAS.³¹³ A young woman was told that she was being raped because her family members supported the SSPDF.³¹⁴ Those who spoke to the Commission included individuals who had escaped in 2022 as well as those released in mid-2022 as part of an informal initiative by NAS.³¹⁵ For families, the trauma of abductions by NAS can be multi-generational.

“I am so stressed and in fear for the life of my son. I don’t know what to do... Maybe NAS has abducted him, as they had abducted me.”³¹⁶

212. The impacts of abductions have further strained the social fabric of communities. Survivors of abductions, some of whom may themselves have perpetrated human rights abuses, are wary of rejection or retaliation from their communities, and many fear arrest by Government forces or recapture by NAS.³¹⁷ Some released abductees have been recruited as Government spies, as noted above. These factors discourage former abductees from seeking support, and there is, in any event, a lack of reintegration programmes for them. With very limited livelihood options, some risk returning to an armed group or criminality, and some have ended up in refugee camps.

213. There were reports of road ambushes attributed to NAS that took place on more remote roads, including the roads from Yei Town to Maridi in Western Equatoria, and south to Lasu Town and the border.³¹⁸ The Commission also received reports that NAS had harassed Government workers, including by temporarily abducting public servants who were delivering services. While alleged attacks are consistent with NAS tactics previously reported by the Commission, the corroboration of those reports was difficult due to insecurity and major access restrictions imposed by SPLM-IG and SPLM/A-IO.³¹⁹ Reported ambushes by NAS units on civilian vehicles close to Yei Town, which is highly militarized and hosts many Government checkpoints, could not be independently verified.³²⁰

214. The SPLM/A-IO maintains a presence in parts of Central Equatoria. This is despite the reduction of much of its force there from 2018 to 2021, largely from high-level defections to NAS and SPLM-IG forces.³²¹ The Commission received reports of SPLM/A-IO soldiers attacking several villages in Morobo County in September 2022, looting food and property,

³¹¹ 105417-105422, 105452-105457, 105398-105402, M-100106, M-100109.

³¹² 105411-105416, 105423-105429, 105423-105429.

³¹³ 105417-105422, 105469-105477, 105398-105402.

³¹⁴ 105417-105422.

³¹⁵ 105417-105422, 105469-105477, 105423-105429, M-100111.

³¹⁶ 105411-105416.

³¹⁷ M-100109.

³¹⁸ 105423-105429, M-100109, D126791-D126816.

³¹⁹ M-100106. See also A/HRC/49/78, para. 62.

³²⁰ For example, when a *Médecins Sans Frontières* humanitarian convoy was attacked in Yei Payam on 28 February 2022, Government sources blamed NAS, who in turn denied any involvement. “Access to medical care undermined following robbery of MSF staff in Yei,” *Médecins Sans Frontières*, 1 March 2022, available at: <https://www.msf.org/access-medical-care-undermined-following-robbery-msf-staff-yei-south-sudan>. Facebook Post of Our Diversity on 2 March 2022, available at: <https://www.facebook.com/pageourdiversity/photos/pcb.5177413632310906/5177410135644589> See also “No Choice But to Flee: Starvation and Displacement in Central Equatoria, South Sudan,” Global Rights Compliance, page 34, available at: <https://globalrightscpliance.com/wp-content/uploads/2022/11/FINAL-No-Choice-But-To-Flee-NO-EDIT.pdf>.

³²¹ High-level defections in South Sudan typically involve the defection of forces under the command of the defecting commander, and the experience in Central Equatoria has been no different. A/HRC/40/CRP.1, para. 767. D126759-D126790.

committing rape, and harassing residents at gunpoint, leading to displacement of residents.³²² While significant tension exists between the key parties to the peace agreement, SPLM/A-IO forces have continued joint operations with the SSPDF against NAS.³²³ According to CTSAMVM, the lack of food supplies provided to SPLM/A-IO soldiers was a factor in, albeit not a justification for, soldiers' predation on communities.³²⁴

215. Human rights violations and abuses documented in Central Equatoria during 2022 involve the same narrative and patterns that the Commission has recorded there for more than five years.³²⁵ Forced displacement and insecurity, enabled by broad impunity, mean the impacts remain widespread. Armed forces have treated civilian populations and local leaders either as enemies or as expendable tools to be used in pursuit of military and territorial objectives. Information received suggests this is affecting community structures as people are less inclined to take on leadership roles for fear of being targeted by armed groups.³²⁶ Traumatized civilians, many of them now displaced, lamented being caught in the middle of this fight.

3. Eastern Equatoria State

216. As in many other parts of South Sudan in 2022, areas of Eastern Equatoria under SPLM/A-IO administration saw peace agreement parties engage in violence and human rights violations. Perpetrators enjoy impunity.

217. For example, Ikotos County is administered by a County Commissioner appointed by the SPLM/A-IO, while it also hosts a SSPDF garrison around the main town, Ikotos. On Sunday 17 July 2022, residents of parts of Ikotos Town went into hiding or fled the area upon hearing gunshots fired by SSPDF soldiers from the nearby garrison.³²⁷ Soldiers had gone through the town on a spree of shooting, looting and property destruction.³²⁸ A young mother recounted to the Commission that there was chaos as worshippers ran in different directions out of a Sunday church service.³²⁹ Witnesses described SSPDF soldiers stealing property and burning down civilian homes and shops.³³⁰ Relatives of a police officer and a wildlife officer who were killed in the violence said they had been taken from their residences and shot dead out the front, in view of their families.³³¹

“I was in Church, worshipping, when we heard gunshots and screams outside... As the chaos continued, we ran out of the church and scampered for safety.”³³²

218. The next day, members of the SSPDF's Tiger Battalion deployed to Ikotos from the Eastern Equatoria capital Torit. They reportedly stabilized the situation, as locally based SSPDF soldiers returned to their garrison.³³³ When residents emerged from hiding, many found their belongings had been looted and their property destroyed by the garrisoned SSPDF soldiers.³³⁴

³²² M-100107, D126817-D126851. See also CTSAMVM, “Harassment of civilians and SGBV in Central Equatoria State,” Report 2022/22, 25 October 2022.

³²³ D126817-D126851.

³²⁴ CTSAMVM, op cit. 322.

³²⁵ See A/HRC/37/CRP.2, paras. 280-333.

³²⁶ M-100106.

³²⁷ These included the residential areas of Hai-Turuju, Hai-Askal, and Hai-Tijune.

³²⁸ 105226-105233, 105219-105225, 105269-105273, 105255-105261, 105289-105295, 105241-105247, M-100091, M-100084.

³²⁹ 105262-105268, 105278-105283.

³³⁰ 105219-105225, 105226-105233, 105241-105247.

³³¹ 105269-105273, 105255-105261, 105278-105283. CTSAMVM, op cit. 322, para. 6. A guard for a humanitarian aid organization was wounded by gunfire.

³³² 105262-105268.

³³³ 105226-105233, CTSAMVM, op cit. 322.

³³⁴ 105255-105261, 105219-105225, 105226-105233.

“I have lost everything I owned. I was a student at the Ikotos Secondary School. I had plans to further my education, but am not sure what will happen now.”³³⁵

“Everything has been lost in this senseless conflict. My restaurant, my home and valuables in my house. Life now as a displaced person is hard.”³³⁶

219. The violence appeared to have been triggered as a retaliation for an incident on 17 July where an SSPDF soldier had been shot dead in an altercation in which alcohol was involved.³³⁷ Information received about fighting that weekend between militias related to tribal-based grievances and cattle-raiding, and allegations of involvement in violence by members of the SPLM/A-IO and NAS, could not be verified by the Commission or other organizations.³³⁸ Most significantly, the violence and resulting displacement took place in the context of simmering tension between the SPLM/A-IO-appointed County Commissioner and the local SSPDF Commander, who disagreed on power sharing. Residents told the Commission they feel marginalized from the State and the protection of its forces, due to their living in an SPLM/A-IO administrative area.³³⁹

“I fear further attacks by Government forces, especially when I hear rumours that the SSPDF Commander is not taking orders from the County Commissioner, and that the Commissioner may have even been a target of SSPDF soldiers.”³⁴⁰

220. The Commission received reports that more than 18,000 people were displaced in the July violence, with some people fleeing into the Palabek refugee settlement in neighbouring Uganda, while others dispersed into Eastern Equatoria including to the town of Torit.³⁴¹ Many civilians have decided not to return to Ikotos Town because they fear the persistent insecurity and the chance of further violence there.³⁴²

“There was nothing left for me in Ikotos, so I left... hoping for a better future.”³⁴³

221. Further incidents between the SSPDF and SPLM/A-IO in the area negatively impacted prospects for addressing the security concerns of the civilian population. On 31 July the SPLM/A-IO General Secretary for Ikotos County was arrested by SSPDF soldiers, reportedly beaten and then transferred to Torit.³⁴⁴ Two SPLMA-IO major generals were also detained by the SSPDF while travelling from Ikotos to Torit in September. As a result, a large proportion of the soldiers under their command reportedly withdrew from attending the graduation ceremony for the Necessary Unified Forces held in late September in Torit Town.³⁴⁵

222. At year end, no steps appeared to have been taken to address civilian displacement or the political conflicts undermining the peace agreement. This is despite the establishment of an investigation by the State Governor’s Office, and a recommendation by the peace agreement monitoring entity CTSAMVM that the responsible SSPDF unit be withdrawn from close proximity to the town of Ikotos.³⁴⁶

III. Situation of children in armed conflict

223. Human rights violations and abuses against children continue, taking place in the context of a highly militarized society affected by decades of violence, persistent armed

³³⁵ 105219-105225.

³³⁶ 105226-105233.

³³⁷ 105241-105247, 105255-105261, 105262-105268.

³³⁸ 105289-105295, 105269-105273, D126873-D126896, D126791-D126816.

³³⁹ M-100084, 105219-105225.

³⁴⁰ 105219-105225.

³⁴¹ 105219-105225, 105241-105247, M-100081, M-100094.

³⁴² 105226-105233, 105219-105225, 105262-105268, 105289-105295.

³⁴³ 105255-105261.

³⁴⁴ CTSAMVM, *op cit.* 322, para 7.

³⁴⁵ D126873-D126896.

³⁴⁶ M-100084, CTSAMVM, *op cit.* 322, para. 14.

conflict, and a prevailing climate of impunity for serious crimes. In particular, the Commission found that armed forces and groups in South Sudan continue to recruit and abduct children, who are exploited in various roles including as cooks, as spies, and as bodyguards. Members of armed forces and groups have also committed acts of sexual violence, particularly against girls. Many affected children and their families have been threatened with harm if they resist or try to escape. While there have been initiatives to release children from armed forces and groups, these have not been fully successful. The screening processes for the necessary unified forces has also not sufficiently addressed the issue of child recruitment. Children survivors who had left armed forces and groups described to the Commission how they were suffering from trauma, depression and exposure to diseases. Challenges with reintegration have led some survivors to re-join armed groups or join criminal gangs.³⁴⁷ It was evident in the Commission's engagements that most affected children had experienced multiple violations of their rights.

224. The human rights violations and abuses against children in armed conflict and areas of insecurity have persisted despite commitments to end such practices. South Sudan is a State Party to the Convention on the Rights of the Child, and its Optional Protocol on the involvement of children in armed conflict. The 2008 Child Act and the 2009 Sudan People's Liberation Army Act are consistent with the Optional Protocol to the extent that they prohibit recruitment of persons under 18 years of age into the armed forces. The 2017 Cessation of Hostilities Agreement and the 2018 Revitalized Agreement further committed all the parties to the agreements to refrain from using children in the armed forces. The Government has legislated related commitments and other key parties to the peace agreement have endorsed these. But these laws and commitments have not been adequately resourced and operationalized in practice.

225. The UN Security Council annually receives reports from the Secretary-General on six grave violations against children in situations of armed conflict. These are: killing and maiming of children; recruitment and use of children in armed forces and armed groups; rape and other forms of sexual violence; attacks on schools or hospitals; abduction of children; and denial of humanitarian access.³⁴⁸ In February 2020, a Comprehensive Action Plan to end and prevent the grave violations against children in South Sudan was signed by the State alongside commitments from parties to the Revitalised Agreement. Yet in 2022, both SSPDF and SPLM/A-IO were again listed by the UN as parties that commit grave violations against children.³⁴⁹ As in previous years, the recruitment and use of children in armed forces was the most prevalent grave violation reported.³⁵⁰ The Special Representative of the Secretary General for Children and Armed conflict, in a country visit in May 2022, noted steps already taken, while calling upon authorities to do more, including addressing impunity.³⁵¹ The Committee on the Rights of the Child echoed this call in its concluding observations on South Sudan in October 2022, recommending investigations, accountability and remedies in response to all cases of child recruitment.³⁵²

226. In 2022, the Committee on the Rights of the Child further called for child-sensitive disarmament, demobilization and reintegration, and for adequate funding for the work of the

³⁴⁷ 105511-105518, M-100206.

³⁴⁸ A/76/871-S/2022/293, 23 June 2022, at 45.

³⁴⁹ See the UN Secretary General's Report on children and armed conflict of June 2022. While listed, the SSPDF and SPLM/A-IO were categorized as "parties that have put in place measures during the reporting period aimed at improving the protection of children." A/76/871 S/2022/493. The SSPDF is nevertheless listed for perpetrating recruitment and use of children; killing and maiming children; rape and other forms of sexual violence against children; and abduction of children; and the "SPLA-IO (pro-Machar)" is listed for recruitment and use of children; killing and maiming children; and abduction of children.

³⁵⁰ *Ibid.*, paras. 162-173.

³⁵¹ "South Sudan: Efforts to Protect Children from Armed Conflict Must be Sustained," Office of the Special Representative of the Secretary-General for Children and Armed Conflict, 25 May 2022, available at: <https://childrenandarmedconflict.un.org/2022/05/south-sudan-efforts-to-protect-children-from-armed-conflict-must-be-sustained/>.

³⁵² CRC/C/SSD/CO/1.

National Disarmament, Demobilization and Reintegration Commission.³⁵³ The UN Secretary-General also called on the Government to budget accordingly for such work.³⁵⁴ This lack of dedicated resourcing is a persistent issue. In February 2019, the Commission highlighted the lack of budgetary allocations toward the National Disarmament, Demobilization and Reintegration Commission, noting the work of UN and NGOs in attempting to cover service gaps.³⁵⁵ Four years later, and three years since the Comprehensive Action Plan was signed, this chronic under-resourcing persists, and as a result children are unable to access adequate demobilization and reintegration support. Underscoring the funding challenge, in June 2022 a senior civil servant in the Ministry of Gender, Child, and Social Welfare reportedly spoke out that policy frameworks to protect children were not being implemented where needed, largely due to insufficient funding allocations to the responsible Government departments.³⁵⁶

A. The use of children in armed forces, and barriers to their reintegration

1. Western Equatoria State

227. The situation in Western Equatoria State is illustrative of the ongoing presence of children in armed forces and groups South Sudan, and of the barriers to their demobilization and reintegration. Western Equatoria has long been a major site of recruitment and use of children by parties to the conflict there. The Commission again examined the situation in the state in 2022, to follow-up on findings previously reported, and as additional information received indicated that human rights violations and abuses persisted particularly in Yambio, Maridi and Tambura counties.

228. In 2021 in Tambura County of Western Equatoria, a significant number of boys were involved in armed violence, orchestrated with political objectives which took on ethnic dimensions.³⁵⁷ When the violence subsided around October 2021, the demobilization and reintegration of boys who were involved presented a significant human rights concern, both for their welfare and for the security situation in the area. The Commission highlighted this issue in previous reporting, noting that many participants in the violence were too young to enter the Training Centre for the Necessary Unified Forces in Maridi County, where major armed forces moved to following the Joint Defence Board's eventual intervention to quell the violence.³⁵⁸ The Commission also noted the lack of support available to effectively facilitate demobilization and community reintegration of boys who had been involved in the violence.

229. Nonetheless, in 2022 the Commission documented the presence of both boys and girls at the Training Centre for the Necessary Unified Forces in Maridi, which is under SSPDF command.³⁵⁹ Children entered the centre around October 2021 during the relocation of forces under the command of SSPDF General James Nando, who was a leader of forces which carried out deadly attacks including on civilians during the violence in Tambura in 2021.³⁶⁰ Nando's force has included boys recruited in 2021,³⁶¹ and men who were recruited as children

³⁵³ Ibid.

³⁵⁴ A/76/871 S/2022/493.

³⁵⁵ A/HRC/40/CRP.1, para. 517.

³⁵⁶ "Underfunded Ministry of Gender unable to enforce child protection mandate," Eye Radio, 17 June 2022, available at: <https://www.eyeradio.org/underfunded-ministry-of-gender-unable-to-enforce-child-protection-mandate/>.

³⁵⁷ A/HRC/49/78, para. 73. A/HRC/49/CRP.4.

³⁵⁸ Ibid.

³⁵⁹ There were graduations from this training centre in late 2022. M-100143.

³⁶⁰ General Nando had defected from the SPLM/A-IO to join the SSPDF in 2021. A/HRC/49/78, paras. 63-76. Nando has also been subjected to certain sanctions. See "Consolidated list of financial sanctions targets in the UK. Regime: South Sudan," 8 March 2023 update, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1140972/South_Sudan.pdf.

³⁶¹ 104457-104460, 104579-104584, 104707-104711, 104543-104547, 104431-104436.

earlier, while Nando was an SPLM/A-IO Commander before defecting to the SSPDF.³⁶² In November 2021, the SSPDF announced that Nando's forces had relocated to Maridi for integration into the Necessary Unified Forces.³⁶³ The children at the Training Centre during 2022 had limited meals and were subjected to violence, including beatings of boys and sexual violence against girls. Among them were girls who had been abducted into Nando's force and brought to the Centre in 2022, with some being told they would be trained.³⁶⁴

230. In March 2022, following months of delay, a group of children were formally released from the Training Centre in Maridi.³⁶⁵ The National Disarmament, Demobilization and Reintegration Commission facilitated this with the support of UNMISS and UNICEF. Of the children released, many are deeply traumatized, and some may have been involved in human rights abuses, yet support is not available for their effective reintegration into the community.³⁶⁶ Some children told the Commission they feel their lives have been ruined.

"My life is ruined. I cannot go to school, and I am sick. It is difficult to find a normal job, but I must fend for myself because all my relatives were killed. I am all alone and want the people who have made me go through this pain to be punished."³⁶⁷

231. The father of a boy who was released after several years of abduction told the Commission that his heart is filled with joy after being reunited with his son, but that he is struggling to support his education costs.³⁶⁸ Yet given the lack of available support, there is a risk that some children who were released, or who escaped, have already returned to the Maridi Training Centre.³⁶⁹ To avoid this, some families have taken the step of moving away from the area with their released children.³⁷⁰ The existing insecurity in areas such as Tambura has made reintegration of children associated with armed forces and groups even more difficult. Many children do not feel safe in returning. A survivor told the Commission that she cannot go back to Tambura because of her fear that the people who recruited her will come to look for her.³⁷¹

"I was taken to Tambura, where I had lived before I was abducted. In Tambura, I did not feel safe, and I stayed indoors for some days. The people who abducted me wanted to kidnap me and kill me. I had to leave..."³⁷²

232. The Commission has reasonable grounds to believe there were still children at the Maridi Training Centre for the Necessary Unified Forces as of late 2022. Some of the released children and their family members told the Commission that other children remain at the Centre.³⁷³ The Commission documented that of several child recruits who had escaped in 2022, some had been tracked down by SSPDF soldiers and forced to return to the Centre.³⁷⁴ The Commission also received credible reports that several girls remained at the Maridi Centre as of late 2022, that they were being held against their will as sexual slaves, and that

³⁶² M-100143, 105511-105518, 105525-105529.

³⁶³ A/HRC/49/78, paras. 70-75. The Commission also received reports that Nando was still recruiting children during 2022, which is consistent with his past practice but could not be independently verified. M-100141, M-100142. "SSPDF completes relocation of Gen. Nando's forces from Tambura – spokesman," Sudans Post, 2021, available at: <https://www.sudanspost.com/sspdf-completes-relocation-of-gen-nandos-forces-from-tambura-spokesman/>.

³⁶⁴ 105525-105529, M-100141.

³⁶⁵ The presence of children, and individuals recruited at children was well-known when Nando's forces relocated to Maridi in October and November 2021.

³⁶⁶ A/HRC/49/78. M-100147.

³⁶⁷ 105511-105518.

³⁶⁸ 105530-105535.

³⁶⁹ Non-government organizations appear to be shouldering the burden of providing them with support, with limited funding. M-100148, M-100146, M-100150, M-100147, M-100149, M-100140.

³⁷⁰ M-100145.

³⁷¹ 105525-105529.

³⁷² 105511-105518.

³⁷³ 105430-105437, 105530-105535. Other organizations have also reported this, see "Report of CTSAMVM and outcomes of CTSAMVM technical committee meeting, Juba, South Sudan," 25 April 2022, pp. 31-32.

³⁷⁴ 105438-105446.

they have been subjected to sexual violence including rape and enforced impregnation by soldiers.³⁷⁵ Eyewitnesses said they saw these girls recaptured by SSPDF soldiers in Yambio Town in March 2022 after they had briefly escaped, and that they were later seen back at the Centre.³⁷⁶ The Commission received eyewitness testimony that soldiers had hid children when monitoring teams inspected the Centre in 2022.

“I left children of my age in Maridi Training Centre. I do not know if they escaped.”

“I heard that some organization came to register children and take them to school, but the Commander in Maridi hid and locked us in a house. Whenever the commanders could hear that the people of child protection are coming, they could hide us inside the house and lock the door. I never even saw any of the people who came.”³⁷⁷

233. The Commission also reviewed reports that the National Security Services (NSS) mobilized young people including children and then trained them in the Tambura area.³⁷⁸ The trainings appear to have commenced soon after children started being released from the Maridi Training Centre and it is highly likely that they were targeted for recruitment.³⁷⁹ Training content could not be fully established but was purportedly framed as promoting vigilance.³⁸⁰ Further information-gathering about this was made difficult by the prevailing atmosphere of fear in the area, especially after July 2022 when NSS personnel unlawfully detained a Tambura civil society leader who had advocated against child recruitment.³⁸¹ For children and youth, particularly former child soldiers, participation in such activities overseen by the NSS risks further ostracizing them in their communities because they may be perceived as being Government spies. Such ostracization may also lead them to be more vulnerable and susceptible to recruitment by security or other armed forces. These concerns are directly linked to the absence of adequate planning and support for the reintegration of child soldiers into communities, as previously noted by the Commission.³⁸²

234. Further evidence was also gathered by the Commission, going back several years, implicating SPLM/A-IO officers, under the command of now-Governor Futuyo, in abductions, sexual slavery and sexual violence against women and girls. Further accounts of abductions were recorded that are consistent with SPLM/A-IO practices in the area over several years, including the abduction of girls to a base in Namutina during 2021.³⁸³ Speaking to the scale and anguish of the abductions, a Yambio resident told the Commission that six female relatives were abducted in 2019 at a young age, and that some of them had since chosen to remain with their “husbands”.³⁸⁴

“I was helpless after my wife told me that our daughter had been abducted. I couldn’t sleep. I lay down wailing like a child. I was confused and blamed myself, thinking that if I was around, I would have fought the abductors and asked them to kill me together with my children.”³⁸⁵

235. At the Maridi Training Centre, the process, supposed to be in place for the screening of the Necessary Unified Forces, should have precluded all of these children from entering the Centre in the first instance.³⁸⁶ The absence of a robust monitoring mechanism to assess and deal with the presence of children at military sites is a major barrier to addressing this

³⁷⁵ M-100149, IR-100039.

³⁷⁶ 105430-105437, M-100148.

³⁷⁷ 105525-105529.

³⁷⁸ See “Illegal recruitment and training by National Security Services (NSS) in Tambura County, Western Equatoria State,” CTSAMVM report 2022/20, 26 July 2022.

³⁷⁹ M-100144.

³⁸⁰ M-100148.

³⁸¹ M-100140.

³⁸² A/HRC/49/78, para. 73.

³⁸³ 105438-105446.

³⁸⁴ 105634-105638, 105649-105653.

³⁸⁵ 105438-105446.

³⁸⁶ The Commission has previously noted that these children are unsuitable for training and recommended that they be provided with adequate reintegration support. A/HRC/49/78.

problem.³⁸⁷ The Commission notes that senior military officers are seemingly aware of children being held against their will at the Training Centre but that the situation has nonetheless persisted. The situation of boys and girls who may be held there warrants immediate intervention by authorities to prevent the adverse impacts, which are visible in the lives of children and their families who have been recruited or used by armed forces.

236. Overall, the persistence of children in armed forces in Western Equatoria is directly attributable to the prevailing climate of impunity for human rights violations and abuses in the state. The Commission has previously indicated that Alfred Futuyo oversaw mass abductions as an SPLM/A-IO commander in Yambio, prior to his elevation as State Governor in 2020.³⁸⁸ Similarly, General James Nando has been retained by the SSPDF, seemingly to advance SPLM-IG's political and military objectives, when neither official should have been allowed to continue to office, and instead should have been investigated and held accountable for their roles in these violations. Their retention in public office constitutes a violation of the State's positive obligations under international human rights law to respect and to protect human rights, and deepens the climate of impunity. Their individual conduct may also give rise to criminal responsibility, under both domestic and international law. Acts involving recruitment, abduction, torture and sexual violence likely amount to crimes under the draft statute of the Hybrid Court for South Sudan.³⁸⁹

2. Central Equatoria State

237. In Central Equatoria State, the Commission found that the armed opposition group the National Salvation Front (NAS) also continued to abduct children into its armed group. In Yei, the Commission also received information that the NAS was conducting informal releases of children previously abducted.³⁹⁰ Former abductees who spoke to the Commission also included children abducted by SPLM/A-IO commanders who had later defected to NAS. A boy who was held for several years by SPLM/A-IO and then NAS recalled being too small to hold a machine gun when he was abducted and put into a two-week training regime.³⁹¹ The Commission also received information that in cases where children informally released by NAS report to the Government forces, they are recruited and used as spies, and that they and their families are threatened with harm if they do not cooperate.³⁹² These factors discourage former abductees from seeking support, and there is a lack of formalized reintegration programmes for them anyway. With limited livelihood options, some risk returning to an armed group or criminality, and some have ended up as refugees.

238. The experiences of their induction into the forces and groups are very traumatising for the children. A child previously associated with an armed group recounted to the Commission his initiation into the armed group, which included rituals of indoctrination designed to ease the fear of bullets, including scarring rituals and having bullets fired in their direction.³⁹³ Multiple children lamented their loss of life opportunities.

“I lost years of my education. I want to study and do nothing else; I don't want to go back to the army.”³⁹⁴

³⁸⁷ In the wide range of reports and information reviewed, the Commission found discrepancies in the number of children who were released or otherwise demobilized from Maridi in 2022. The Commission was also told that the presence of some families at the training centre makes verification of child soldiers more difficult. M-100146, 105430-105437.

³⁸⁸ A/HRC/49/CRP.4, para. 108.

³⁸⁹ For instance, “other serious crimes under international law” under draft article 5 includes conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to actively participate in hostilities, while draft article 6 contemplates serious crimes against children.

³⁹⁰ M-100206, M-100111.

³⁹¹ 105469-105477.

³⁹² The potential for abductees to become informants or intelligence sources for the government also disincentivizes NAS from releasing them. 105452-105457, 105469-105477, M-100110, D126791-D126816.

³⁹³ 105430-105437.

³⁹⁴ 105339-105346.

239. Testimonies and information collected by the Commission reaffirm that the reintegration of demobilized children into the community remains a challenge in Western and Central Equatoria States, due to the inadequate number of organizations with a mandate and resources to provide services, such as psychosocial and medical support, to children associated with armed forces and groups in South Sudan. The lack of sustainable reintegration support and rehabilitation programmes to cater for the needs of these children has led to some of them being recruited again and again.³⁹⁵ The continuing presence of children at the Necessary Unified Forces Training Centre in Maridi raises concerns about the screening process at similar sites throughout the country, and of the ability of the National Disarmament, Demobilization and Reintegration Commission to fulfil its obligations towards the protection of children.

B. Other violations of child's rights in conflict and their impact

240. The Commission documented killings of children, as well as other forms of violence against children, in multiple areas affected by conflict during 2022. Witnesses in Upper Nile and northern parts of Jonglei State shared accounts of parents witnessing their children being shot and killed during armed attacks on Shilluk and Nuer civilian populations, and of children and parents being separated in the course of violence and displacement.³⁹⁶ In Unity State, the Commission received reports of children being burnt in tukuls during attacks on settlements, of girls being subjected to sexual violence, and of boys and girls fleeing attackers but drowning in rivers because they could not swim.³⁹⁷

241. Children have continued to comprise the majority of the population displaced within South Sudan as well as those living as refugees from South Sudan in neighbouring countries.³⁹⁸ They faced acute hardships and deprivations including lack of access to adequate food and to education. Many were subjected to exploitation. During attacks and displacements, children are often separated from caregivers, increasing their vulnerability. One young man told the Commission that the children in his family had sought better educational opportunities in a refugee settlement in Uganda, only for some of them to return to South Sudan after being exploited by their caregiver, who would sell-on their food rations, leaving them hungry.³⁹⁹ Authorities in the town of Kodok in Upper Nile State estimated that the displaced population in November 2022 included around 300 children who had been separated from their care givers.⁴⁰⁰ Further south at the UN Protection of Civilians site in Malakal, the Commission heard about children caught up in the ethnic tensions caused by the broader violent conflict.⁴⁰¹

242. Despite the SSPDF being delisted by the UN Secretary-General as a persistent perpetrator of violations consisting of attacks on schools or hospitals, the SSPDF's military use of schools continues. This deprives children of the right to education, severely impacting the availability of safe child-friendly environments or space. The Commission verified that during 2022 the SSPDF used for military purposes three schools in Western Equatoria State, two schools in Central Equatoria's Yei and Kajo Keji counties, and one school in Rual-Bet Payam, in Warrap State.⁴⁰² The Commission notes that the Government has not disciplined or otherwise sanctioned military commanders who have been involved in the occupation of schools, for example the use of a primary school in Tambura in 2021.⁴⁰³ In September 2022, Information Minister Michael Makuei sought to justify the ongoing occupation of schools by

³⁹⁵ 105430-105437.

³⁹⁶ 105691-105694, 105705-105706, 105700-105702, 105665-105668, 105678-105682, 105723-105728.

³⁹⁷ M-100041, M-100038, 105339-105346

³⁹⁸ "Humanitarian Situation Report No. 12: Reporting Period, 1 January to 31 December 2022," UNICEF, 15 February 2023, available at: <https://www.unicef.org/media/134751/file/South-Sudan-Humanitarian-SitRep-31-December-2022.pdf>.

³⁹⁹ 105423-105429.

⁴⁰⁰ South Sudan Protection Cluster Flash Report, 24 November 2022.

⁴⁰¹ 105723-105728.

⁴⁰² M-100110, M-100107, M-100148, M-100138.

⁴⁰³ A/HRC/49/78, paras. 70 and 75.

armed forces, stating that this occurred only in sparsely populated areas with few or no teachers or pupils, and to prevent armed groups occupying the premises.⁴⁰⁴ Even where Government forces have relocated from a school, the Commission found that they often remained nearby, perpetuating a climate of fear, and disrupting education.

243. While the Commission's findings illuminate the situation of children in these parts of the country, the magnitude and breadth of their experiences should be further investigated. The failure to hold those who violate children's rights accountable emerges as a driver of these violations and abuses which recur across generations. The Government of South Sudan bears the obligation of ending and preventing human rights violations and abuses against children, including the 'grave violations' referred to in the UN Secretary General's reports related to the relevant parties. The Government needs to demonstrate greater political will to address these persistent violations, including by properly resourcing the reintegration initiatives and by holding to account those responsible for violations against children. Other parties to the Revitalized Agreement must also do far more to demonstrate a genuine will to address violations against children, including through addressing impunity. Armed actors who are not party to the Agreement, such as NAS, must also address violations and ongoing abuses within their ranks. As part of this, all parties to conflict in South Sudan must immediately release children within their ranks and associated with them, and cease the perpetration of grave violations against children.

IV. Conflict-related sexual violence and gender-based violence

1. Overview

244. Since 2016, the Commission has reported on the prevalence, patterns and trends of conflict related sexual violence in South Sudan, in its mandate reports and various conference room papers.⁴⁰⁵ These reports have detailed the experiences of witnesses, included the patterns and trends of these violations, and delivered an analysis of the eco-system within which such violations take place in South Sudan. "Conflict-related sexual violence" refers to the range of violations including rape, sexual slavery, forced prostitution, forced pregnancy, forced abortion, enforced sterilization, forced marriage, and any other form of sexual violence that is directly or indirectly linked to a conflict.⁴⁰⁶

245. Conflict-related sexual violence is often brutal, deliberate and intended to punish or humiliate individuals and their communities. It occurs within the context of broader structural violence within society, and is enabled and aggravated by conflict at all levels. Perpetrators are usually affiliated with a State or non-State armed group, including militias. The acts are often perpetrated alongside other violations and abuses against civilian populations who are targeted because of their actual or perceived membership of ethnic, religious, political or other groups, or on account of gender identity or sexual orientation. While women and girls are disproportionately the targets, men and boys and members of sexual and gender minorities are also victims of these violations. Some groups, such as internally displaced persons, widows, migrants, female heads of household, detainees, people with disabilities, specific ethnic and minority groups, are also more vulnerable than others. Conflict-related sexual violence has multiple enablers and consequences: among others, it thrives in a climate of impunity and limited accountability; it also results in displacements of persons, including through cross-border trafficking for the purpose of sexual violence or exploitation.

246. The consequences of conflict-related sexual violence can be severe. Many victims die or are killed by their assailants. Survivors are usually left with severe physical and psychological trauma, scarring their lives permanently. They can also be exposed to HIV

⁴⁰⁴ "Armed forces continue to occupy schools: UNICEF," *The City Review*, 7 September 2022, available at: <https://cityreviewss.com/armed-forces-continue-to-occupy-schools-unicef/>.

⁴⁰⁵ See the Conference Room Paper on conflict-related sexual violence against women and girls in South Sudan, 21 March 2022, A/HRC/49/CRP, available at: https://www.ohchr.org/sites/default/files/2022-03/A_HRC_49_CRP_4.pdf.

⁴⁰⁶ Report of the United Nations Secretary General on Conflict Related Sexual Violence, 29 March 2022, S/2022/272.

infection. Survivors also experience stigmatization and rejection by their communities and even families. When sexual violence results in unwanted pregnancies, mothers and children born of wartime rape bear the added burden of ostracism. They face administrative challenges in registering births of their children, their legal names, or their rights to citizenship, inheritance, and other entitlements. Because of the stigma associated with being sexually violated and emasculated, men and boys are extremely reluctant to discuss or report sexual violence. They also experience particular physical and psychological consequences that often require specialized attention. Oftentimes legal and institutional systems for responding to male rape are rudimentary or non-existent.

247. The Commission has continued to document, collect and preserve evidence of conflict-related sexual violence. The Commission has in this report focused on establishing the facts and incidents of sexual and gender-based violence, including in the emblematic situations above. Information was gathered from victims and witnesses in various locations, including areas near military barracks and displacement sites. The Commission visited sites where violations had taken place and examined secondary materials for factual determinations on specific incidents and patterns of sexual violence. The Commission documented multiple accounts of rape, gang-rape, forced stripping or nudity, sexual slavery, forced pregnancy or abortion, forced marriage, and abduction for purposes of sexual abuse perpetrated by parties to the conflicts including members of the SSPDF, the SPLA-IO, armed youth affiliated to the government and opposition forces, and other armed elements, linked to and/or fighting alongside various fighting groups but whose identities were unknown. The Commission places emphasis on evidence that the perpetrator committed an act of sexual violence against one or more persons or caused such person or persons to engage in sexual violence by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent. In this section, the report further analyses the patterns and trends of conflict related sexual and gender-based violence detailed elsewhere in this report. It underscores the continuation of cycles of conflict related sexual and gender-based violence in different contexts of conflict across the country, highlighting the gendered nature of safety and security in these diverse settings; the dynamics of limited and under-reporting; the interconnectedness of perpetrators and their position within communities and groups; and some of the adverse impacts of the violence on individuals and communities.

248. Impunity for sexual and gender-based violence continues to remain a central feature of the violent conflicts in South Sudan. Sexual and gender-based violence is often used as a tactic of warfare by armed parties to instil fear and terror, to humiliate and destroy the identity of the autonomy of victims, subjecting them to gross violations. During the mandate period, the Commission documented primarily women and girls as victims, without disqualifying men and boys. As documented in previous reports, sexual violence perpetrated against male victims remains largely underreported owing to a failure by victims to report incident, as well as other factors, including stigma and lack of safe spaces to report.

2. Continuation of sexual and gender-based violence

249. Conflict related sexual violence in South Sudan is an ongoing phenomenon which has become normalized, and has been perpetrated by different actors at different stages of the country's political trajectory since it gained independence in July 2011. The conflict that began in 2013 saw high levels of sexual violence from the onset, perpetrated and condoned by the main conflict actors at the national level: the Government and the SPLM/A-IO. The conflict has continued between the Government and armed opposition groups including, the National Salvation Front (NAS), and other members of the South Sudan Opposition Movements Alliance (SSOMA); groups that did not sign the 2018 Revitalized Agreement. They too have perpetrated conflict related sexual violence, as have other armed actors including armed youths, cattle keepers, and other armed elements who are directly or indirectly linked to, or under the control of, parties to the conflict.

250. As the Commission has previously stated, the true magnitude of conflict related sexual violence in South Sudan is yet to be fully understood, given the immense underreporting of cases because of fear of reprisal, stigma, and safety and security, including to families and

communities. The lack of access to meaningful justice and accountability for these crimes has left many victims with whom the Commission has interacted feeling hopeless and in despair. A notable feature of conflict in South Sudan is the consistent recurrence of violations despite shifts in the conflict dynamics. As conflict and violence have spread or re-emerged in different areas of the country, new threats and perpetrators of sexual violence have emerged to blight the lives of ordinary South Sudanese, particularly women and girls. Several witnesses to and victims of attacks, particularly in Unity State in 2022, spoke to the Commission of experiencing rape and gang rape multiple times between 2013 and 2022.

251. Across the different expressions of violence, the patterns of attack had gendered dimensions. Mostly, attackers sought to kill the men, who then fled for their lives, leaving behind the women and children who then became even more vulnerable to other harms such as rape. In some cases, men have sent their families away to camps or settlements for displaced persons, or neighbouring villages for safety. During flight, women were often left behind because unlike the men, they could not move as fast, as they had to carry small children or ensure that children and elderly relatives were not left behind. Women also carry with them necessary provisions, and household implements including food and cooking utensils.⁴⁰⁷ Women thus tended to travel with children in larger groups whereas men could flee alone or in smaller groups comprised only of men, and were helpless to protect their families.

252. Women and other family members sometimes opted to remain behind, rather than move to a displaced persons' settlement, if security forces had established a presence in their area. Hoping that the forces would protect them, women and families are forced to balance the risk of attack with the need to pursue livelihoods to provide for themselves. One man narrating the ordeal of his female relatives, shared how, in spite of warning his young sisters of an imminent attack, the girls refused, arguing that too much was at stake if they could not earn enough money to support themselves and the extended family. These young women were captured when their area was attacked, and along with a group of other women, they were taken as sexual slaves and subjected to days of gang rape, beatings and other cruel and degrading treatment.⁴⁰⁸

3. Patterns of rape and other forms of sexual violence

253. Thus, South Sudanese women and girls have continued to experience rape, gang rape and other sexual violence. Sexual slavery has also continued, as women are confined for the purposes of sexual violation. After nearly a decade of conflict in which women and girls are violated, they are unable to feel safe and secure in their own country and have lost the sense of agency and autonomy and carry profound traumas. For whole communities, the sense of stability and belonging that both women and men should enjoy, is lost, with long-term implications that are not yet fully comprehended.

254. The Commission established that rape, gang rape, forced nudity, and abduction of women and girls after which they were held in captivity and repeatedly sexually violated over a period of days, were key features during armed offensives in southern Unity State in February and April 2022 (see also the section above). Women and girls were raped in villages throughout Southern Unity, which came under attack by Government-aligned forces. As armed attacks spread to communities, so too did rape, gang rape and other forms of sexual violence. The Commission obtained information that in one particular area, more than 30 rape and gang rape cases of women and girls occurred during the first day of the armed attacks, with estimates by first responders that more than 60 females were raped or gang raped there. Much of the sexual violence was accompanied by brutal physical assault, beatings and victims and survivors forced to bear witness to gruesome crimes.

255. A particular characteristic of sexual violence in the campaigns in Unity State was the capture and forced movement of large groups of women from one location to another. During this movement, women were forced to carry looted items from villages and homesteads at the command of their attackers, often to distant destinations. Many witnesses described

⁴⁰⁷ 105388-105392.

⁴⁰⁸ 105373-105378.

repeatedly seeing armed attackers “burning houses, and looting property” even as they were forced to flee from place to place. These attackers also “collected women and put them in groups. I saw houses getting burned and women captured in groups”.⁴⁰⁹ Women reported that they were released from their confinement as different groups of women arrived, but only after being subjected to incredibly harrowing sexual attacks. One woman was raped by at least 13 men at different points over a period of seven days with rape going on long into the night on at least one occasion.⁴¹⁰

256. Several witnesses the Commission spoke to in Unity State detailed the cyclical and repetitive nature of armed attacks in that state. They noted how young men were recruited on the basis that they would be compensated for their participation in raids by helping themselves to women and girls and loot. In South Sudan, it is extremely difficult to acquire a bride owing to the high number of cattle (or equivalent value) the groom has to provide to the family of the bride. Therefore, attacks and raids on other communities provide an opportunity to young men to acquire cows. Perpetrators of violations are thus often members of neighbouring communities, but they may also have some family or clan connections to victims and survivors. The Commission was told that some of the perpetrators are seen in local public places such as the markets, but nothing is done about this. These complex community relationships, interactions and networks make it difficult for actors to be held to account for violations including sexual violence. In some situations, the safety and security of various other family and community members could be impacted as the threat of reprisal against a large group of people always remains a real possibility. Witnesses suggested that women sometimes recognised their attackers, and indeed in some instances more serious attacks were avoided because women had identified their would-be attackers.⁴¹¹

257. The story of Unity State paints a picture of a horrendous situation where there was literally no place to hide: neither for the women and girls, nor for the men and boys. Women and girls however were exceptionally vulnerable. The Commission repeatedly heard how villagers were forced to hide in the river up to their necks, but this proved no deterrent for the assailants who still dragged the women from the water and captured them.⁴¹² Several of these women, when they were able to finally escape, have refused to remain in South Sudan as they no longer have any trust in the State. The drivers and patterns of these violations also mirror other parts of South Sudan, including on the social issue of young men needed to secure cattle for purposes of marriage.

258. The Commission identified the persistence of sexual violence in other areas of violence and insecurity during 2022. In Warrap State, the Commission established that rapes and other sexual violence against women and girls, perpetrated by armed elements started to be reported and increased in prevalence from July 2022, when armed forces moved to the area and violent clashes intensified. As of September 2022, service providers documented at least 53 cases of rape of women and girls, including the rape of a pregnant woman, as discussed in the section above. But this figure likely underrepresents the true picture. In Central Equatoria State, there continued to be incidences of conflict related sexual violence. Here, however, the SSPDF has also responded to complaints and reports by communities of violations perpetrated by military personnel through the use of military courts operating in the area (discussed in section below). In Western Equatoria State, interlocutors spoke to the Commission about the ongoing security threat posed to community members because of the location of military personnel in close proximity to civilian dwellings and settlements. Relatives of victims and witnesses recalled the ongoing plight of women and girls in an area located within close proximity to an SPLM/A-IO cantonment site. Community members recounted how the SPLM/A-IO personnel in the area abducted women and girls in 2019, and how the ramifications of those events continued to plague families. In addition, the interconnectedness of military and civilian authority, whereby civilian authorities such as the police and county authorities are housed in the same physical location as military personnel,

⁴⁰⁹ 105388-105392.

⁴¹⁰ 105379-105383.

⁴¹¹ 105305-105319.

⁴¹² 105379-105383.

makes it next to impossible for civilians to report to the police sexual and gender-based violations committed by military personnel.

4. Reporting and stigma: dynamics affecting disclosure of experiences of sexual violence

259. In documenting conflict related sexual and gender-based violence, interrelated elements emerged that have a bearing on reporting these violations. The absence of accountability measures for sexual violence makes it difficult for survivors and their families to report the attacks even if they were inclined to do so. Moreover, women and girls need to survive and remain in communities where the perpetrators often continue to live. When victims therefore continue to share the same community with their attackers, yet without the requisite psychosocial or medical support, this also impacts on their disclosure and reporting of the assault. In these circumstances, the absence of disclosure and reporting is not only attributable to associated stigma, but can also be understood as a difficult choice for the victim due to their need for survival within the community. A community that has been repeatedly violated, is unlikely to have the social and other infrastructure to handle sexual violence, or the other traumas and dehumanising experiences that have befallen it. In other words, survivors choose not to disclose because they also need to continue to live within their communities, which is often the only home they have.

260. Although sexual violence is not being reported to authorities such as the police at sufficiently high rates, the Commission also heard how women and communities in general are facilitating alternative spaces for victims to share and speak about their experiences and pain. Following the April attacks in Unity State, some women formed support groups where they could share their stories, cry with other survivors, comfort others and receive comfort. Others shared their experiences with trusted family or clan members and neighbours.⁴¹³ One man describing his wife's ordeal noted that she shared her experience to him together with female members of her family who supported her throughout the process.

261. Issues of confidentiality continue to be a challenge for survivors and victims who may require a range of medical and psychological response following sexual violence. Several witnesses expressed concern about the safety and security of their information when they access certain services such as medical services, especially in camps for displaced persons and other settlements. Furthermore, institutional challenges, including lack of justice and accountability mechanisms, including poor and ineffective law enforcement all acted as a deterrent to reporting cases at the police station. In some States including Unity, Upper Nile, and parts of Central Equatoria there is no High Court with the legal jurisdiction to hear serious cases of rape and murder. In the absence of such courts, cases are brought to the attention of customary courts which are predominantly comprised of male adjudicators who may not be sympathetic to women's situations. This discourages female victims from reporting cases.

5. Elusive accountability and impunity

262. The Commission reiterates that there is need for the State to create a conducive environment and establish measures that encourage and support victims to report cases to the police. Despite the setting up of Special Protection Units at police stations to assist and support vulnerable persons including women and children, the units lack specialized and trained personnel, as well as the resources to function effectively and efficiently. Many of the units across the country have no vehicles to investigate a case and pursue perpetrators.

263. While welcoming a few advances in Yei and Bentiu towns in Central Equatoria and Unity States respectively, the Commission remains concerned that, as in the past, there have been no investigations into allegations, nor have perpetrators been held accountable for the gross and widespread sexual violations committed in areas affected by conflict. Where prosecutions have taken place, these have been confined to individual prosecutions through the military and general court martials of individual perpetrators who are military personnel. Little to no action has been taken to hold to account, investigate, prosecute and punish those senior people most responsible for dealing with sexual violations where information on

⁴¹³ 105379-105383, 105305-105319.

widespread violations has emerged, especially those alleged to be responsible for armed groups including cattle keepers.

264. Addressing impunity, especially for conflict related sexual violence, is urgent. Significant and serious efforts to counter impunity will require dedicated and comprehensive investigative and accountability responses that prioritise accountability for sexual violations that have taken place while also laying foundations for prevention of future violations. Decisively addressing impunity for conflict related sexual violence requires acknowledgement at high political levels that violations have taken place repeatedly, over a long period, by the same range of actors and in the similar patterns. Political and community leaders should also recognise the deep and generational impacts of sexual violence and commit to ways of preventing and rooting it out of South Sudanese society. The repeated cycles of both conflict and sexual violence, where victims have experienced rape and gang rape on multiple occasions, means it is not possible to delay extensive accountability efforts any longer. The welfare and need to repair the harm to victims, and to ensure their safety and wellbeing must be at the centre of the response to conflict related sexual violence.

265. As discussed in the section below, South Sudan suffers from institutional incapacity and extremely limited resources for law enforcement personnel, including low to no salaries for law enforcement officers. Infrastructure deficiencies, including lack of proper road and telecommunication resources also affect the delivery of justice. Personnel within the criminal justice system are also members of South Sudanese society and are therefore affected by challenges and biases that affect the rest of the society. Law enforcement personnel also do not have access to the tools for their work to enable them to respond to crimes and incidents of sexual violence, for example, vehicles and other transport, adequate prison cells and physical holding structures for suspects, books, files and other materials.

6. Victims and perpetrators

266. The nature of the trends and patterns of conflict related sexual violence and gender-based violence in South Sudan over the years are deeply disturbing and shocking, and lifechanging for the victims, their families and their communities. Most cases of sexual violence involve gang rape of a single victim, with multiple perpetrators raping the victim one after the other or involve multiple victims. The areas of attacks include along the roads, when victims are traveling from one area to another including markets, during firewood and water collection, charcoal making, cultivating, and during armed conflicts, including when fleeing from armed conflicts. From some testimonies, the perpetrators hide in forests where they set up temporary shelters. The Commission has consistently heard about and documented cases of extremely brutal and painful sexual violations that could only be explained by an intention to cause the maximum harm, if not death to victims.

267. Sexual violence and in particular rape and gang rape, have targeted mainly women and girls. Male reporting of sexual violence has continued to be limited, and where male survivors do report, it is usually out of an extreme need for medical attention. Nevertheless, the Commission did obtain information on male survivors of rape, gang rape and sexual torture with victims including old men and young boys. Often, the few who report are in cases of extreme medical attention, and even then, most refuse to undergo clinical management. Service providers in various parts of the country stated that there was a need for greater awareness of the plight of male victims, so that they too should be encouraged to seek support and justice.

7. Impacts of sexual violence on victims and survivors

268. Many victims of conflict related sexual violence have succumbed to the harms and injuries from their violation. For survivors, the impacts are both short-term, and long term, with victims suffering both physical and emotional scars. The effects of what has happened to victims further exacerbates their vulnerability, with many suffering deep psychological trauma, accusations of rejection by family members resulting in collapse of family relations, isolation and stigma by family and community members, depression and loss of hope and feeling suicidal, low self-esteem and morale, depreciation in physical appearances, including weight loss. Furthermore, in some of the cases, victims of rape gave birth to children which resulted from the rape. The births of the children further worsened attitudes of rejection and

abandonment by family members, including husbands. Some of the victims were forced to leave their residences to stay in other areas where they are not known, because of shame and stigma of what happened to them.

269. Survivors who chose to disclose attacks, received medical attention when health care was available, while numerous other victims did not seek or receive assistance. Girls as young as 9 years old were raped, while others were kept in confinement and gang raped over a period of up to five days. One witness narrated how a 16-year-old girl was not only suffering from the physical impact of her ordeal but had become stressed about the long-term health impact on her body of the multiple gang rapes she suffered, “this girl is stressed that her future is spoiled and will never be the same”.⁴¹⁴

270. In addition to the previously reported psychological and physical impacts, the Commission noted with concern the deep harms that sexual violence has at a community and societal level. This will also have an impact on the design and delivery of future efforts for repair and redress. Survivors spoke to the Commission of a deep sense of dislocation and not belonging. They told the Commission how they believe they have been completely abandoned by the state and those responsible for their security and well-being. Pointing to various authorities’ failure to follow through on promises and obligations related to preventing violations and establishing investigative bodies – for example in Unity State – or providing compensation and reparation – for example in Yei, Central Equatoria, survivors do not see sincerity in the promises made by the Government or other authorities.

271. Many witnesses spoke to the Commission about the loss of family members and the resultant continued erosion of the social fabric through breaking down of families. The Commission continues to note the toll of the loss of family members especially on women. This loss has a deeper impact on the wider net of care giving and takes place in the absence of a social support system. One woman told the Commission how her care giving responsibilities had increased, following her sister’s death in violent attacks on their village: “I am looking after my sister’s seven children, including an 11-month-old baby”.⁴¹⁵

8. Support for victims of sexual violence

272. As conflict has endured and the economy continues to struggle, including through mismanagement and skewed priorities, basic services including hospitals, law enforcement, and other response mechanisms specifically targeted at sexual violations, have been further impacted. The absence of courts, magistrates and other legal personnel in remote areas means the continued reliance on traditional mechanisms which are being further distanced from the centre because of limited operational resources. One Stop Centres and other support mechanisms, such as social workers, while having increased in number, are confined to main towns and centres. While the Commission is encouraged by the Ministry of Gender’s efforts in this regard, there is still a need for more resources for establishing a robust response system to sexual violence across the country, including the deployment of mobile health and psychosocial services. The Commission also notes with concern that non-state service providers have been adversely affected by changes in the global system that have impacted on funding. Several medico-legal organisations that previously operated in conflict affected areas have ceased operations.

273. Support for victims of sexual violence is inadequate, as narrated by service providers in Western Equatoria, Eastern Equatoria, Central Equatoria, Unity, and Upper Nile States. Most of the service providers, including medical and psychosocial referral entities emphasised that the cases being reported to them for support are not a true reflection of the actual numbers. This means that the systems would actually be under huge pressure should all survivors come forward. However, issues of stigma, fear of reprisals, feelings of shame and guilt, and other cultural considerations, including notions of women’s requirements to remain ‘pure’ for marriage, also contribute to very low levels of reporting.

274. Frontline responders and service providers for sexual and gender-based violence indicated that cuts in funding were a serious impediment to service provision for victims of

⁴¹⁴ 105384-105387.

⁴¹⁵ 105384-105387.

sexual violations, especially in conflict affected places. These cuts have had a direct impact on medical responses in some of the most remote areas in the country, areas that were already underserved. In these circumstances, service providers have noted the importance and urgency of initiating immediate responses including mobile health services and psychosocial support to these remote areas. State hospitals are not adequately supplied to respond to the needs of communities particularly with regard to sexual violence. As a result, the provision of medical care is mostly left to international organisations and other non-Governmental entities. However, these organisations often do not have the capacity to cover remote and inaccessible areas, especially when the road and communication networks are cut off, isolating the populations from medical assistance and support.

9. Reparations

275. Many victims who spoke to the Commission are still in deep shock and trauma, and experiencing life-threatening physical, sexual and reproductive health conditions from conflict related sexual violations committed against them. They face urgent needs that have a direct bearing on their survival, their ability to function physically and psychologically, the ability to care for their loved ones and participate in family life and limit their ability to be active members of their communities. The Commission in engaging with numerous victims over the years, has established that victims are tired of waiting for perpetrators and violators to be arrested and prosecuted before they can access and benefit from responses to their immediate needs.

276. The Revitalized Agreement anticipates the establishment of a comprehensive reparation programme to address the needs of conflict-affected victims. This includes action through the Compensation and Reparation Authority and Fund, and Special Reconstruction Fund. The establishment of these measures should be fast-tracked to begin to provide interim assistance and reparation to address victims' urgent health and psychosocial needs.

10. Ongoing engagement of the Commission

277. The Commission continued to engage all stakeholders on conflict related sexual violence. In August 2022, the Commission participated in a one-day Multistakeholder Dialogue, held by South Sudanese civil society organisations in Juba, that considered the recommendations of the Commission's March 2022 Conference Room Paper on conflict related sexual violence against women and girls. Participants included various Government ministries, the Defence Board, Prison Services, the SGBV Courts, various UN entities, CTSAMVM, civil society organisations including women's groups, faith-based organisations and survivors' groups. Participants engaged in robust discussion on an action plan for taking forward the Commission's recommendations. In December 2022, the Commission also participated in the Preventing Sexual Violence in Conflict Initiative (PSVI) Conference, raising the various issues of concern regarding sexual violence in South Sudan.

278. The Commission is encouraged by the efforts of the Ministry of Defence and Veteran Affairs to implement the Action Plan on Conflict Related Sexual Violence that includes commitments to ensuring accountability and ending impunity for violations committed by armed actors, in particular personnel of the Armed Forces. The Commission notes the growing implementation of General and Military Courts Martial in various States and regions where human rights violations have been perpetrated by members of the armed forces including sexual violence. The Commission encourages the Ministry and the SSPDF to accelerate the implementation of the Action Plan and other commitments to the fullest extent possible. While individual ministries and some Government responses demonstrate serious action with potential long-term impact, there is insufficient concerted commitment by the broader political system and the related state infrastructure to deliver these aspirations. Neither is there an adequate allocation of resources and energy to ensure access to justice, medical and psychosocial support, as well as prevention measures which should include criminal accountability.

279. The Commission appreciates the complexity of the phenomenon of conflict related sexual violence and remains deeply troubled and concerned about its prevalence and recurrence in South Sudan. This violence is taking place in the context of gender-based violence at a societal level that increasingly manifests and evolves even as the conflict itself

transforms. This requires a response that targets all forms of sexual violence with a view to preventing this deplorable blight on the lives of South Sudanese women, girls and communities. The Commission is convinced that breaking the cycles of impunity is a critical first step. It is therefore concerned by the denials and minimising of these crimes at the highest and most influential levels and urges relevant parties and state authorities to confront the reality of sexual violence and take relevant action to strengthen its institutional and other responses.

V. Political economy and its impacts on human rights

280. Although South Sudan is rich in natural resources, the State has failed to deliver the core government services that would enable South Sudanese to enjoy their economic, social, and cultural rights. These include the rights to food, clean water, sanitation, adequate healthcare, and basic education, which are core entitlements of citizens. Competition among South Sudan's ruling elites for the resources of the State is also a key driver of conflict, associated human rights violations and humanitarian impacts, as resources are funnelled into enabling proxy conflicts and armed violence. The Government's heightened resistance to effective public scrutiny of its management of resources has also involved repression and the clampdown on civic and political space, discouraging related media reporting and public debate. Corruption and economic mismanagement are thus directly and indirectly connected with the full range of human rights violations documented in this report. Accordingly, any sound strategy for preventing these violations must grapple seriously with the causes and consequences of the continuing resource mismanagement by South Sudan's elites.

281. On the humanitarian front, mismanagement and corrupt governance have contributed to the situation where the country cannot feed itself, with more than 76 percent of South Sudanese inside the country requiring humanitarian assistance in 2023, up from the previous year.⁴¹⁶ The Government is not able to pay public servant salaries; in 2022, South Sudan applied financial assistance received from the International Monetary Fund (IMF) to reduce eight months of public sector salary arrears, only for those arrears to increase again. These arrears have built up despite many Government salaries being as low as SSP2,000 per month – currently less than US\$3 and depreciating by the day.⁴¹⁷ Hospitals are crippled by power outages and where they have no drugs, patients are compelled to bring their own, if drugs are even available.⁴¹⁸ In more than a decade since independence, the Government has not built even the beginnings of a road network.

282. This failure of economic and public financial management is explained by South Sudan's political and military elites having, at every opportunity, corruptly diverted public resources from all sectors for private gain and sectarian interests. This pattern which began pre-independence, with the multibillion-dollar Dura Saga in 2008, has continued post-independence with large-scale scandals – like the Letters of Credit – and continues up until the period of the current Peace Agreement.⁴¹⁹

⁴¹⁶ OCHA, "Humanitarian Response Plan: South Sudan," December 2022, page 5, available at: https://fscluster.org/sites/default/files/documents/ssd_hrp_2023.pdf

⁴¹⁷ M-100200.

⁴¹⁸ See for example "“Malakal Teaching Hospital lacks drugs since 2019”, says Director-General,” Catholic Radio Network, 28 March 2022, available at: <https://catholicradionetwork.org/2022/03/28/malakal-teaching-hospital-lacks-drugs-since-2019-says-director-general/>.

⁴¹⁹ Between 2012 and 2015, the Government of South Sudan arranged for \$793M from Qatar National Bank and \$200M from CFC Stanbic Bank to be made available as an oil-secured, dollar-denominated credit facility. The intention of the programme was to assist businesses involved in the importation of essential goods – such as food, medicine, and fuel – at a time when foreign currency was becoming increasingly scarce. However, the country's most connected individuals in the political, military, and business spheres abused this programme; they took the foreign currency, but never imported the goods into South Sudan. See "Cash Grab: How a Billion-Dollar Credit Scam Robbed South Sudan of Fuel, Food, and Medicine," The Sentry, October 2022, available at: https://thesentry.org/wp-content/uploads/2022/10/CashGrab_TheSentry.pdf and "Capture on the Nile," Global Witness, April 2018, available at: <https://www.globalwitness.org/en/campaigns/south-sudan/capture-on-the-nile/>.

283. As a consequence, South Sudan, a country well-endowed with natural resources, is now almost entirely dependent on foreign aid, as evidenced by the country's applications for three rounds of emergency IMF assistance in three years. A complete dependence on imports, has also left the country with insufficient flexibility to manage unanticipated shocks. Recent shocks include the 2020 oil price decline, persistent flooding in oil-producing regions throughout 2021/22, and high levels of global inflation in 2022.

284. Corruption in South Sudan has made the international community increasingly reluctant to provide assistance. In October 2022, the US Government made it official policy to oppose international financial institution assistance for South Sudan.⁴²⁰ Additionally, the Government of Japan's aid donations in November 2022 for flood assistance took the form of tents, blankets, and jerry cans,⁴²¹ after 30% of the previous aid they provided in cash disappeared when it reached South Sudan's Ministry of Interior.⁴²² The armed conflict in Ukraine is further increasing donor reluctance, placing greater demands on national foreign assistance budgets. All this translates into a lack of basic services and assistance for the long-suffering people of South Sudan.

1. Flawed Budgeting and Expenditure Process

285. South Sudan's flawed budgeting and expenditure processes facilitate the diversion of Government revenue from the critical institutions and services required to carry out basic governance functions and to meet the State's obligations under international human rights law. While oil represents approximately 90% of South Sudan's revenue, accounting for its receipt and expenditure is still largely 'off-budget.' This creates vulnerabilities and opportunities for rampant diversion and problems for officials who need to execute the budget as approved. It is difficult to escape the conclusion that the system is deliberately kept in a dysfunctional state precisely to enable diversions. A budget execution report from the first quarter of 2022/23 illustrates this lack of budget discipline, as during this period the Ministry of Presidential Affairs spent 581% of its allocation for the quarter, while the Ministry of Health spent only 20% percent of its allocation.⁴²³

286. Although South Sudan's parliamentary-approved budgets do not reflect actual expenditures, they are nevertheless an indication of where Government priorities lie, and the degree to which the economic, social, and cultural rights of South Sudanese are acknowledged or undermined. For the 2021/22 budget, the Government allocated the security and 'rule of law' sectors a combined SSP 62.3 billion; more than 125% of the Ministry of Health's SSP 27.6 billion.⁴²⁴ The UN Panel of Experts also reported the total cost of South Sudan's additional annual healthcare allowance for Members of Parliament is twice the amount spent on the Ministry of Health from July to December 2021.⁴²⁵ This contrasts further with just SSP 48 million (\$274,000) allocated to the Anti-Corruption Commission. This de-prioritization led to the Anti-Corruption Commission's 2022 eviction from their offices, due to lack of rent payment.⁴²⁶

⁴²⁰ United States law requires that its Government officially oppose international financial institution funding to countries designated as Tier 3 – the worst tier – in the State Department's annual Trafficking in Persons report. South Sudan is a Tier 3 country, but the US Administration has previously waived this requirement to oppose funding. In October 2022, the US Government announced the waiver would not be renewed. See "Trafficking in Persons Report," US Department of State, July 2022, available at: <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf>.

⁴²¹ "Emergency Assistance to the Republic of South Sudan in Response to Flood," JICA, 21 November 2022, available at: https://www.jica.go.jp/english/news/field/2022/20221121_71.html.

⁴²² M-100201.

⁴²³ IR-100034.

⁴²⁴ IR-100033.

⁴²⁵ S/2022/884.

⁴²⁶ IR-100033. "South Sudan Anti-Corruption Tzar Evicted From Office Over 7 Million SSP Debt," Juba Echo, 13 June 2022, available at: <https://jubaecho.com/%EF%BF%BCsouth-sudan-anti-corruption-tzar-evicted-from-office-over-7-million-ssp-debt/>.

2. Mismanagement and Diversion of Oil Revenues

287. South Sudan's budgeting problems and anomalies lead to the mismanagement and diversion of the country's oil revenues resulting in failures to fulfil core human rights as required by South Sudan's treaty obligations. The following paragraphs outline additional ways the Government has failed to responsibly manage public resources from the oil revenue for the benefit of the South Sudanese population.

288. Through the practice of "oil presales," the Government has sold off oil before production, but failed to invest the proceeds of these pre-sales in the country's future, or to allocate the funds for the development of the non-oil economy, critical health and educational services, or key infrastructure. The well-documented 2012 – 2015 Letters of Credit scandal exemplifies this blatant diversion of public funds for private use; it meant significant funds were transferred into Uganda from Qatar National Bank for South Sudanese beneficiaries.⁴²⁷ South Sudanese were deprived of their right to these resources, and continue to pay a very high price for elite greed.

289. The Petroleum Revenue Management Act of 2013 mandates that 10% of oil revenue goes to the 'Future Generation Fund,' which is designed to ensure that South Sudanese can enjoy the benefits of the country's oil wealth in the future. The Commission heard from the Ministry of Finance and Economic Planning that the Bank of South Sudan only opened the Future Generation Fund bank account in 2022.⁴²⁸ This is despite the Ministry presenting materials to international donors stating that \$2.905 million from the July to December 2021 oil revenue went into this Fund.⁴²⁹

290. Future governments and generations are now saddled with the burden of repaying the debts incurred by the mismanagement of the borrowing against oil, and the consequences will be felt in the failure to fulfil the core obligations associated with the social and economic rights of South Sudanese. Based on information from a 2022 audit of external debt, South Sudan has committed as collateral or pre-sold no less than \$1.7 billion in oil, but possibly as much as \$2.2 billion.⁴³⁰ Cargoes are committed as far into the future as 2027. This date is likely to be pushed further into the future, however, when taking into account missed repayment cargoes likely to occur due to flooding in oil-producing regions. This is large and unsustainable when contrasted with South Sudan's current share of the country's oil production, which yields approximately \$1.2 billion in annual revenue at an oil price of \$75 per barrel.

291. Even for oil that South Sudan has not pre-sold, the State is providing a discount for 70-80 percent advance payments. This is driven by the desperation for cash and, based on the Commission's analysis, the \$1.50 discount they provide for the advance payment, combined with the reduced market of buyers who can fulfil these terms, leads to a total discount of approximately \$4 per barrel.⁴³¹ This equates to approximately \$62.4 million per year – an amount greater than the country's first IMF emergency funding disbursement.

292. Under the 2012 Cooperation Agreement between Sudan and South Sudan, the Parties agreed to Transitional Financial Arrangements under which South Sudan would contribute \$3.028 billion of its oil revenues to help cushion the impact of Sudan's loss of rights to oil in the south following South Sudan's independence. Although South Sudan has met this obligation, Sudan has continued to lift South Sudanese oil, translating into an overpayment reportedly reaching \$443 million by December 2022 and growing by \$30 million per month.⁴³² Negotiations between Sudan and South Sudan to address this matter continue under

⁴²⁷ On the letters of credit, see *op cit.* 419.

⁴²⁸ IR-100032.

⁴²⁹ IR-100031.

⁴³⁰ IR-100030.

⁴³¹ M-100100.

⁴³² "Oil minister Puot Kang 'locked out' of J-1 meeting for 'causing problems' between Khartoum and Juba," *Sudans Post*, November 2022, available at: <https://www.sudanspost.com/oil-minister-puot-kang-locked-out-of-j-1-meeting-for-causing-problems-between-khartoum-and-juba/>.

the aegis of the Office of the President. These are resources that the people of South Sudan cannot afford to lose in these challenging times.

293. Improvement in the management of oil and other resources starts with respect for the relevant legislative and policy frameworks, including the Petroleum Revenue Management Act, and the 2012 Petroleum Act. According to the Petroleum Act, management of NilePet – the state petroleum management company - should be the purview of the Ministry of Petroleum, but through a provisional order in 2016, the Minister for Presidential Affairs became the responsible Minister and also Chairman of the Board of Directors.⁴³³ Chapter IV of the Revitalized Agreement makes detailed provision for the management of oil and other resources, as well as public finances. Its implementation is a priority if South Sudanese are to benefit from the endowment of their country's resources.

3. International Monetary Fund Finance and Public Financial Management

294. As a result of the anomalies identified above, the Government has not had the money to pay for key services to fulfil the economic, social, and cultural rights of the South Sudanese, and the Government has relied instead on the international community to cover this shortfall. Some of this assistance, however, has also been diverted. In March 2021, South Sudan received \$174.2 million in a second IMF Rapid Credit Facility, half of which was used to clear public servant salary arrears. South Sudan's National Audit Chamber's audit of that disbursement identified a 29% "non-compliance rate," with over \$21 million either unaccounted for or applied to ineligible expenditures.⁴³⁴

295. There have been some improvements, however, in public financial management. For example, South Sudan has closed the gap between official and black-market exchange rates, which has eliminated the opportunity for individuals with privileged access to foreign currency at the official exchange rate to profit off the difference. South Sudan has also increased transparency around non-oil revenue collection, which currently accounts for approximately 10% of the public revenue landscape, and with the prospects for growth in this sector, these are important developments and should be sustained.

296. A host of weaknesses, including the mismanagement of oil revenues, have contributed to the lack of funding for public servant salaries and has decreased the spending power of those salaries. For example, the printing of money in 2022 cut in half the value of public servant salaries the employees had waited 8 months to receive. This leads to tensions and resentments when workers remain unpaid or underpaid. In 2022, workers at Parliament went on strike for not having received money owed to them, when Members of the Assembly had reset their own salaries. The workers were reportedly suspended for three months as a result of the strike action.⁴³⁵ In early March 2023, the National Transitional Committee was evicted from South Sudan Hotel for US\$6 million in rent arrears and staff of the National Constitution Amendment Committee ceased work due to three years without payment.⁴³⁶

4. Checkpoint Economy

297. South Sudan's soldiers, police, and security service employees are also caught up in the public pay and arrears crisis. The Government's inability to pay them their already

⁴³³ M-100100.

⁴³⁴ IR-100029.

⁴³⁵ See "President Kiir approves SSP524m monthly salary package for MPs," City Review, 14 April 2022, available at: <https://cityreviewss.com/president-kiir-approves-ssp524m-monthly-salary-package-for-mps/> and "Striking Parliamentary staff finally receive salary," City Review, 8 June 2022, available at: <https://cityreviewss.com/striking-parliamentary-staff-finally-receive-salary/> and "10 Striking TNLA staff slapped with three months suspension," Eye Radio, 21 June 2022, available at: <https://www.eyeradio.org/10-striking-tnla-staff-slapped-with-three-months-suspension/>.

⁴³⁶ Some staff from the Ceasefire & Transitional Security Arrangements Monitoring & Verification Mechanism (CTSAMVM), which had ten months of arrears and lost significant international funding support in 2022, also went on strike. "CTSAM-VM on strike over arrears," Eye Radio, 2 March 2023, available at: <https://www.eyeradio.org/ctsam-vm-on-strike-over-arrears/>. See also "National Transitional Committee evicted over \$6 million rent arrears," Radio Tamazuj, 3 March 2023, available at: <https://radiotamazuj.org/en/news/article/national-transitional-committee-evicted-over-6-million-in-rent-arrears>.

unliveable salaries in a timely manner drives South Sudan's "checkpoint economy," whereby these public servants – such as traffic police and SSPDF – engage in illegal taxation of vehicles and passengers.⁴³⁷ This does not only affect aid agencies moving around the country, but ordinary commuters as well. Illegal taxation increases the already high cost of living and doing business in South Sudan. It also raises the cost and inefficiency of delivering humanitarian and other assistance through bribes or indirectly by causing aid organizations to deliver aid by air.

298. The checkpoint economy also prevents some necessary aid projects from ever being proposed, due to the high-risk nature of the cargo. The Commission heard that one such project that might not be proposed is building a school in a remote area, due to the high risk of transporting building materials, which are valuable and easily commandeered.⁴³⁸ This creates a vicious cycle of aid diversion where delivering the aid becomes too expensive, so organizations provide cash instead. The cash is then even easier to divert, ensuring a larger proportion of aid does not reach the intended beneficiaries.⁴³⁹ Even transporting cash in South Sudan is expensive, with aid organizations losing as much as 15% to secured carriers.⁴⁴⁰

VI. Accountability and transitional justice

299. This report describes human rights violations and abuses amounting to serious crimes under international law. The Commission has highlighted the prevailing climate of impunity for gross human rights violations in South Sudan, including those amounting to serious crimes, for which in many cases public officials and military officers bear responsibility.

300. In 2015, amendments to South Sudan's Penal Code incorporated crimes under international law of genocide, crimes against humanity and war crimes.⁴⁴¹ In theory, this allows for the prosecution in South Sudan of individuals responsible for the most serious crimes under international law, including the acts identified by the Commission. Yet in practice, effective investigations and prosecutions for such acts are extremely rare, and responsible authorities face multiple challenges. In recent years, military courts have been used to prosecute soldiers perpetrating crimes against civilians, including in Unity State⁴⁴² and in Central Equatoria State (see below). However, to date no prosecutions have taken place for the aforementioned crimes, nor have senior officials or the commanders of any armed force or group faced criminal trials. Alongside the establishment of the Hybrid Court, it will be important for South Sudan to adopt and develop in its laws, practices and jurisprudence to reflect the important concepts of command and superior responsibility which place a focus on higher-ranked perpetrators who have a primary responsibility to prevent and ensure the punishment of crimes by subordinates.

301. The development of a functioning independent judicial system is an intergenerational project, but this needs already to start in earnest. Faced with the violations in the context of the conflict, the Parties to the ARCSS and the Revitalized Agreement committed themselves to a holistic and comprehensive transitional justice process, including the establishment of the Hybrid Court, the Commission for Truth Reconciliation and Healing (the "Truth Commission"; and the Compensation and Reparation Authority (the "Reparation Authority"). Working together, these institutions would help South Sudanese to grapple with their past and re-envision the country's future. These mechanisms represent an opportunity to move beyond pervasive impunity to a future where those who lead are accountable to

⁴³⁷ For a detailed study, see: Ken Matthysen and Peer Schouten, "Checkpoint economy: the political economy of checkpoints in South Sudan, ten years after independence," op cit. 206.

⁴³⁸ M-100197.

⁴³⁹ "Give beneficiaries food not cash – Governor Chagor tells humanitarian agencies," City Review South Sudan, 11 November 2022, available at: <https://cityreviewss.com/give-beneficiaries-food-not-cash-governor-chagor-tells-humanitarian-agencies/>.

⁴⁴⁰ M-100197.

⁴⁴¹ Penal code, section 206. This in part implemented South Sudan's 2012 Geneva Convention Act. See A/HRC/40/CRP.1, paras. 206-212.

⁴⁴² A/HRC/46/CRP.2, para 148 and A/HRC/49/CRP.4, para 190. See also David K. Deng, Transitional Justice Working Group South Sudan: Justice Landscape Assessment, page 17.

citizens. The lack of urgency in implementing chapter V of the Agreement has seen lengthy delays, particularly in relation to the Hybrid Court. The failure to deal credibly with violations is a central factor in why the country remains trapped in cycles of violence.

302. The Government is taking certain measures to deliver justice, particularly through the military courts. However, isolated prosecutions of foot soldiers, while a step in the right direction, are woefully insufficient and will be ineffective in preventing the repetition of attacks against civilians, so long as those who are in effective control of those who commit these crimes, especially senior commanders and civilian superiors, are not held accountable.

303. The Commission is aware of the significant challenges facing the administration of justice, including the investigation and prosecution of crimes involving human rights violations and abuses. At the same time, many steps required to address the situation are self-evident. Justice must start with holding to account rather than retaining or rewarding senior State agents who bear responsibility in this context. The individuals who are responsible should be made to stand down or be suspended while effective investigations and prosecutions are instituted to determine their personal responsibility.

A. The State's criminal justice system

304. South Sudan's nascent formal justice system is experiencing serious challenges and obstacles in its functionality, efficacy and independence, as well as in its compliance with international human rights law and standards. The Commission has previously reported on the state of the judicial system, and identified a host of challenges and weaknesses including: limited capacity and flaws in the conduct and documentation of investigations; interpretation and translation issues; insufficient witness protection; lack of fair trial guarantees; insecurity and inadequacy of facilities; lack of transportation and other basic infrastructure; inadequate legal aid; limited understanding of child-sensitive and gender-sensitive proceedings; arbitrary and prolonged detentions; inaccessibility of courts; challenges to the independence of judges, lawyers and prosecutors. An overall lack of resources, due to limited budget allocation and execution, is a key cross-cutting theme for these and other challenges.⁴⁴³

305. The Commission found that all these challenges persist, and that the State's capacity to manage the criminal justice system is extremely limited, including in parts of the country that saw gross human rights violations amounting to crimes during 2022. This is illustrated starkly in the cases of Unity State and Upper Nile State, where some of the most serious crimes under national and international law have been perpetrated in 2022, as detailed above in this report, but where no High Courts are in place to try serious crimes.

1. Upper Nile State

306. When the Commission visited Upper Nile State in 2022, there was no permanent prosecutor or resident judge for the High Court to facilitate trials for serious crimes such as murder. As a result, there is a large backlog, which effectively cripples the criminal justice system. Areas like Upper Nile now rely on the mobile courts, composed of senior judges who deploy from other parts of the country for several weeks to adjudicate cases.⁴⁴⁴ When the Commission visited Malakal in 2022, it found that a mobile court had not sat in the State capital for more than one year.⁴⁴⁵ While both UNMISS and the UNDP have provided critical assistance to the mobile courts, these measures are provisional, insufficient and unsustainable. It is imperative that the Government invests in operationalizing High Courts in all states.

307. In the context of conflict, deployments of justice officials in the states also come with significant risks. The last State Prosecutor for Upper Nile State was killed in Malakal in July 2020.⁴⁴⁶ There has been no accountability for his killing and other prosecutors are

⁴⁴³ A/HRC/37/CRP.2, paras. 665-681.

⁴⁴⁴ M-100120.

⁴⁴⁵ M-100121.

⁴⁴⁶ M-100121, M-100123. "Gunmen kill public prosecutor in Malakal," Radio Tamazuj, 14 July 2020, available at: <https://radiotamazuj.org/en/news/article/gunmen-kill-public-prosecutor-in-malakal>.

understandably reluctant to take his place.⁴⁴⁷ The prosecutors of county courts in the state still lack sufficient security.⁴⁴⁸ The last High Court judge moved from Malakal to the northern town of Renk at the outbreak of the conflict in 2013, and he never moved back, although he did continue to preside over cases in the state until he passed away around 2021.⁴⁴⁹ He has not been replaced and so the state lacks both a prosecutor and judge for the High Court. Jurists and other justice sector actors who spoke to the Commission all called for the urgent reestablishment of a permanent High Court in Upper Nile State.

308. Another impact of the absence of higher courts is that alleged perpetrators of certain serious crimes languish in detention awaiting the arrival of a mobile court to process their cases bail applications.⁴⁵⁰ A jurist in Malakal told the Commission that suspects can spend more than two years in pre-trial detention, in violation of their human rights.⁴⁵¹ UNMISS maintains a detention facility in the Protection of Civilians (PoC) site, but serious crimes are referred to the State's system.⁴⁵² This also raises challenges for compliance with human rights standards. In the absence of a High Court in the State, and given that the President of the Appeals Court is located in Juba, the process of any appeal of conviction is extremely challenging in practice.

309. In the context of polarising conflict along political and ethnic lines, citizens and communities do not always have confidence in the administrators of justice who might hail from a different community. This has affected perceptions of justice in Malakal Town, and the PoC, where there are community members who are aggrieved by the killing of the State Prosecutor (a Shilluk) for which no one has been held accountable. While justice is to be administered without regard to the identity of the persons involved, in South Sudan's context, it may be necessary for administrators of justice and other stakeholders to continue to engage communities in outreach to engender trust in the system, while ensuring that judicial processes and outcomes remain scrupulously fair and beyond reproach.

1. Unity State

310. In Unity State, too, there is no High Court judge or prosecutor in place, meaning that similar systemic challenges to those found in Upper Nile State are experienced in administering justice. The Commission observed, and was also informed, that in the capital Bentiu there is a lack of physical infrastructure, including appropriate and secure accommodation options, to support the effective functioning of the judiciary. There is reportedly no appropriate residence for a High Court Judge.⁴⁵³ Bentiu and Malakal were largely destroyed by heavy fighting between 2013 to 2018, and have still not seen adequate investments in rehabilitating justice institutions and infrastructure. The lack of adequate and secure accommodation and working facilities is also a challenge for mobile court judges when they visit these locations and travel outside the state capitals. The Commission received reports that mobile court jurists and county court jurists need to make their own arrangements for basic provisions, and that arrangements for their security are often limited.⁴⁵⁴ The lack of available resources also affects the rights of the accused and victims of crimes, impacting for example on the participation of victims in proceedings, given barriers to transport and information.⁴⁵⁵ Conditions in prison are generally described as deplorable.

311. The Commission spoke with jurists who highlighted political and structural limitations on their ability to independently prosecute and adjudicate criminal cases. A prosecutor described having to share offices with police, when they should be separated for independence, and that a lack of resources meant having to take notes by hand and then go

⁴⁴⁷ M-100121.

⁴⁴⁸ M-100117.

⁴⁴⁹ M-100119.

⁴⁵⁰ M-100117.

⁴⁵¹ M-100119.

⁴⁵² M-100121.

⁴⁵³ IR-100027.

⁴⁵⁴ M-100121, M-100120, M-100119.

⁴⁵⁵ IR-100028.

to the market and spend money out of pocket to type them.⁴⁵⁶ Most prosecutors and judges do not want to live and work where there is a lack of security, accommodation and where predecessors have been killed with impunity.

312. The reluctance of survivors, and the families of victims, to file complaints with formal justice systems in South Sudan is well established and recognized by justice actors.⁴⁵⁷ Ongoing and unaddressed protection concerns were identified consistently as barriers to lodging complaints and participating in legal processes.⁴⁵⁸ The Commission has previously and recently reported on these issues in detail.⁴⁵⁹

313. Lawyers have also cited the fear of retaliation as a reason for not representing victims in sensitive cases. Lawyers described to the Commission their fears of being harassed or victimised, particularly in cases involving members of armed forces or groups, or politically connected suspects.⁴⁶⁰ As a result, victims of crimes face further barriers to legal representation and avenues for justice.

314. The formal justice system requires political commitment, technical support, and financial investment. The State needs to budget and apply the necessary resources to ensure a functioning criminal justice system. This must include prioritizing investments in physical infrastructure and facilities for judicial institutions, personal security for jurists, adequate and timely remuneration salaries.⁴⁶¹ It also requires addressing impunity for crimes against jurists by effectively investigating threats and attacks on officials. This is especially critical in environments where public officials and leaders of armed groups are implicated in serious crimes, as identified by the Commission in 2022 in Upper Nile and Unity states, for example. Because governance and justice in South Sudan are highly militarized, the civilian justice actors are reticent to exercise jurisdiction over crimes against civilians that involve soldiers, and remain deferential towards the military.⁴⁶² Without effective protection and political support this deference towards the military is not likely to change.

315. Alongside the transitional justice measures envisaged by chapter V of the Revitalized Agreement, South Sudan needs to invest in the national justice system, so that criminal and military justice systems operate effectively in the states, delivering accountability for serious crimes. Only then will citizens and communities develop trust in the justice system.

B. Ad hoc investigation committees

316. During 2022, several executive branches of Government at both national and state level established a series of special investigation committees to examine situations involving alleged human rights violations. Many of these were high-level initiatives of the Office of the President. In September 2022 at the UN Human Rights Council in Geneva, the statement read by the Government of South Sudan noted that the President had established the committees “to investigate communal violence” in Upper Nile State; Abyei Administrative Areas; Warrap State; and Unity State.⁴⁶³ The statement noted that these committees were “currently deployed to the sites” and that one had submitted its report. The Commission’s inquiries and visits to several affected areas have so far not led to any further details about the activities of these Committees.

317. The 2006 Investigation Committees Act states that investigation committees have no authority to determine civil or criminal liability for acts.⁴⁶⁴ Therefore, they cannot be a substitute for criminal investigations and judicial proceedings.

⁴⁵⁶ M-100117, M-100121.

⁴⁵⁷ M-100121, M-100120.

⁴⁵⁸ M-100112.

⁴⁵⁹ See for example A/HRC/49/CRP.4, paras. 196-201.

⁴⁶⁰ M-100112.

⁴⁶¹ A/HRC/49/CRP.4, paras. 178—184.

⁴⁶² IR-100027.

⁴⁶³ Statement of the Government of South Sudan at the 51st Session of the Human Rights Council.

⁴⁶⁴ Section 14.

318. In 2022, the Government announced the establishment of a National Human Rights Advisory Council. In his address to the Human Rights Council on 7 March 2023, the Minister of Justice and Constitutional Affairs noted that this body would be part of the Government's efforts to address the human rights situation in South Sudan. The Commission notes that in the charter for the National Human Rights Advisory Council, section 14 contemplates the Council's authority to conduct investigations, including the power to summons individuals and institutions to gain information as part of its inquiries. While to date the Commission is unaware of investigations being established by the Council, it will be important to ensure that any such investigations into human rights violations and abuses are designed to enable criminal accountability. In any case, inquiries led by these ad hoc bodies are not empowered to make determinations on criminal accountability, and so alone they are not sufficient steps to fulfil the State's obligations under international law to effectively investigate and prosecute crimes that represent violations of human rights.

319. While any initiative to advance human rights in South Sudan is potentially positive, especially when it affords citizens the opportunity safely to report violations, and results in accountability, it is unclear how investigation committees established by the President or the new National Human Rights Advisory Council will interact with the roles and functions of South Sudan's National Human Rights Commission. It is critical that the National Human Rights Commission should not be undermined: already that Commission suffers from severe under-resourcing, including a failure to meet its rental obligations. This might demonstrate a lack of political will and inclination to support an independent human rights monitoring function. Generally, national human rights institutions are empowered to conduct investigations, and South Sudan's institution has official status with the African Commission on Human and Peoples' Rights, but not with the Global Alliance of National Human Rights Institution, and it is not yet aligned to certain international standards. The forthcoming national constitution-making process presents an opportunity not only to reflect strong human rights protections and values in the text of the constitution, but also to establish a truly independent national human rights body that is aligned to international standards for such mechanisms.

2. Investigation Committee into the situation in southern Unity State

320. As detailed above in this report, the Commission and other organizations established that gross human rights violations were carried out by Government forces in southern Unity State, centred in Leer County, particularly between February and April 2022. On 13 April 2022, the President appointed an Investigation Committee to investigate incidents in Koch, Leer and Mayendit counties in Unity State.⁴⁶⁵ This was announced on a daily bulletin of the South Sudan Broadcasting Service and in Facebook posts of the Office of the President. The announcement was made against the backdrop of widespread media coverage of the second wave of attacks on civilians in Leer County, and related protests and press statements made by community members and civil society figures, including in Juba.

321. According to official announcements, the Committee was to submit its findings and recommendations to the President within 14 working days from the oath-taking ceremony for its members, which was held on 15 April.⁴⁶⁶ During its first week, the Committee

⁴⁶⁵ The establishment of the Investigation Committee was announced on the State Broadcasting Service for South Sudan, and on the Facebook page of the Office of the President. The legal instrument its establishment was not clear.

⁴⁶⁶ Facebook posts of the Ministry of Water Resources and Irrigation, South Sudan, Juba on 13 April 2022, available at: [https://www.facebook.com/ministeroffice.juba/posts/pfbid025DGB5fq6NrmPokFnGVQGPzifxtGVwSLC1zeY51unnzJK8D6AJ2kuH2LkKY2Lerol?__cft__\[0\]=AZVXOreVpLfaZPk86OxTfxF17tSEB6BuX505SSvbA-Stb1K_ME_dPALsIgIKzeFQ9zr8HRRrsrjQaxc9g5BhMPBJNvNNN1LWPJSSWE04oXJbiUsEKGvFGoupQWQX3CK0g98utk7BdlFhx--S026nLyL4JJO8cFWehEL7QILVKCg&__tn__=%2C0%2CP-R](https://www.facebook.com/ministeroffice.juba/posts/pfbid025DGB5fq6NrmPokFnGVQGPzifxtGVwSLC1zeY51unnzJK8D6AJ2kuH2LkKY2Lerol?__cft__[0]=AZVXOreVpLfaZPk86OxTfxF17tSEB6BuX505SSvbA-Stb1K_ME_dPALsIgIKzeFQ9zr8HRRrsrjQaxc9g5BhMPBJNvNNN1LWPJSSWE04oXJbiUsEKGvFGoupQWQX3CK0g98utk7BdlFhx--S026nLyL4JJO8cFWehEL7QILVKCg&__tn__=%2C0%2CP-R) and on 16 April 2022, available at: [https://www.facebook.com/ministeroffice.juba/posts/pfbid026r4FMawUCg7pQKgbuV6FVtUd9V5w5WfZLoFHZuuJy6HcwXChcU4aaGkgEi71u1fAl?__cft__\[0\]=AZUIdTGbhrH-Wchvi_tGgtFHSx6DNKX0kICf8MPcV4dfnIsp2H625zgC_IdiCQJz0UX4r3mCfNwxuAIIZwWQXi5V](https://www.facebook.com/ministeroffice.juba/posts/pfbid026r4FMawUCg7pQKgbuV6FVtUd9V5w5WfZLoFHZuuJy6HcwXChcU4aaGkgEi71u1fAl?__cft__[0]=AZUIdTGbhrH-Wchvi_tGgtFHSx6DNKX0kICf8MPcV4dfnIsp2H625zgC_IdiCQJz0UX4r3mCfNwxuAIIZwWQXi5V)

developed a concept note for its operations, and hosted several meetings in Juba. By 20 April, its draft budget had been reportedly finalized.⁴⁶⁷ Yet by the first week of May, when the Committee was first due to report, its members had still not travelled to Unity State, with officials attributing the delays to various reasons including the Islamic Eid holiday.⁴⁶⁸

322. When the Commission visited Unity State in May 2002, several interlocuters expressed concern about the Investigation Committee's delays in visiting the area. By June, it had been one month since the report deadline had passed, yet there was no indication that any investigative activities had taken place. Then on 18 June 2022, the Committee's Chair, Peter Gatkuoth Manawa, passed away in Khartoum.⁴⁶⁹ The Commission subsequently wrote twice to the Government seeking information about the work of the Committee, including on its terms of reference, and any measures in place to protect witnesses and pass on evidence to competent authorities for prosecutions.⁴⁷⁰ The Commission was unable to establish information about any activities of the Committee, nor find out anything about the status of the Chairperson post. During two visits to Unity State in 2022, the Commission found that the Committee members had not visited the state.

323. Up until March 2023, there was no information to indicate that investigative activities had commenced, nor any report developed, and there had been no judicial or other accountability outcomes. Then on 6 March, a news report suggested that Committee members planned to travel to Unity State.⁴⁷¹ This would have come almost 11 months after the Investigation Committee was first established. Meanwhile, it appears that the establishment of the Investigation Committee by the Office of the President led to other relevant agencies to cease their investigations, including the police, so as to not be seen as interfering with the work of their superiors and a Presidential initiative. To date, the Investigation Committee has thereby not only failed to deliver on its mandate, but its creation appears to have resulted in blocking other forms of investigation by State actors.

3. Investigation Committee into the situation in Mayom County in Unity State

324. As highlighted in detail above in this report, the Commission has verified that State actors carried out the detention, rendition and extrajudicial killings of four males in Mayom County in August 2022, in an apparent revenge killing for a deadly attack on Government forces. On 12 September 2022, the Office of the President announced the establishment of an Investigation Committee, "mandated to investigate the cause of insecurity, including reported cases of Extra Judicial killings, rape, and destruction of property that occurred in Mayom County, Unity State..."⁴⁷² Its establishment came roughly two weeks after the

[7twsI2bbyxi8ZtflYRxuZmDQU4rmiyUy7MuiWLWdFFooVsXfse8xshyslz-ArsULedmpjG2cOZIV48nJ3ShVNQ&__tn__=%2CO%2CP-R](https://www.facebook.com/ministeroffice.juba/posts/pfbid02G7UkhgMJsWaUzsHFaRnEuESNX223TGhcrcJsYYsh9neuXczLe1CUDx6pfsuxvWMI?__cft__[0]=AZXPChipOcfcaMVm3Tka1I3OAbV0FIHkiYJDlcbUNklMOEzpjH14KxLPGiVYGwTfZWmvr3cBj49M2W2ly9orSm5-vDVXeAypHCz1uVP2onErKgtM0KSixQAoBGIsyJ_YgmQN0zuo3yqYF1e2pE5ij8PWHcUh6Vyin6MHUGaobByReg&__tn__=%2CO%2CP-R).

⁴⁶⁷ Facebook Post of the Ministry of Water Resources and Irrigation, South Sudan, Juba on 20 April 2022, available at:

[https://www.facebook.com/ministeroffice.juba/posts/pfbid02G7UkhgMJsWaUzsHFaRnEuESNX223TGhcrcJsYYsh9neuXczLe1CUDx6pfsuxvWMI?__cft__\[0\]=AZXPChipOcfcaMVm3Tka1I3OAbV0FIHkiYJDlcbUNklMOEzpjH14KxLPGiVYGwTfZWmvr3cBj49M2W2ly9orSm5-vDVXeAypHCz1uVP2onErKgtM0KSixQAoBGIsyJ_YgmQN0zuo3yqYF1e2pE5ij8PWHcUh6Vyin6MHUGaobByReg&__tn__=%2CO%2CP-R](https://www.facebook.com/ministeroffice.juba/posts/pfbid02G7UkhgMJsWaUzsHFaRnEuESNX223TGhcrcJsYYsh9neuXczLe1CUDx6pfsuxvWMI?__cft__[0]=AZXPChipOcfcaMVm3Tka1I3OAbV0FIHkiYJDlcbUNklMOEzpjH14KxLPGiVYGwTfZWmvr3cBj49M2W2ly9orSm5-vDVXeAypHCz1uVP2onErKgtM0KSixQAoBGIsyJ_YgmQN0zuo3yqYF1e2pE5ij8PWHcUh6Vyin6MHUGaobByReg&__tn__=%2CO%2CP-R).

⁴⁶⁸ "Leer investigation committee ultimatum elapses with no results," Radio Tamazuj, 4 May 2022, available at: <https://radiotamazuj.org/en/news/article/leer-investigation-committee-ultimatum-elapses-with-no-results>.

⁴⁶⁹ Peter Gatkuoth Manawa was an SPLM/A-IO member and the Minister of Irrigation and Water Resources.

⁴⁷⁰ Commission letters to the Government of South Sudan, 27 July 2022 and 1 November 2022.

⁴⁷¹ "Committee move to ground to probe Leer clashes," City Review South Sudan, 6 March 2023, available at: <https://cityreviewss.com/committee-move-to-ground-to-probe-leer-clashes/>.

⁴⁷² Facebook Post of the Office of the President – Republic of South Sudan on 12 September 2022, available at: [https://web.facebook.com/StateHouseJ1/posts/pfbid032Qxr2FysvVJBmVctCNZve7gwrblNU98AuhLq73CNHZUPqTduBLoPBbWSLccG5oMHI?__cft__\[0\]=AZXQZt9SQ1IXsIKelmkNPZ6HVmHaSc3keQfoypzwh3aele4ucQLmxsE9bloTC_61Lw_tRzp_WiaCzLF1RpaopuQCILWIT69URAWhtxJwU6Sj0JEXwy8H3iB1ZppbRx43iVygxyChPaH0ScIKEq1RxiI6PHs3QEMsNnGDmDBuRg8ZpkzBQQeMw4o_MDQ43HNjk&__tn__=%2CO%2CP-R](https://web.facebook.com/StateHouseJ1/posts/pfbid032Qxr2FysvVJBmVctCNZve7gwrblNU98AuhLq73CNHZUPqTduBLoPBbWSLccG5oMHI?__cft__[0]=AZXQZt9SQ1IXsIKelmkNPZ6HVmHaSc3keQfoypzwh3aele4ucQLmxsE9bloTC_61Lw_tRzp_WiaCzLF1RpaopuQCILWIT69URAWhtxJwU6Sj0JEXwy8H3iB1ZppbRx43iVygxyChPaH0ScIKEq1RxiI6PHs3QEMsNnGDmDBuRg8ZpkzBQQeMw4o_MDQ43HNjk&__tn__=%2CO%2CP-R).

President's Office had rejected a motion by the Council of States to dismiss Unity State Governor Monytil, including for his failings to address the human rights situations in Leer and Mayom counties.

325. In the Committee's mandate, there are references to the destruction of property that seem to point to scope for the Committee to investigate the SSPM/A attacks on Government forces in July 2022, detailed above in this report. The announcement to establish the Committee stated that its members "shall apprehend and interrogate any suspect (s) at large where appropriate; and shall identify, summon and interview any relevant witness or witnesses of the incident(s)."⁴⁷³ They were to submit findings and recommendations to the President within 21 working days, yet this deadline also passed, without any publicly available information about the Committee's activities. As with the initiative established in April 2022 for southern counties of Unity State, the Committee does not appear to have conducted any investigations, and the Commission had not received information about its work as of February 2023.⁴⁷⁴

4. Investigation Committee into the situation in Rualbet Payam, Warrap

326. The Commission details above in this report the attacks on civilians of Rualbet Payam carried out by joint Government security forces from July 2022. It took place when the heads of the State's three main security forces deployed to the area from Juba, accompanied by bolstered forces, following the death of SSPDF soldiers in clashes with armed cattle-keeping youth in Rualbet in the previous month. The Investigation Committee was established on 12 September 2022, at the same time as the Investigation Committee on Mayom County, also discussed above. The Committee's mandate shared the same terms of the Mayom inquiry, except that the focus of this Committee was "the incidents of insecurity in Rualbet Payam, Tonj North County in Warrap State."⁴⁷⁵ Further details on the mandate of the Committee were not fully clear.⁴⁷⁶

327. In the latter half of October, the Committee travelled to the area, albeit after the 21 working day deadline for the submission of its report had passed. While in Warrap State, committee members reportedly facilitated the release of 17 males detained in Tonj South in connection with the violence.⁴⁷⁷ Some people in Warrap State told the Commission that they had been fearful to engage with the Committee, for fear of detention or reprisals.⁴⁷⁸

328. The Commission established that the Committee included 11 members, including representatives of the Ministry of Justice and Constitutional Affairs, the South Sudan National Police Service, the Internal Security Bureau of the National Security Services, and the SSPDF.⁴⁷⁹ On 6 January 2023, the President's Office announced that the Committee had presented its final report to the President, and had recommended the prosecution of individuals who participated in what was characterized as "communal violence"⁴⁸⁰ and had

⁴⁷³ Ibid.

⁴⁷⁴ Letter from the Commission to the Government on 1 November 2022.

⁴⁷⁵ Facebook Post of the Office of the President – Republic of South Sudan on 12 September 2022, available at:

[https://web.facebook.com/StateHouseJ1/posts/pfbid032Qxr2FysvVJBmVctCNZve7gwrBLNU98AuhLq73CNHZUPqTDUbLoPBbWSLccG5oMHI?__cft__\[0\]=AZXQZt9SQ1IXsIKelmkNPZ6HVmHaSC3kEfoypzwh3aele4ucQLmxsE9bloTC_61Lw_tRzp_WiaCzLFIRpaopuQCILWIT69URAQWhtxJwU6Sj0JEXwy8H3iB1ZppbRx43iVygxyChPaH0ScIKEq1RxaiI6PHs3QEMsNnGDmDBuRG8ZpkzBQQeMw4o_MDQ43HNJk&__tn__=%2CO%2CP-R](https://web.facebook.com/StateHouseJ1/posts/pfbid032Qxr2FysvVJBmVctCNZve7gwrBLNU98AuhLq73CNHZUPqTDUbLoPBbWSLccG5oMHI?__cft__[0]=AZXQZt9SQ1IXsIKelmkNPZ6HVmHaSC3kEfoypzwh3aele4ucQLmxsE9bloTC_61Lw_tRzp_WiaCzLFIRpaopuQCILWIT69URAQWhtxJwU6Sj0JEXwy8H3iB1ZppbRx43iVygxyChPaH0ScIKEq1RxaiI6PHs3QEMsNnGDmDBuRG8ZpkzBQQeMw4o_MDQ43HNJk&__tn__=%2CO%2CP-R).

⁴⁷⁶ The Commission requested further information from the government about the Investigation Committee and any measures in place to protect witnesses. No response had been received at time of publication. Letter from the Commission to the Government of South Sudan on 1 November 2022.

⁴⁷⁷ M-100132. "Seventeen civilians suspected of involvement in Rualbet clashes released from detention," Radio Miraya, 1 November 2022.

⁴⁷⁸ M-100132.

⁴⁷⁹ IR-100025.

⁴⁸⁰ Facebook Post of the Office of the President – Republic of South Sudan on 6 January 2023, available at: [https://www.facebook.com/StateHouseJ1/posts/pfbid0Z8SVJFsBbHPVQgpb3zX2woLBCNosfpoyU9EJUnRAczfuKdMkx25pJHX7zHfB9vHI?__cft__\[0\]=AZXW-](https://www.facebook.com/StateHouseJ1/posts/pfbid0Z8SVJFsBbHPVQgpb3zX2woLBCNosfpoyU9EJUnRAczfuKdMkx25pJHX7zHfB9vHI?__cft__[0]=AZXW-)

called for the “formation of a special court to investigate civilians” and a “court martial to try SSPDF soldiers.”

329. Given that the first three weeks of the campaign of violence against civilians in Rualbet were carried out by joint Government forces while the three heads of the security forces were in the area, including the Director of the Internal Security Bureau of the NSS, the Committee’s composition raises major questions about its independence and impartiality. As of February 2023, the report of the Committee had not been made public, and it was unclear if trials would ensue. It was also not clear if the State’s role in the violence, including the actions of the three heads of the security forces, would be subjected to further scrutiny.

330. The Commission welcomes the clear call for accountability, and the Committee’s distinction between trial settings for civilians and soldiers. However, it is still unclear what the legal basis is for a “special court to investigate civilians” would be, and how such a court would interact with investigative authorities and with the permanent and mobile courts already in operation in South Sudan. In any case, it will be important that the most serious crimes are prioritized for effective investigation and prosecutions. If the process is to win the trust of the community, the administration of justice across the board must be seen to be fair and avoid focusing disproportionately and even discriminatorily against members of the Rualbet community, whose members were targeted by State security forces during the violence, as detailed by the Commission above.

5. Conclusions

331. Overall, there was a lack of clarity about the mandates of the Investigation Committees, the rationale for their composition, their independence and objectivity, their activities and their findings, as well as their legal authority, including powers to institute protective measures and to refer cases to the criminal justice system. Not all Committees appear to have produced reports, and when they are produced, they have not been made public or followed up with the implementation of any specific accountability measures against perpetrators. Generally, announcements about the Investigation Committees were made on the SSBC and published to the official Facebook page of the Office of the President. In most cases, there were a lot of announcements and media coverage when the Committee was established, but there was little if any follow up on their activities subsequently, including any outcomes.

332. The Commission is concerned about the lack of safeguards and protection for victims, witnesses and other individuals interacting with these Investigation Committees. Secondly, the mandate does not indicate whether the Committees will identify alleged perpetrators of crimes and refer them to the judicial system for effective criminal prosecutions. The Commission has been unable to identify any specific referral by an Investigative Committee. It is unaware of an investigative or judicial process or sanction relating to any of the investigations instituted in 2022.

333. Of the three Investigation Committees monitored by the Commission in 2022, as of the first week of March 2023, only one is known to have visited the areas under concern. The two Committees established for situations in Unity State did not appear to have travelled to the sites, and seem to have failed to carry out any genuine investigative activities. There are no known outputs or outcomes following the initial steps taken at their establishment. The victims of serious crimes in southern counties of Unity State and in Mayom County of Unity State have therefore seen no justice from these Investigation Committees. Instead, the establishment of the Committees appears to have delayed or deferred investigations and prosecutions by other bodies, including potential inquiries by police and prosecutors. Where the Committee did travel to the area under inquiry, in Warrap State, its members were able to engage with a range of stakeholders and they did produce a report that was presented to the President with recommendations on next steps, including accountability.

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334. The Commission found that the establishment of Investigation Committees may undermine the efforts of formal entities mandated to investigate serious crimes, as police and prosecutors often suspend their own investigations to await the conclusions of these high-level initiatives. Overall, the Commission is concerned that these Committees are not accompanied by credible measures to ensure effective accountability and deterrence. As noted above, the Commission wrote twice to the Government seeking information about the activities of specific Committees, including with regard to terms of reference, and any measures put in place to protect witnesses and pass on evidence to competent authorities for prosecutions.⁴⁸¹ No responses had been received as of February 2023.

335. Steps taken by the Government to initiate investigations into human rights situations of concern are critical to addressing the repetition of violence and enabling accountability, as part of the State's obligations under international law to effectively investigate, prosecute and punish serious crimes. However, Investigation Committees must also be independent as well as genuine in purpose and in design, to complement rather than displace criminal justice processes, while ensuring the protection of witnesses and victims. Otherwise, these Committees risk being counterproductive by undermining justice and shielding the perpetrators. In this regard, the recommendation by the Investigation Committee for Rualbet in Warrap State, to transfer cases to trial needs to be urgently pursued. Even where an Investigative Committee has not concluded its work, the Government should ensure the formal civilian and military institutions are facilitated to continue their independent investigations potentially leading to trials.

C. Military courts

336. From 1 to 27 June 2022, an ad hoc General Court Martial (military court) was held in Yei County. This followed an earlier District Court Martial there in late 2020.⁴⁸² These trials in military courts are rare instances in which an accountability process has been initiated to examine crimes by soldiers against civilians. As noted above, these took place in a context in which effective State judicial infrastructure is mostly absent, and where the institutions and judges that do exist are chronically under-resourced and lack independence. As such, the trials have represented significant, albeit limited, progress on accountability, as well with regard to reparations to victims. At the same time, the Commission has found serious deficiencies with both military courts, including some amounting to violations of the rights of the accused and of the victims of serious crimes. In particular, the 2022 trials failed to address issues that arose in 2020. Those issues included fair trial rights violations, failures to fully implement custodial sentences, lack of transparency and timeliness in the payment of reparations, and protection concerns including those associated with hosting proceedings on a military base.⁴⁸³ Some issues worsened, including fair trial and protection concerns.

337. As in most countries, in South Sudan the core purposes of military courts are to examine military governance and disciplinary matters.⁴⁸⁴ Under the South Sudan People's Defence Forces Act (SSPDF Act; formerly the Sudan People's Liberation Army Act), military courts are also empowered to try soldiers for crimes prescribed in the Penal Code.⁴⁸⁵ But under these laws, in cases where soldiers are implicated in crimes against civilians, trials

⁴⁸¹ Commission letters to the Government of South Sudan, 27 July 2022 and 1 November 2022.

⁴⁸² See A/HRC/49/78, para. 44 and A/HRC/49/CRP.4, paras. 185-190.

⁴⁸³ Ibid.

⁴⁸⁴ SSPDF Act, section 3: "The purpose of this Act is to provide for the establishment, governance and discipline of the SPLA and for purposes connected therewith and incidental thereto."

⁴⁸⁵ The name of the SPLA Act was changed to the SSPDF Act in a December 2022 amendment. Section 35 of the SSPDF Act, on the structure and composition of military courts, provides for two levels of military courts: a District Court Martial and a General Court Martial. The latter has broader jurisdiction and more senior judges. Sections 37(a) and 37(b) empowers District Court Martials to try soldiers for crimes which are prescribed in the Penal Code, except for serious crimes punishable by death, such as murder, which must be tried in a General Court Martial.

must be transferred to civilian criminal courts.⁴⁸⁶ This is consistent with international human rights law and standards, which generally require any crimes against civilians to be tried in civilian criminal courts as military courts tend not sufficiently to provide for the rights of victims and families. These include rights to participate in and have information about proceedings, to have their safety duly considered and protection measures put in place, and to have access to reparations. A challenge arises in South Sudan, however, since there is often no civilian criminal court to which to transfer an individual soldier for trial, particularly in the case of serious crimes. The trials in military courts in Yei have taken place in this context.

1. The 2020 District Court Martial

338. The Commission previously reported that survivors of crimes, as well as lawyers and civil society observers, had partially accepted and welcomed the District Court Martial of 2020, albeit with reservations about safety concerns and the implementation of some judgements.⁴⁸⁷ In 2022, the Commission gathered more information about the outcomes, and found that the payment of compensation to victims, ordered at the conclusion of proceedings in September 2020, continued to be significantly delayed. When it was finally paid in July and September 2022, many recipients reported that deductions of ten percent were taken from their awards, often without explanation.⁴⁸⁸ The prospect of compensation had initially been welcomed and seen as holding great promise. But these delays caused frustration and appeared to have deterred other survivors from reporting crimes and pursuing justice in future processes.⁴⁸⁹

339. The Commission received additional reports that some soldiers who were convicted by the District Court Martial had not actually served their sentences.⁴⁹⁰ The Commission established that a private convicted for the rape of a minor had been reintegrated into the SSPDF and was seen walking around Yei Town, armed and back in uniform.⁴⁹¹ While information about the status of other convicted individuals was not fully clear, people with direct knowledge of the 2020 proceedings told the Commission that they believe other convicted soldiers may be walking around free. At the very least, this reflects the community's lack of confidence in the military justice process, which should be addressed through community engagement, as survivors may otherwise be discouraged from reporting crimes.

340. Some victims who participated in the 2020 trials also reported fearing for their safety. Many survivors of rape and sexual violence, whose cases were heard in 2020, remain in displacement settings in Yei Town or across the border because they still fear being attacked in their homes in an environment where systematic rape continues.⁴⁹² The widespread knowledge that at least one individual convicted of rape is armed and back in the area has added to their fear and hesitation in returning home.

341. The Commission also established that none of the 28 soldiers prosecuted in the 2020 trials had been afforded the right to legal counsel. This is a serious violation of the fair trial rights of the accused. It is unlikely that any of those convicted were aware of or could exercise the right to appeal.

342. While delivering recognition and justice for survivors of crimes by soldiers, the experience of the 2020 District Court Martial was beset by problems with the implementation

⁴⁸⁶ Section 37(4) of the SSPDF Act states that: "Whenever a military personnel commits an offence against a civilian or civilian property, the civil court shall assume jurisdiction over such an offence." Note that while section 83 of the Act states that persons subjected to its provisions can be tried under the Act for Penal Code offenses, the section is silent on acts committed against civilians. Read with the unequivocally plain language of section 37(4), including the terms "whenever" and "shall," there can be no doubt that section 37(4) applies at all times.

⁴⁸⁷ A/HRC/49/CRP_4, paras. 185-190.

⁴⁸⁸ 105452-105457, 105483-105486, M-100107.

⁴⁸⁹ 105458-105463.

⁴⁹⁰ A/HRC/49/CRP_4, para. 186.

⁴⁹¹ The Government previously stated that all convicted men were discharged from the SSPDF. M-100112. 105458-105463.

⁴⁹² 105458-105463.

of convictions and compensation. This, and the ongoing protection concerns of communities living amidst conflict and insecurity, informed perceptions toward the next military court process when it was set up in 2022.

2. The 2022 General Court Martial

343. In 2022, a General Court Martial was held at the SSPDF's Amiya Barracks in Yei County. Fifteen cases were prosecuted involving criminal acts under South Sudan's Penal Code. These included eight cases which involved killings,⁴⁹³ and at least five cases involving rape or attempted rape.⁴⁹⁴ Of the 22 or 23 individuals prosecuted, not all were soldiers. Four of the accused were civilians, including a boy aged around 14 years.⁴⁹⁵ In these cases, the civilian was accused of a crime against a soldier. The Commission received information that the trials resulted in one acquittal and that all other charges resulted in convictions.

344. The Court was presided over by a panel of five male judges of Dinka ethnicity, deployed from the SSPDF's Military Justice Directorate in Juba. One military officer prosecuted all of the 15 cases. Support was provided by UNMISS, including logistics, financial aid and advice.⁴⁹⁶ Not all of the advice offered to the military judges seems to have been taken into account by the court, particularly regarding the prosecution of civilians.⁴⁹⁷ Based upon engagements with a range of stakeholders in the Yei County area and in Central Equatoria's administrative capital Juba, the Commission was able to make observations and findings about the conduct and outcomes of the General Court Martial, regarding: fair trial rights of the accused; participation and rights of victims; and convictions and compensation.

Fair trial rights of the accused

345. Three cases involved the prosecution of a civilian in the military court. One case involved the trial of a civilian boy, around 14 years old, who was charged with murder for stabbing a soldier to death, reportedly after the soldier had entered his home.⁴⁹⁸ The Commission received information that the boy pleaded guilty, while being the sole witness and without proper legal advice.⁴⁹⁹ He was sentenced to five years imprisonment in juvenile custody, and ordered to pay blood compensation of 51 cows or equivalent as a precondition for any eventual release.⁵⁰⁰ In addition to being denied fair trial rights and being tried in the wrong court, the boy's detention risks being perpetual given his apparent lack of capacity to pay the compensation which has been ordered.

346. In another case, a civilian and soldier were both charged with murder for the death of a Payam chief in 2021. He had died from injuries he succumbed to after being shot, reportedly while the accused were tussling over a live weapon. The accused civilian was convicted of murder, sentenced to five years imprisonment, and ordered to share with his co-accused the payment of compensation to the family of the victim. An additional case involved two civilians accused of killing a soldier who was found dead after leaving a venue where they had all been drinking. The two accused reportedly confessed to the crime in the court.⁵⁰¹

347. Based on information received by the Commission, all of the accused had been detained at the SSPDF's Amiya Barracks. This included the three civilian men and one

⁴⁹³ Murder or culpable homicide.

⁴⁹⁴ Of the seven cases that were not killings, the Commission established that five or six of these were of rape or attempted rape, and one or two were of assault and robbery/looting.

⁴⁹⁵ Note information received by the Commission had some inconsistencies regarding the total number of accused. IR-100036, D126987-D126992, 105452-105457.

⁴⁹⁶ "UNMISS statement welcoming justice delivered through a General Court Martial in Yei," 18 July 2022, available at: <https://peacekeeping.un.org/en/unmiss-statement-welcoming-justice-delivered-through-general-court-martial-yei>.

⁴⁹⁷ The Commission received information that officers involved in the General Court Martial had been advised to not try the civilians, and instead to allow the local leaders and the complainants to refer the case to civilian authorities who could then refer it to the civilian courts.

⁴⁹⁸ 105452-105457, M-100126.

⁴⁹⁹ 105458-105463.

⁵⁰⁰ D126987-D126992, 105398-105402.

⁵⁰¹ D126987-D126992, 105452-105457.

civilian boy who were housed at the barracks during pre-trial detention.⁵⁰² A witness at the trial noted that they all looked malnourished during the court proceedings.⁵⁰³ In the community, there are perceptions that the barracks is a dangerous place for civilians in detention. In a well-known recent case, in August 2022 a popular gospel singer who was also a soldier died in custody at the site, and photographs of his body bearing signs of torture sparked public anger and even rare street protests in the town of Yei.⁵⁰⁴ The Commission also notes the high rates of confessions and convictions in this context, which underscore the need for defendants to have access to an independent civilian lawyer.⁵⁰⁵

348. Only one defence counsel was provided to serve all the accused persons; he had been the Judge Advocate on the 2020 District Court Martial in Yei.⁵⁰⁶ This was an important improvement on the 2020 District Court Martial, where no accused had access to legal representation. At the same time, the capacity of one lawyer to represent so many clients in a short period of time, on serious charges, would be severely limited in any event. The defence lawyer also engaged in additional tasks to support the functioning of the court, including by providing interpretation for victims, making his main job more challenging.

Rights of victims, survivors, and their participation

349. The Commission learned that several days prior to the trials starting, there were public announcements on the radio to inform community members of the proceedings.⁵⁰⁷ For example, one victim first heard on the radio that people who had filed complaints, like her, should report to the Amiya Barracks.⁵⁰⁸ Some civil society groups, who were in contact with authorities, conducted additional outreach so that victims who reported cases were aware their cases may be going to the trial stage.⁵⁰⁹ Other victims and witnesses found out about the trials through word of mouth. Some of the information appeared to have not been shared clearly as some victims and family members were turned away from the barracks arriving on the wrong day.⁵¹⁰ Although victim testimony was a central part of the proceedings, none of the victims had access to legal representation, or any meaningful advice to inform their participation in proceedings. At best, some civil society organizations and international agencies provided occasional support for transportation and food. Because victims were inadequately prepared, they did not have a clear understanding of the process and their role. They were told to stand up and speak to the court about what happened to them, narrating their experience to the room of uniformed men.⁵¹¹ A survivor told the Commission that she had been unaware that her case could be transferred to a military court, and was unsure how her case ended up before it.⁵¹²

350. Many victims did not understand the language of proceedings, which was Juba Arabic, and effective interpretation into the local language of Kakwa was not provided, except when testimony was given.⁵¹³ Although some effort had been made to support interpretation, the Commission this was inadequate.

⁵⁰² M-100126.

⁵⁰³ 105452-105457.

⁵⁰⁴ M-100110. See “Youth demand answers over death of SSPDF officer,” City Review South Sudan, 15 August 2022, available at: <https://cityreviewss.com/youth-demand-answers-over-death-of-sspdf-officer/> and “Army promises justice for slain SSPDF Col. Yuma,” One Citizen Daily, 19 August 2022, available at: <https://onecitizendaily.com/index.php/2022/08/19/army-promises-justice-for-slain-sspdf-col-yuma/>.

⁵⁰⁵ 105398-105402.

⁵⁰⁶ 105398-105402, 105452-105457, M-100126.

⁵⁰⁷ 105464-105468, 105458-105463.

⁵⁰⁸ 105447-105451.

⁵⁰⁹ 105458-105463, 105478-105482.

⁵¹⁰ 105464-105468.

⁵¹¹ 105478-105482, 105447-105451.

⁵¹² 105464-105468.

⁵¹³ 105452-105457, 105458-105463, 105464-105468, 105398-105402, M-100111, 105447-105451.

“Language was a problem in the court as interpretation wasn’t provided. Most of the survivors came from rural areas. They did not understand the terminology used in court, and they had difficulty understanding the Arabic dialect used by the judges.”⁵¹⁴

“(The Government) should know that language matters and not bring people who speak language that the locals cannot understand.”⁵¹⁵

351. A survivor of sexual violence told the Commission that she had left her native village due to her fear of encountering soldiers again, and so it was with great trepidation that she travelled to the SSPDF barracks to attend the court martial. She described the experience as disorienting. Nobody guided her on what was happening, and she could not understand most of the proceedings. Nonetheless when called upon to testify, she bravely narrated her experience to the court, while someone did translate into Arabic for the judges.⁵¹⁶

Convictions and compensation

352. When all the rulings were delivered on 27 June 2022, each conviction was accompanied by a court order for the convicted perpetrators to pay compensation. In murder cases, this was an order that each perpetrator pay 51 cows as “blood money” to the victim or their family.⁵¹⁷ Military officials engaged with community representatives and negotiated that the cows should be converted into cash, amounting to around USD \$8,500 for 51 cows.⁵¹⁸ However, compensation for the murder cases is yet to be paid, and it was unclear how the payments and debts may be settled, including in the case of the convicted boy.⁵¹⁹ The Commission heard suggestions that the court orders for compensation reflected Dinka culture more than reparations practices of Equatorians, who were not consulted.⁵²⁰ In the cases resulting in convictions for rape, injury and looting, compensation was prescribed as cash.

353. In September 2022, it was announced on the radio that those eligible for cash compensation from the General Court Martial would need to return to Amiya Barracks to collect it.⁵²¹ Most of the recipients were survivors of the rape prosecutions.

“It was announced on the radio that every rape survivor who had a case before the court had to go to the Amiya Barracks to collect their money.”⁵²²

“I was concerned the announcement exposes the victims as everyone knows they have money... I was later informed by some survivors that money was deducted.”⁵²³

354. On the day cash compensation was delivered, it was done so publicly through a ceremony at the barracks, in the presence of senior military and government officials. A journalist was also present, seemingly from the military.⁵²⁴ All six survivors of sexual violence received their compensation; as with those who eventually received compensation following the 2020 District Court Martial, several survivors saw a deduction of ten percent which was explained to some but not all as constituting taxation.⁵²⁵ Several survivors and witnesses recounted to the Commission how compensation recipients were asked to publicly declare their thanks and gratitude to the local commander and public officials, upon receipt of the money.⁵²⁶ Victims who received compensation posed with officials for photographs.⁵²⁷

⁵¹⁴ 105452-105457.

⁵¹⁵ 105458-105463.

⁵¹⁶ 105464-105468.

⁵¹⁷ M-100036, M-100037.

⁵¹⁸ 100,000 South Sudanese Pounds per cow, converted here at a rate of 600 SSP to 1 USD. 105398-105402, M-100126.

⁵¹⁹ 105398-105402.

⁵²⁰ 105452-105457.

⁵²¹ 105452-105457, 105398-105402, 105478-105482, 105483-105486, 105478-105482.

⁵²² 105447-105451.

⁵²³ 105452-105457.

⁵²⁴ 105398-105402.

⁵²⁵ 105478-105482, 105483-105486, 105447-105451.

⁵²⁶ 105398-105402, 105478-105482, M-100111, 105464-105468.

⁵²⁷ 105478-105482, 105398-105402.

355. Some people who were still owed cash compensation from the 2020 District Court Martial attended the ceremony at the barracks and received outstanding compensation.⁵²⁸ In most, if not all, cases the convicted perpetrators did not have the means to pay. The source of the compensation payments was the SSPDF or senior officers.⁵²⁹ A monitor criticized these ad hoc direct payments, saying there should be a formal Government process.⁵³⁰

356. There is a lack of clarity on whether the sentencing of perpetrators was enforced, and this has had a significant impact on the perceptions of the justice process, including its efficacy as well as the safety concerns of participants.⁵³¹ The experience of convicts released after the 2020 trials informs this perception. Survivors, lawyers and monitors of proceedings said they could not establish if the convicted were indeed in prison.⁵³²

“There is a general perception that some have been released, transferred and reintegrated back into the SSPDF. That the trials are just a camouflage. This uncertainty makes civilians whose cases were heard fear they can be targeted.”⁵³³

“Most of the survivors have remained in Yei due to fear... They fear to return to their villages as they are scared about a repeat attack.”⁵³⁴

357. Related to concerns about the enforcement of sentencing, several survivors told the Commission that they still have not returned to their villages, for fear of being attacked there again. One woman noted even after going through the court process, some of her attackers remain free, and she feels threatened and unprotected.

“I feel the General Court Martial is there to ‘blindfold’ civilians. Although they are taking place, they are not going on the right track. It is just a way of covering up and it is not really acting as a deterrence. The cases of rape and looting are still there. The soldiers are brought... without supplies... and prey on civilians to survive.”⁵³⁵

“(Some rapists) have not been caught. So I have been living afraid that they will come after me again.”⁵³⁶

“I am happy that the person who did this to me is in prison, but I still live with the pain of what happened to me. It pains me so very much.”⁵³⁷

358. Multiple individuals reported that the community are aware that compensation hasn’t been paid and so this influences the prospect of future complaints being pursued.⁵³⁸ A combination of culturally inappropriate and unrealistic compensation claims, where there is no capacity to pay, may serve to further erode confidence in justice processes.

3. Conclusions

359. Broadly, people who engaged with the Commission said these accountability mechanisms were making some difference in that some soldiers had been subjected to accountability.⁵³⁹ A service provider suggested prosecutions happen more regularly, rather than typically being ad hoc. It was also suggested, however, that any panel of judges should be composed of people with different ethnicities and those who can communicate in local languages.⁵⁴⁰ One witness noted that the 2020 District Court Martial provided a better model in that the judges were more patient, the survivors had enough time to express their views

⁵²⁸ 105398-105402.

⁵²⁹ M-100126, M-100110.

⁵³⁰ 105452-105457.

⁵³¹ 105452-105457.

⁵³² 105458-105463, M-100112.

⁵³³ 105452-105457.

⁵³⁴ 105458-105463.

⁵³⁵ 105458-105463.

⁵³⁶ 105447-105451.

⁵³⁷ 105464-105468.

⁵³⁸ M-100112, M-100111.

⁵³⁹ 105398-105402.

⁵⁴⁰ 105458-105463.

and there was sufficient time provided for psychosocial counselling for the survivors.⁵⁴¹ While the rights of the accused were better upheld in the 2022 General Court Martial, the lack of victims' representation was a clear regression from the 2020 trials.⁵⁴²

360. In the context of South Sudan, where there is hardly any accountability for the range of serious crimes perpetrated against civilians, military justice will continue to be an important pillar of accountability in addressing violations by members of the military. Most senior military justice officials the Commission engaged with confirmed the principle that cases involving civilians must be dealt with in civilian courts, unless one is not operating in the area, for instance in Yei. The Commission notes that in locations where a regular civilian court is not functioning, or does not have the ability to host such trials for reasons of independence and resourcing and other capacity constraints, there is the option to have special courts of civilian prosecutors and judges, including those with specialized functions such as the Gender-Based Violence Court.⁵⁴³

361. There is also an evident gap in the prosecution of crimes against civilians committed by the NSS, who refuse to submit to the jurisdiction of the SSPDF.⁵⁴⁴ The Commission was told that NSS cases aren't tried by military courts because the NSS is in a different directorate from the SSPDF and reports directly to the President, and not the SSPDF Chief of Defence.⁵⁴⁵ In fact, the NSS Act provides for the establishment of Tribunals to try members of the NSS for a range of offences, including serious offenses. Yet in the face of serious violations committed by members of the NSS, there is no information of a functioning Tribunal to deal with serious crimes against civilians.

362. Given these challenges and legal parameters, special courts remain an important forum to host trials involving crimes by soldiers against civilians, rather than military courts. Ultimately, the establishment and adequate resourcing of formal civilian courts in all parts of the country is indispensable for the delivery of timely accountability and reparations for human rights violations. In the meantime, transitional measures to facilitate accountability for perpetrators and other forms of justice for victims through civilian justice will continue to be needed. Central Equatoria State, which hosts the country's capital city, has both generalized and specialized courts recently established to aid the case load and constraints of the civilian criminal justice system. Such courts could host trials as needed in Yei, Central Equatoria State, for so long as security forces are willing to commit to guaranteeing the safety and security of the proceedings. Such civilian-hosted initiatives should be hosted and supported to facilitate criminal accountability processes in which the rights of victims and the accused are both respected and protected.

D. Traditional Justice

363. The Commission has recognized that in South Sudan most communities still depend on customary mechanisms of adjudication for most disputes. The limitations of the formal criminal justice system highlight the need to understand and make use of traditional customary justice as a system that is complementary to the formal justice systems. Such justice mechanisms are often closer to communities than formal systems, they are less costly, and capable of producing timely decisions. As with the State's criminal justice system, these justice fora are often deeply flawed, and can be inconsistent with international human rights standards including for the administration of justice respecting and protecting the rights of women and girls. As the Commission has previously concluded in the context of achieving justice for sexual violence, traditional and customary justice systems should be engaged with both by the State and supporters of justice systems, as part of a holistic and realistic approach to meaningfully addressing impunity in the challenging country context.⁵⁴⁶ As part of this,

⁵⁴¹ 105458-105463.

⁵⁴² 105398-105402, 105452-105457, M-100126.

⁵⁴³ Special courts are provided for in section 124 of the Transitional Constitution.

⁵⁴⁴ 105452-105457.

⁵⁴⁵ M-100110.

⁵⁴⁶ A/HRC/49/CRP.4, paras. 191—195.

avenues for appeal to the State's courts should be in place where decisions of customary courts may be contrary to human rights, as has been recommended by the Committee on the Elimination of all forms of Discrimination Against Women.⁵⁴⁷

364. One of the tasks of the Truth Commission, to be established under Chapter V of the Revitalized Agreement, is to develop the contribution of traditional justice systems to transitional justice.⁵⁴⁸ When established, the Truth Commission may also examine how to best strengthen traditional justice systems more broadly, in line with international human rights law and standards, as part of a holistic and practical approach to institutional reforms.

E. Transitional justice

365. In response to the conflict and violations that have shaken South Sudan since December 2013, the conflict parties, with the support of the African Union, along with regional and international guarantors, have agreed to transitional justice measures that would deliver accountability, and promote truth, reconciliation, healing and reparations in order to restore the fabric of South Sudanese society. While the 2015 Agreement on Resolution of the Conflict and the 2018 Revitalized Agreement adopted new transitional justice mechanisms, the existing rule of law institutions in South Sudan, including the criminal justice system and governance mechanisms, are indispensable to enhance accountability. However, even under the most promising circumstances, the current justice arrangements are incapable of dealing with the magnitude and gravity of the violations being experienced in South Sudan. Thus, transitional justice measures set out in the Revitalized Agreement provide a crucial avenue to confront impunity for widespread and systematic violations of international human rights and humanitarian law committed in South Sudan. In recognition of their vital role, the Human Rights Council has, since 2017, mandated the Commission to provide guidance on transitional justice, and to make available to the transitional justice mechanisms established under chapter V of the Peace Agreement, information and evidence of violations that it has collected.

366. In 2014, the African Union (AU) Commission of Inquiry into the 2013 conflict, having gathered extensive views from South Sudanese, determined that a comprehensive framework consisting of truth seeking, justice, accountability and reparation for conflict-related violations was required to achieve healing, reconciliation, and sustainable peace in South Sudan. These measures would complement reforms and strengthen existing justice mechanisms. In this regard, the AU Commission of Inquiry recommended the establishment of an African-led legal mechanism to pursue accountability against individuals bearing greatest responsibility for war crimes, crimes against humanity and other violations committed during the 2013 conflict; a Truth and Reconciliation Commission; and a national reparation fund, among other institutional reforms and state-building measures.⁵⁴⁹ The AU Peace and Security Council adopted the report of the Commission of Inquiry in 2015 and affirmed the need for a holistic approach that would pursue accountability together with reconciliation, healing, and institutional reforms in a "mutually supportive way".⁵⁵⁰

367. The parties to the Revitalised Agreement signed in September 2018 reached a similar determination and adopted the recommendations of the AU, as reflected in the 2015 Agreement on Resolution of the Conflict in South Sudan. Chapter V of the Revitalized Agreement requires the AU to establish a Hybrid Court for South Sudan (the "Hybrid Court") to investigate and prosecute individuals responsible for violations of international and South Sudanese law, including genocide, crimes against humanity and war crimes committed from the onset of the conflict on 15 December 2013 to the end of the transitional period of the

⁵⁴⁷ CEDAW/C/SSD/CO/1.

⁵⁴⁸ Revitalized Agreement, article 5.2.2.3.9.

⁵⁴⁹ African Union, Final Report of the African Union Commission of Inquiry on South Sudan, 15 October 2014.

⁵⁵⁰ Communique of 547th meeting of the PSC, at the level of Heads of State and Government, on the situation in South Sudan, 26 September 2015, available at: <https://www.peaceau.org/en/article/communique-of-547th-meeting-of-the-psc-at-the-level-of-heads-of-state-and-government-on-the-situation-in-south-sudan>.

peace agreement, which is now set for 22 February 2025.⁵⁵¹ Chapter V further requires the Government of South Sudan to establish a Commission for Truth, Reconciliation, and Healing (the “Truth Commission”), and Compensation and Reparation Authority (the “Reparation Authority”).

368. The Truth Commission is mandated to inquire into all aspects of human rights violations and abuses, breaches of the rule of law and excessive abuses of power committed by State and non-State actors, and to investigate, document and report on the course and causes of conflict.⁵⁵² It is also expected to investigate and provide an accurate record of human rights violations, including the causes, circumstances, and perpetrators responsible for the violations committed between July 2005, when the Comprehensive Peace Agreement was signed between parties from Northern and Southern Sudan, and 12 September 2018, when the Revitalized Agreement was adopted. The Truth Commission may review this and other timeframes stipulated by the 2018 Agreement or implementing legislation for its operations. The Truth Commission will also be required to propose measures for effective remedies and reparation to affected victims, in order to prevent recurrence of violations.⁵⁵³ The Reparation Authority will be expected to administer a Fund to assist conflict-affected individuals and communities and provide victims recorded by the Truth Commission with appropriate compensation and reparation.⁵⁵⁴

369. The Hybrid Court, the Truth Commission and the Reparation Authority are essential to demonstrate the nation’s unequivocal and collective condemnation of impunity for political violence and ensuing violations, including by ensuring accountability for perpetrators from the lowest to the highest levels, and recognition and reparation for affected victims. Furthermore, truth-seeking through the CTRH would provide a significant avenue for nationwide interrogation of the root causes of violations and identification of effective measures to deal with ethnic and identity-based divisions and other grievances, which are continuously exploited to incite communities against each other and perpetuate conflict.

1. Delayed implementation of transitional justice measures

370. Despite the clear recognition of the necessity of transitional justice measures in South Sudan, the pace of implementation has been woefully slow. None of the three transitional justice mechanisms required under Chapter V of the Revitalized Agreement have been established. While preparatory steps have been initiated, progress toward establishment and operationalisation of the Hybrid Court, the Truth Commission, and the Reparation Authority does not match the urgency depicted by persisting impunity fuelling ongoing armed conflict and violations as documented in this report. For more than four years, implementation of Chapter V, like other core provisions of the Revitalized Agreement, has been set back by the Government’s consistent failure to adhere to agreed timelines, insufficient financial and technical resources, and lack of genuine political will to pursue a holistic framework that includes criminal accountability against perpetrators of conflict-related violations and atrocities.

371. There was complete Government inaction in the first two years following adoption of the Revitalized Agreement due to delayed formation of the Revitalised Government of National Unity that was set up in February 2020. The Cabinet eventually passed a resolution in January 2021, which mandated the Ministry of Justice and Constitutional Affairs to move forward with the establishment of the three transitional justice mechanisms. By mid-2021, the Ministry of Justice and Constitutional Affairs had established a Task Force to oversee implementation of Chapter V mechanisms, alongside judicial reforms, and the permanent constitution-making process⁵⁵⁵, and a Technical Committee to conduct public consultations

⁵⁵¹ Revitalized Agreement, Article 5.3.

⁵⁵² Revitalized Agreement, article 5.2.2.1.

⁵⁵³ Revitalized Agreement, Article 5.2.

⁵⁵⁴ Revitalized Agreement, Article 5.4.

⁵⁵⁵ Ministerial Order No 01/2021 for the establishment of the Taskforce in the Ministry of Justice and Constitutional Affairs to oversee, coordinate and conduct advocacy for Transitional Justice Mechanisms, Permanent Constitution-Making Process and wide range of legislative and institutional reforms as enshrined in the RARCSS.

on the establishment of the Truth Commission⁵⁵⁶. The national consultations on the Truth Commission were, however, further delayed by one year due to insufficient resources and eventually carried out between May and June 2022. The Government is yet to engage with the African Union (AU) to advance the process of establishing the Hybrid Court.

372. On 2 August 2022, the parties to the Revitalized Agreement adopted a ‘roadmap’ for a two-year extension of the Transitional Period of the Agreement from 22 February 2023 to 22 February 2025, with revised timelines for establishment of Chapter V mechanisms.⁵⁵⁷ The enactment of enabling legislation for establishment of the Truth Commission and appointment of Commissioners were to be completed by 30 November 2022, allowing it to become fully operational by 30 March 2023.⁵⁵⁸ Legislation for the Reparation Authority was to be initiated by 9 November 2022.⁵⁵⁹ The roadmap further indicated that timelines for establishment of the Hybrid Court were dependent on provision of broad guidelines by the African Union Commission.⁵⁶⁰ As the original three-year transitional period of the Revitalized Agreement came to an end on 22 February 2023, the Hybrid Court, Truth Commission and Reparation Authority were all yet to be established. The constitutive laws for the three mechanisms have neither been made public nor tabled before Parliament.

373. In February 2023, the Ministry of Justice and Constitutional Affairs informed the Commission that it was at an advanced stage of drafting legislation for the establishment of the Truth Commission and Reparation Authority based on the views received from the public consultations conducted from May to June 2022. The Ministry indicated that the draft legislation is also informed by lessons drawn from comparative experiences from the region, including a visit it undertook to South Africa and The Gambia with the support of the United Nations Development Programme (UNDP). The Ministry projected that the draft Bills for the Truth Commission and Reparation Authority would be presented for public review and input by stakeholders and experts drawn from varied countries within the region during a Conference in March 2023, before being presented to the Cabinet and Transitional National Legislative Assembly.⁵⁶¹

2. Public Consultations on the Commission for Truth, Reconciliation and Healing

374. President Salva Kiir, together with other parties to the Revitalized Agreement, jointly launched the public consultations to inform the design of the legislation for establishment of the Truth Commission on 5 April 2022. The launch marked a significant milestone, almost one year following the reconstitution of the Technical Committee mandated to conduct the consultations in May 2021. After a six-month period of intensive preparations, the Technical Committee’s plans to initiate the consultations had been set back due to inadequate resources and related logistical constraints. The Technical Committee, with support from UNMISS and UNDP, eventually conducted the consultations between 6 May and 2 June 2022.

375. The Technical Committee reported that it visited a total of 37 locations in a predetermined sample of mapped locations in the 10 States and two Administrative Areas of South Sudan. They received views from 4,543 citizens, 3,080 men and 1,463 women, with representation from victims’ groups, internally displaced persons, youth, persons with disabilities, legislators, security actors, business sector, State and County Government officials, faith-based groups, traditional leaders, and local administrators. Notably, the Technical Committee was able to engage communities in some opposition-controlled areas,

⁵⁵⁶ Ministerial Order No 02/2021 for the establishment of a Technical Committee in accordance with provisions of Chapter V, Article 5.2.1.3 of the RARCSS 2018.

⁵⁵⁷ Agreement on the Roadmap to a Peaceful and Democratic end of the Transitional Period of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (the “Roadmap”), prepared by the High-Level Standing Committee of the Parties Signatory to the Revitalized Agreement, 2 August 2022.

⁵⁵⁸ “Roadmap,” Articles 2.5.1 and 3.5, and Annex 7, clauses 5 - 7.

⁵⁵⁹ “Roadmap,” Articles 2.5.2 and 3.5, and Annex 7, clause 17.

⁵⁶⁰ “Roadmap,” Articles 2.5.3 and 3.5, and Annex 7, clause 18.

⁵⁶¹ Commissioners meeting with the Minister for Justice and Constitutional Affairs and Task Force on 14 February 2023, and during the Conference on Sustaining Momentum for Transitional Justice in South Sudan in Mombasa, Kenya from 20 to 22 February 2023.

such as within Unity State, that were difficult to access during the first round of similar consultations conducted between 2017 and 2018.⁵⁶² Representatives provided views in relation to key issues delineated for consideration including: the temporal and substantive mandate of the Truth Commission, criteria and process for selection and appointment of Commissioners, protection of victims and witnesses, correlation between the Truth Commission and other transitional justice mechanisms, role of traditional justice mechanisms, and financing of the Commission.⁵⁶³

376. However, the Technical Committee encountered significant resource, logistical and security challenges that affected its ability to ensure broad inclusion and participation of citizens and conflict-affected communities in the consultations. Regrettably, the Commission has noted a recurrence of key challenges experienced during the 2017/18 consultations. The 21-day period allocated for the consultations was inadequate to cover the vast area of the country and ensure effective engagement of affected communities, especially in flooded and remote areas with poor road infrastructure. Further, there were no resources allocated for consultations with refugees in neighbouring countries, including Kenya, Uganda, Ethiopia, Sudan, the Democratic Republic of Congo, and the Central African Republic. The failure to engage with refugees is particularly concerning as it was flagged as one of the most critical gaps in the previous round of consultations carried out in 2018.⁵⁶⁴ In addition, the Technical Committee was unable to conduct broad and timely public sensitization to adequately prepare citizens for the consultations. As a result, despite high levels of interest demonstrated during the public gatherings, the majority of ordinary citizens were uninformed about the transitional justice obligations outlined in the Revitalized Agreement or the goals of the Truth Commission. Furthermore, sensitization materials and consultation questionnaires were published in English, without translation into local languages understood by majority of citizens. Finally, the Technical Committee was unable to conduct consultations in several locations affected by ongoing conflict and flooding, including in Upper Nile State, Jonglei State and Greater Pibor Administrative Area, Western Bahr El Ghazal State, Central and Eastern Equatoria States, and the Abyei Administrative Area.

377. The Technical Committee has aptly underscored the need to distinguish between the consultations intended to guide the design of the constitutive legislation for the Truth Commission and the actual truth-seeking process that is anticipated to have a more extensive reach across the country. Nonetheless, the challenges experienced by the Technical Committee have significant implications for implementation of the Truth Commission and future transitional justice processes. Ensuring equal participation and involvement of all sectors of society is essential to counter legacies of identity-based discrimination, and socio-economic and political inequalities, which have been among the primary causes, drivers and consequences of conflict and related atrocities in South Sudan. Meaningful inclusion and participation of affected victims, including refugees, is critical to renew their trust in the State, cultivate a shared national identity, and instil legitimacy, public ownership and support for transitional justice processes and outcomes. Thus, while efforts to ensure the participation of large numbers and diverse representation of citizens from varied sectors, gender and age sets is indispensable, an equal level of investment is required to ensure that vulnerable and marginalized groups are not further excluded. Moreover, deliberate measures should be taken to create public awareness and address language barriers so that citizens are adequately prepared to meaningfully engage in transitional justice processes.

⁵⁶²See additional details on the first round of national consultations on the establishment of the CTRH conducted between 2017 and 2018, in UNDP, Report on Consultations by the Technical Committee for the Establishment of the Commission for Truth, Reconciliation and Healing (CTRH) in South Sudan (2018). See also UN CHRSS Transitional justice and accountability: a roadmap for sustainable peace in South Sudan, A/HRC/45/CRP.4, Annex 1, 2019 Transitional Justice Workshop Report, at p. 36-38.

⁵⁶³Preliminary report of the Technical Committee on Establishment of the CTRH, 4 July 2022 on file with the Commission; and CHRSS meetings and consultations with members of the Technical Committee on 5 August 2022, 15 November 2022 and 8 December 2022.

⁵⁶⁴The Ministry of Justice and UNDP have since informed the Commission that they are committed to work together to secure resources and avenues for consultation with refugees and ensure that their views are incorporated in the design of the Truth Commission.

3. Hybrid Court for South Sudan

378. There has been no movement in the establishment of the Hybrid Court throughout the duration of the 2018 Revitalized Agreement. The establishment of the Hybrid Court has been beset by a political blame-game between the AU and the Government of South Sudan, seemingly being sustained to provide a convenient guise for political elites opposed to criminal accountability. The Government maintains that the MoU for the establishment of the Hybrid Court agreed on between the AU and Government in 2017, under the auspices of the 2015 peace agreement, cannot stand as it must be reviewed and aligned to provisions of the Revitalized Agreement. One of the key issues of contention is that the 2018 peace agreement requires the AU to initiate the process of establishing the Hybrid Court through broad guidelines - rather than an MoU - that would inform drafting and enactment of domestic legislation by the Government of South Sudan.

379. During the second Transitional Justice Conference convened by the Commission in December 2021,⁵⁶⁵ the AU and the Ministry of Justice and Constitutional Affairs expressed their readiness to work closely to unlock the stalemate, including by streamlining the existing MoU with provisions of the Revitalized Agreement. However, during a follow-up mission conducted by the Commission in October 2021, senior AU officials expressed frustration at the lack of progress, cooperation, and serious engagement by the Government of South Sudan to unlock the stalemate and advance establishment of the Hybrid Court. The AU reported that its numerous attempts to seek engagement with the Government of South Sudan in Juba through established diplomatic protocols have been futile. Meanwhile, some cabinet ministers and several members of the political elite in Juba have been outspoken on their preference for the country to first pursue reconciliation through the future Truth Commission before initiating accountability processes.⁵⁶⁶

380. In November 2022, a coalition of civil society organizations (CSOs) reiterated that the AU's obligation to establish the Hybrid Court remains, irrespective of the Government's collaboration. The CSOs asserted that whereas the Revitalized Agreement envisioned that the AU would collaborate with the Government of South Sudan to establish the Hybrid Court, the demonstrated absence of good faith by the Government now necessitates the AU to rely on its Constitutive law to unilaterally establish the Court as a measure to counter impunity for violations and atrocities committed in South Sudan. The CSOs, therefore, urged the AU Commission to finalise, adopt and make public the draft Statute that it prepared in 2016 and which had been reviewed by experts in 2019, to demonstrate its genuine commitment to establish the Hybrid Court.⁵⁶⁷

381. The Commission is concerned that a selective approach, that favours truth-seeking and excludes accountability, would deepen citizens' mistrust and apprehension regarding the legitimacy of transitional justice measures and put in doubt the Government's genuine commitment to address past violations and prevent their recurrence in future. The Government's lukewarm approach to the establishment of the Hybrid Court frustrates victims' and citizens' demands for criminal accountability as an indispensable measure to effectively deal with impunity and end the vicious cycle of conflict and widespread human rights violations in South Sudan. Further, the Government risks creating a perception that truth, recovery, and reconciliation processes would exclude avenues to pursue accountability against identified perpetrators.

382. The Revitalized Agreement does not envisage a *sequencing* whereby one transitional justice mechanism is exhausted before another is commenced; rather, it envisages these mechanisms functioning side by side in a holistic frame. Indeed, this is the approach that the

⁵⁶⁵ "High-level conference held to sustain momentum for transitional justice in South Sudan," 15 December 2021, available at: <https://www.ohchr.org/en/press-releases/2021/12/high-level-conference-held-sustain-momentum-transitional-justice-south-sudan>. The first conference convened by the Commission was held in 2019.

⁵⁶⁶ See for example President Kiir interview, Citizen Television, 7 July 2021, available at: <https://youtu.be/MtlbKlHycIE?t=1284>, at minute 21:24.

⁵⁶⁷ "African Union's Abandoned Commitment to Justice in Africa: The Case of the Hybrid Court for South Sudan," South Sudan Transitional Justice Working Group and Amnesty International, November 2022, available at: <https://www.amnesty.org/en/documents/afr65/6196/2022/en/>.

AU Peace and Security Council enjoined in its decision of 2015 on transitional justice in South Sudan. Therefore, the Government and the AU must exercise due diligence to create a safe and conducive environment for the operation of the Hybrid Court, the Truth Commission, and the Reparation Authority, alongside judicial and other institutional and legal reforms, and equip them with sufficient technical and financial resources to meaningfully achieve their intended goals. In this regard, the Government and AU should consider initiating an approach that begins to promote the legacy of the Hybrid Court in South Sudan from the onset rather than at the completion of its mandate. This could include initiation of training, capacity building and technical assistance to South Sudanese investigators, prosecutors, and judges to enhance their understanding and practice on concepts and procedures for investigation and prosecution of international crimes and other violations of South Sudanese law envisaged within the jurisdiction of the Hybrid Court. It should also involve the adoption of legislation that ensures that the range of international crimes included in the draft Statute of the Hybrid Court can be prosecuted in the national system, including the military courts, and the elaboration of the concepts of command and superior responsibility into national law.

4. Sustaining momentum for the establishment of transitional justice measures

383. The Commission convened the third Transitional Justice Conference on *Sustaining Momentum for Transitional Justice in South Sudan* from 20 to 22 February 2023.⁵⁶⁸ The primary objective of the Conference was to assess the progress in implementation of Chapter V of the Revitalized Agreement and resolutions adopted by key State and non-State actors in December 2021 to promote timely, holistic, inclusive, and citizen-and-victim-centred transitional justice processes in South Sudan.⁵⁶⁹

384. The South Sudan Minister for Gender, Child and Social Welfare, Hon. Aya Benjamin Warille, UN High Commissioner for Human Rights, Mr. Volker Türk (via pre-recording), and IGAD Special Envoy to South Sudan, H.E. Ambassador Ismail Waiss (online) presided over the opening of the Conference, among other national and regional leaders. The Conference brought together Ministers and officials from key Government institutions, representatives of the African Union, Guarantors of the Revitalized Agreement (Uganda), members of the Troika (USA), the South Sudan Human Rights Commission, members of the Judicial Reforms Committee, the Technical Committee on National Consultations for the Establishment of the Commission on Truth, Reconciliation and Healing, UNDP, UNMISS, UN Women, the Reconstituted Joint Monitoring and Evaluation Commission, and civil society, including religious leaders, members of the union of journalists, and national and international non-governmental organizations.

385. Participants at the Conference stressed the need for greater national ownership and genuine political will by the Government and its citizenry to accelerate the realization of a holistic transitional justice, encompassing truth-seeking, accountability, reparation, memorialization, reconciliation, institutional and legal reform programmes, and other complementary measures to ensure prevention of recurrence of conflict and atrocities in South Sudan.

386. The Conference concluded with the adoption of the following outcomes as key priorities to be completed within one year of the extended 24-month period of the Revitalized Agreement, at the latest by the end of February 2024:

- 1) The Government to initiate development of a comprehensive Transitional Justice Policy and Strategy incorporating Chapter V and other complementary mechanisms and processes;
- 2) The Government to immediately enact legislation and operationalize the Commission for Truth Reconciliation and Healing, and Compensation and Reparation Authority, with

⁵⁶⁸ The first conference was convened in 2019 and the second in 2021 (see above).

⁵⁶⁹ “Summary of Resolutions from the Conference on Sustaining Momentum for Transitional Justice in South Sudan, 13th – 15th December 2021,” available at: https://www.ohchr.org/sites/default/files/2022-02/Summary_Resolutions_Conference_13-15_Dec_2021.pdf.

broad public participation and inclusion of victims, refugees, women, children, and other marginalized groups;

- 3) The African Union to step up its engagement with the Government of South Sudan, including through the offices of its Chairperson, Commissioner for Political Affairs, Peace, and Security, Peace and Security Council, and C5 Group, to finalize the development and adoption of broad guidelines and also to offer technical support to the Government to initiate legislation for the establishment and operationalization of the Hybrid Court for South Sudan.
- 4) The Government to fast-track implementation of judicial reforms as provided in the Peace Agreement and initiate other legal and institutional measures, including within the military justice system and permanent constitution-making process, to provide effective, human rights-based and victim-centred accountability and reparation for conflict-related violations;
- 5) The Government to conduct mapping of victims of conflict-related violations, including survivors of conflict-related sexual violence and children born out of rape, and initiate feasible interim reparation and assistance measures to address their urgent needs such as health care, education, and psychosocial support;
- 6) The Government to swiftly put in place effective measures to curb ongoing conflict and insecurity across the country to provide a safe environment for citizens to participate freely and openly in the Truth Commission, constitution-making, institutional and legal reforms, and other transitional justice processes. This includes immediate enactment and enforcement of the amended National Security Service Act and *Presidential Directive to Governors, County Commissioners and Administrative Chiefs on ensuring open and civic space, access to information and freedom of media, assembly, and association*, deployment of graduated armed forces, and completion of training and graduation of the Necessary Unified Forces;
- 7) The Government to allocate adequate funding in the 2023-24 national budget to operationalize the Truth Commission, the Reparation Authority and the Hybrid Court, and to facilitate broad-based civic education and awareness on holistic implementation of transitional justice and related reform processes in South Sudan;
- 8) The UN and other development partners, the African Union, IGAD, Troika, guarantors of the Revitalized Agreement, RJMEC and civil society, to offer financial and technical support and collaborate with the Government of South Sudan to expedite the implementation of transitional justice and related reform processes.

387. Conference participants agreed to meet quarterly in South Sudan and conduct learning visits, to assess the progress achieved and address emerging challenges in implementation of the adopted priorities. The Commission urges the Government of South Sudan and the AU, in collaboration with all stakeholders, to support implementation of the foregoing priorities to fast-track implementation of transitional justice measures envisaged in Chapter V of the Revitalized Agreement.

F. Enabling peace through justice

388. South Sudan has the primary duty under international law to ensure accountability, including by conducting prompt, independent and impartial investigations into alleged violations and abuses of human rights, and, where evidence exists, to facilitate effective prosecutions of individuals who may bear criminal responsibility, potentially including individuals in positions of command or superior responsibility. As part of this, there is a need to develop the criminal justice system and strengthen the rule of law, including by protecting the independence and security of the judiciary and other justice sector actors, ensuring that all sectors of the justice system are non-discriminatory, in particular towards women and girls.

389. The Commission concludes that, in addition to establishing the three transitional justice mechanisms under the Revitalized Agreement, there should be a prioritization of resources for mobile courts, and the specialized court for gender-based violence, to enable them to address existing gaps in the criminal justice system on a greater scale, and to take

measures to ensure judicial independence in trials of members of security forces allegedly involved in crimes against civilians. At the same time, public officials and military officers who may bear responsibility for serious crimes, including those in senior positions such as the individuals named by the Commission in its detailed findings in this report, must be promptly stood down from their positions and face accountability. Otherwise, without these practical steps, human rights violations and conflict in South Sudan risk going on forever.

VII. The virtual disappearance of civic and political space

390. The Commission has reported consistently on the shrinking of civic space in South Sudan,⁵⁷⁰ and has found that the space for public debate has now virtually disappeared. Human rights activists continue being harassed, arbitrarily detained, and threatened with death and other forms of harm. State actors persist in the unlawful harassment of journalists. Members of the public raising human rights issues on social media have also been subjected to harassment. Individuals, media and civil society organizations are all targeted, and some organizations have been forced to close. These acts by State security forces constitute human rights violations, including of the right to life, they violate protections against arbitrary detention, and the rights to freedom of expression, association, and peaceful assembly. Individuals in South Sudan and the region who bravely exercise their rights face serious risks to their physical integrity and freedom.

391. This virtual disappearance of civic space comes at a time when freedom of expression and association are as important as ever, to enable informed and open public debate and participation in critical political processes. Long-delayed constitution-making and national electoral processes are scheduled to take place and be completed by December 2024, as detailed in the “Agreement on the Roadmap” signed in August 2022 by parties to the 2018 Revitalized Peace Agreement, which extends transitional governance arrangements by two years.⁵⁷¹ The Roadmap includes a framework process to establish and solicit public views on a permanent constitution.⁵⁷² Yet individuals in civil society told the Commission they already lack confidence in these processes. Many say they were not consulted regarding the extension to the transitional arrangements, and that they have not seen the extension accompanied by the opening of civic space necessary for processes under the Agreement to succeed.⁵⁷³ The Commission has noted in its statement to the UN Human Rights Council that constitution-making and elections cannot be credible, meaningful, or impactful unless State actors end repression of civic space.⁵⁷⁴ The Government’s fear of public debate and its intolerance of criticism appears to be deep-seated. At the conclusion of the Universal Periodic Review of South Sudan by the UN Human Rights Council in 2022, the Government rejected specific recommendations from Member States to guarantee and protect the rights of human rights defenders, journalists and individuals engaged in civic activities.⁵⁷⁵ Members of civil society who were involved in the Universal Periodic Review told the Commission they were discouraged and concerned by this response from the Government.⁵⁷⁶

392. In 2022, the Commission observed at least three patterns of repression: crackdowns on individuals and affiliated organizations for expressing views critical of the Government or perceived as reflecting unfavourably on State institutions; the curtailment of peaceful public assemblies; and intimidation, arbitrary detention, and other forms of harassment against journalists. As a result, individuals continue to flee South Sudan for refuge in other countries. Among these refugees, and especially for individuals still in the country, there are

⁵⁷⁰ A/HRC/40/CRP.1, paras. 110–127.

⁵⁷¹ Agreement on the Roadmap to a Peaceful and Democratic end of the Transitional Period of the Agreement on the Resolution of the Conflict in the Republic of South Sudan, 2 August 2022.

⁵⁷² *Ibid.*, Annex 8.

⁵⁷³ M-100214, M-100219, M-100218, M-100177.

⁵⁷⁴ “Un experts tell Human Rights Council that violence against civilians persists in South Sudan, fuelled by pervasive impunity,” 7 March 2023, available at: <https://www.ohchr.org/en/press-releases/2023/03/un-experts-tell-human-rights-council-violence-against-civilians-persists>.

⁵⁷⁵ See A/HRC/50/14, 28 March 2022, paras. 113.147, 113.150; and A/HRC/50/14/Add.1, 1 June 2022.

⁵⁷⁶ M-100219.

heightened degrees of self-censorship and wariness about who they associate with, alongside a reluctance to publicly raise critical voices, given the intimidation and risks of retaliation.

A. Silencing voices critical of the Government

“When you’re talking about human rights, you become targeted. I am a human rights defender, and many friends have already been killed. South Sudan is unsafe for us.”⁵⁷⁷

393. The State’s ongoing crackdown on activities associated with the People’s Coalition for Civil Action (PCCA) presents an emblematic example of restrictions on civic space and their effects.⁵⁷⁸ The Commission previously reported that in late August 2021, security forces deployed on the streets of Juba and other cities, and there were internet and telecommunications outages, preventing a lawful public assembly planned by the PCCA.⁵⁷⁹ The crackdown also included the unlawful freezing of the bank accounts of several prominent members and the non-government organizations they led, including Jame David Kolok and Michael Wani, who fled the country in fear for their lives and have been unable to safely return.⁵⁸⁰ The freezing of organizational bank accounts held by civil society groups in 2021 has had the direct effect of preventing their ability to continue their various activities openly and effectively, throughout 2022 and into 2023.⁵⁸¹ The NSS continued to harass members of some organizations whose accounts were frozen.⁵⁸² A PCCA member who is in exile told the Commission that he was aware of several attempts by State security forces to detain members of the coalition outside South Sudan, in 2022.⁵⁸³

394. Multiple PCCA members were arrested by State security forces in 2021, and detentions continued into 2022. Among these was Kuel Aguer Kuel, the former Governor of Northern Bahr el Ghazal State. Having been detained in early August 2021 before the planned protests, on 3 October 2022 he appeared in front of a judge in a special court in Juba, after spending more than 400 days in detention.⁵⁸⁴ He was charged with various criminal offenses related to subversion. On 9 December 2022, Kuel Aguer Kuel was acquitted of charges given that he had no case to answer for, and subsequently released. PCCA members since reported that his life has been threatened, and the Commission verified reports that as of March 2023 he was under significant State surveillance, and was at risk.⁵⁸⁵ Charges were also filed against PCCA members who had fled their homes in South Sudan, but no trials took place given they were outside the country.⁵⁸⁶ During 2022 they had been approached informally by State agents suggesting that they could return safely to South Sudan if they apologized to the President for challenging his authority.⁵⁸⁷

⁵⁷⁷ 105296-105304.

⁵⁷⁸ The foundational document of the PCAA listed observations about progress on human rights and democratic indicators in the country ten years after achieving independence. Among its demands was for national leaders to step down from their unelected posts. PCCA, “The Declaration,” 30 July 2021. On file.

⁵⁷⁹ A/HRC/49/78, paras. 23-28. The Commission has previously sought but did not receive an explanation from the Government. While the internet shutdown remains inexplicable, it appears to have been designed to censor and block access to information and capacity of citizens to mobilize. Letter from the Commission to the Government of South Sudan, 19 October 2021.

⁵⁸⁰ “Threats against civil society leaders violate human rights, undermine transition to peace in South Sudan - UN Experts,” 20 October 2021, available at: <https://www.ohchr.org/en/press-releases/2021/11/threats-against-civil-society-leaders-violate-human-rights-undermine>.

⁵⁸¹ M-100216.

⁵⁸² 105777-105784.

⁵⁸³ M-100214.

⁵⁸⁴ As per the dates of detention and court proceedings cited in the SSBC evening news broadcast of 9 October. See also “South Sudan Government Begins Trial of Activists, Critics,” Human Rights Watch, 6 October 2022, available at: <https://www.hrw.org/news/2022/10/06/south-sudan-government-begins-trial-activists-critics>.

⁵⁸⁵ M-100214, M-100215.

⁵⁸⁶ M-100216.

⁵⁸⁷ M-100215, M-100216.

“What happened to us has scared civil society from speaking out. Most civil society in Juba now self-censor. They don’t speak out on issues courageously the way they used to because they fear their organizations will be closed or be exiled. Implementation of the peace agreement (requires) being responsive to ideas that are coming from throughout the country. We are in a critical stage on the constitution-making process, and we need very vibrant discussions involving civil society.”⁵⁸⁸

395. The State’s ongoing crackdown against the PCAA is emblematic of the Government’s intolerance of criticism and public debate. It constitutes an unnecessary and disproportionate response to expressions of criticism. The tactics employed in response to the PCCA involved interference with a range of rights protected under various provisions of the Transitional Constitution of South Sudan, national law, and applicable international human rights law, including the rights to freedom of association, assembly, expression as well as the right to life.⁵⁸⁹ Although the PCCA has been a peaceful political movement, the State has responded with violence and repression. A senior Minister has even described the PCCA as “enemies.”⁵⁹⁰ A senior member of the group decried how the Government treated them like an armed group that had launched a rebellion against the State, noting that this reaction to peaceful dissent was counterproductive, and that the PCCA would continue to engage with the Government using peaceful means.⁵⁹¹ Another prominent civil society activist who is not part of the PCCA described how the State’s crackdown had affected other organizations and public figures, many of whom fear facing similar repression for expressing critical views, and that many members of civil society have become even more cautious about their activities in the civic space, including who they associate with.⁵⁹²

“We are being monitored all the time. In all places and at all levels, speaking out is a problem. We can’t even come together to discuss issues in our community.”⁵⁹³

396. More broadly, civil society organizations in South Sudan face an elaborate web of formal and informal rules, processes and procedures by which State organs monitor and control their activities.⁵⁹⁴ Many of these procedures are ad hoc; almost all violate freedom of association rights. The director of a local organization described NSS officials, often plain clothed, habitually monitoring meetings, workshops and forums arranged by his colleagues and partners. Hotel venues and international organizations hosting events face pressure from security services to enforce vague directives requiring various permissions, and even to report sensitive information about participants.⁵⁹⁵ It has become extremely difficult for civil society actors to meet together and to hold events, even in public spaces.

397. The ongoing and increasingly pervasive surveillance of Facebook and WhatsApp groups was documented by the Commission as having triggered arbitrary detentions, torture and death threats during 2022.⁵⁹⁶ Members of the public who used social media platforms to speak out about human rights violations also described to the Commission their experiences of feeling hunted by public officials and security forces. A man who denounced violence on Facebook recounted being detained and tortured for several days, then taking an arduous journey to escape his captors.⁵⁹⁷ Another individual had to go into prolonged hiding, away from their job and family, because they received credible death threats after circulating a

⁵⁸⁸ M-100126.

⁵⁸⁹ The acts were also contrary to Article 25 of the Transitional Constitution of South Sudan (2011) which guarantees the right to freedom of assembly and association, including the right to form or join political parties, association and trade or professional unions. The rights to information and expression (Art 9), freedom of association (Art 10), and freedom of assembly (Art 11) are protected under the African Charter on Human and Peoples’ Rights.

⁵⁹⁰ “UN Rights Commission Condemns South Sudan Security Crackdown,” VOA, 21 October 2021, available at: <https://www.voaafrica.com/a/un-rights-commission-condemns-south-sudan-security-crackdown/6280069.html>.

⁵⁹¹ M-100215.

⁵⁹² 105777-105784.

⁵⁹³ M-100219.

⁵⁹⁴ M-100089, M-100219.

⁵⁹⁵ M-100219, M-100218.

⁵⁹⁶ 105296-105304, 105320-105332, M-100219.

⁵⁹⁷ 105296-105304.

letter on WhatsApp decrying Government complicity in atrocities.⁵⁹⁸ In the highly-militarized Kajo-Keji County in Central Equatoria State, residents who spoke to the media about the killing of civilians went on the run after receiving information that SSPDF soldiers had interrogated their families and were looking for them.⁵⁹⁹ In a publicized and illustrative case, Koch County authorities in Unity State warned against critical social media posts after detaining a humanitarian worker who spoke out about the widespread attacks on civilians directed by Government officials, which are also detailed in the findings of this report.⁶⁰⁰

“I know that if they cannot get hold of me, they can try to get me through my family, who don’t know the level of threats against me... I must be careful.”⁶⁰¹

398. Even abroad, many individuals are still not safe from the reach of State security forces, who have a track record of facilitating renditions, with impunity. This is demonstrated by the ongoing absence of truth or accountability for the enforced disappearance and of two South Sudanese citizens, Dong Samuel Luak and Aggrey Idri, who were abducted in Nairobi, Kenya in 2017 and transferred to the NSS “Blue House” detention facility in Juba.⁶⁰² The Commission has documented several other cases illustrating the reach of State security forces in recent years, even extraterritorially.⁶⁰³ Individuals who have sought safety in neighbouring countries continue to fear abduction and rendition, particularly in Kenya.⁶⁰⁴ The most recent such case was reported in February 2023, when Morris Mabior Awikjok, a critic of South Sudan’s Government, disappeared in Nairobi.⁶⁰⁵ His whereabouts have not been established, and his situation may constitute an enforced disappearance.⁶⁰⁶ Family members live in limbo experiencing ongoing trauma not knowing what has happened to loved ones, as well as having to deal with the loss of a breadwinner. As previously reported, many individuals subjected to enforced disappearance are known to be, or are suspected to have been, the victim of an unlawful killing; this often involves NSS members, but other State security forces, as well as armed groups, have also been responsible.⁶⁰⁷

B. Curtailment of peaceful public assemblies

399. On 7 August 2022, members of the public, mainly students, held a small peaceful demonstration in the Konyo Konyo market area of Juba, carrying placards highlighting the rising cost of living and inflation in the country. NSS security officers at the scene fired shots, injuring at least one man, who was taken into custody with other protestors. A journalist who interviewed some of the protestors away from the scene later that evening was also detained (see below).⁶⁰⁸ Juba’s Deputy Mayor publicly threatened that bullets may be further used at

⁵⁹⁸ 105320-105332.

⁵⁹⁹ M-100219. “‘We are hunted for speaking to media,’ Kejo-Keji residents,” Eye Radio, 4 June 2022, available at: <https://www.eyeradio.org/we-are-hunted-for-speaking-to-media-kejo-keji-residents>.

⁶⁰⁰ “Koch County authorities warn aid workers against ‘disinformation’,” Sudans Post, 2022, available at: <https://www.sudanspost.com/koch-county-authorities-warn-aid-workers-against-disinformation/>.

⁶⁰¹ 105320-105332.

⁶⁰² A notorious site of arbitrary detention, torture and unlawful killings, the Blue House has been the last known location of many victims of enforced disappearances. See A/HRC/37/CRP.2, para. 62, A/HRC/40/CRP1, paras. 132, 263 and 366, A/HRC/43/56, para. 83 and A/HRC/46/CRP.2, para. 73.

⁶⁰³ 104881-104883, 104892-104897.

⁶⁰⁴ M-100214.

⁶⁰⁵ See Pan African Lawyers Union, “PALU seeks Urgent Interim Orders at the East African Court of Justice (EACJ) against the Governments of South Sudan and Kenya for the production of Mr Morris Mabior Awikjok Bak,” 25 February 2023, available at: <https://www.lawyersofafrica.org/palu-seeks-urgent-interim-orders-at-the-east-african-court-of-justice-eacj-against-the-governments-of-south-sudan-and-kenya-for-the-production-of-mr-morris-mabior-awikjok-bak/>.

⁶⁰⁶ A definitional element of an enforced disappearance is that family members have limited, if any, information about the victim’s whereabouts and wellbeing, with authorities typically refusing to acknowledge the State’s role in it.

⁶⁰⁷ See for example A/HRC/37/7, paragraphs 338-342.104727

⁶⁰⁸ They were released without charge after around one week.

future protests, resulting in loss of life for protestors.⁶⁰⁹ Journalists who reported these comments received threats.⁶¹⁰

400. Teachers who protested during 2022 against delayed and meagre salaries were repressed with vigour. In June 2022 in the Lakes State capital Rumbek, at least 20 teachers were detained in an SSPDF Barracks, in flagrant violation of fair trial rights, and placing them at heightened risk of other violations.⁶¹¹ Most of them were reportedly released within one week; while five or six were held for around one month, before being transferred to a prison and charged with criminal offences.⁶¹² Ultimately they were acquitted in August, only to be dismissed by the Education Ministry.⁶¹³ Civil servants with similar demands were also detained for protests in other parts of the country, including in Jonglei State where teachers went on strike in Bor. On 5 September 2022, in another illustrative incident, several people were reportedly killed when security forces opened fire on protestors in Malakal, Upper Nile State.⁶¹⁴ No disciplinary or other action appears to have been taken against the shooters. These disproportionate and unlawful responses to protests are intended to discourage the people of South Sudan from exercising their rights to public assembly, and further erode space for peaceful public debate.

C. Harassment and repression of journalists

“You can’t even take a camera and photograph the streets of Juba without first getting clearances from the media authority... We can’t even take photographs of rubbish on the streets, and you can’t talk to officials because they won’t say anything and will even threaten people. We can’t raise issues of tax usage here (without retaliation).”⁶¹⁵

“I was slapped and asked if I was a spy. They don’t understand journalists’ role.”⁶¹⁶

401. The Commission received testimonies from journalists who were forced into hiding in 2022, both inside and outside the country, after experiencing severe harassment including death threats. Among journalists writing about powerful public officials and their alleged links to crimes, some receive threats that they may be killed if they return to a crime scene or continue a line of inquiry.⁶¹⁷ An observed tactic of the NSS is to abduct journalists off the street, into a car, and take them to a detention site where they are subjected to ill-treatment, interrogations, and forced to reveal confidential sources and information stored on their phone and laptop devices.⁶¹⁸ Some journalists found themselves in prison for no lawful reason, as in the highly publicized case of Voice of America correspondent Diing Magot, who was detained on 7 August 2022 and held unlawfully for eight days, before being released without charge.⁶¹⁹ Following this, she appears to have stopped working as a journalist. These high-profile cases have a chilling effect on independent reporting. Victims who recounted

⁶⁰⁹ “Deputy Mayor Thiik threatens protestors with live bullets,” Eye Radio, 9 August 2022, available at: <https://www.eyeradio.org/deputy-mayor-thiik-threatens-protestors-with-live-bullets/>.

⁶¹⁰ 105365-105372, M-100220.

⁶¹¹ “21 more teachers arrested and detained at Rumbek’s Panda Military Barracks,” Radio Tamazuj, 22 June 2022, available at: <https://radiotamazuj.org/en/news/article/21-more-teachers-arrested-and-detained-at-rumbeks-panda-military-barracks>.

⁶¹² “Lakes governor orders trial of jailed teachers,” Radio Tamazuj, 1 August 2022, available at: <https://radiotamazuj.org/en/news/article/lakes-governor-orders-trial-of-jailed-teachers>.

⁶¹³ See “Rumbek court acquits six teachers for lack of evidence,” Eye Radio, 23 August 2022, available at: <https://eyeradio.org/rumbek-court-acquits-six-teachers-for-lack-of-evidence> and “Lakes State teachers charged in payment row sacked,” The City Review, 12 October 2022, available at: <https://cityreviewss.com/lakes-state-teachers-charged-in-payment-row-sacked/>.

⁶¹⁴ “Police begin arresting protest organizers in Malakal,” Radio Tamazuj, 7 September 2022, available at: <https://radiotamazuj.org/en/news/article/police-begin-arresting-protest-organizers-in-malakal>.

⁶¹⁵ 105762-105768.

⁶¹⁶ 105365-105372.

⁶¹⁷ 105320-105332.

⁶¹⁸ 105365-105372, 105769-105776.

⁶¹⁹ “South Sudan journalist Diing Magot released on bail, charged,” Committee to Protect Journalists, 15 August 2022, available at: <https://cpj.org/2022/08/south-sudan-journalist-diing-magot-released-on-bail-charged/>.

these experiences to the Commission, particularly when their cases had not been in the public spotlight, requested that the details not be published because they feared retaliation against them, their families and any organizations they may be affiliated with.

402. The Commission was also informed of incidents in 2022 where NSS officers demanded the removal of stories scheduled for publication by different media outlets, on the basis these were deemed to be critical of the Government.⁶²⁰ There were also early signs that journalist accreditation rules introduced in October 2022 are already being abused to restrict media.⁶²¹ Furthermore, 20 journalists were reportedly detained while covering events at the Transitional National Legislative Assembly during incidents in February, April and June 2022.⁶²²

403. In another example of State security officials violating journalists' rights, in January 2023, NSS officers conducted a series of arrests and detentions of seven journalists, most of whom were camera operators working for State media, the South Sudan Broadcasting Corporation (SSBC). The arrests, and detentions at the NSS Blue House in Juba, came after embarrassing video footage circulated on social media, and in regional and international press, involving the President's attendance at an official event in December 2022.⁶²³ On the day the video was taken, journalists were instructed by security forces to delete the footage.⁶²⁴ The video was not subsequently broadcast on SSBC. When the footage later emerged online, NSS officers apparently suspected that SSBC journalists were the source.

404. On 3 and 4 January 2023, six SSBC journalists were arrested by NSS officers.⁶²⁵ On 6 January, the Union of Journalists of South Sudan publicly stated that if there were grounds for an administrative or legal process involving the journalists, it should be conducted accordingly and transparently.⁶²⁶ The journalists were detained at the notorious NSS Blue House in Juba, although initially NSS officers reportedly denied they were being held there.⁶²⁷ Lawyers, family members and colleagues of the detainees spent several days unsuccessfully trying to access the men, and to establish the status of their wellbeing. On 16 January, a seventh journalist associated with SSBC was detained by NSS officers in Juba. Three of the journalists were released without charge on 23 January, after nearly three weeks in detention. As of early March 2023, it appeared that none of the three released journalists had returned to their work, and that they remained under NSS surveillance. The other four journalists remained detained as of early March; by that stage, three had been detained without charge and without legal counsel for more than two months.

405. NSS officers reportedly intimidated lawyers who sought to access and represent the journalists, and claimed that the detentions were an administrative issue rather than being a

⁶²⁰ 105769-105776.

⁶²¹ See "Media Authority starts accreditation of local journalists," Radio Tamazuj, 12 October 2022, available at: <https://radiotamazuj.org/en/news/article/media-authority-starts-accreditation-of-local-journalists> and "MA announces accreditation for journalists, excluding Miraya's," Eye Radio, 12 October 2022, available at: <https://www.eyeradio.org/ma-announces-accreditation-for-journalists-excluding-mirayas/>.

⁶²² "National security denies detaining journalists at the parliament," Eye Radio, 28 February 2022, available at: <https://www.eyeradio.org/updated-national-security-denies-detaining-journalists-at-the-parliament/>. "Security agents briefly detain journalist at parliament," Radio Tamazuj, 11 April 2022, available at: <https://radiotamazuj.org/en/news/article/security-agents-briefly-detain-eye-radio-journalist-at-parliament>. "UJoSS condemns harassment of 9 journalists at R-TNLA premises," Eye Radio, 13 June 2022, available at: <https://www.eyeradio.org/ujoss-condemns-harassment-of-9-journalists-at-r-tnla-premises/>.

⁶²³ The Guardian, 22 December 2022, available at: <https://www.theguardian.com/global-development/2022/dec/22/south-sudan-leader-live-tv-president-salva-kiir>.

⁶²⁴ 105762-105768.

⁶²⁵ 105762-105768, 105769-105776. "National Security arrests 6 SSBC staff," Radio Tamazuj, 5 January 2023, available at: <https://radiotamazuj.org/en/news/article/national-security-arrests-6-ssbc-staff>.

⁶²⁶ "Press Release: UJoSS calls for speedy conclusion to investigation of detained SSBC staff," 6 January 2023, available at: <https://www.facebook.com/photo?fbid=479886580982113&set=a.162719222698852>.

⁶²⁷ 105762-105768.

legal matter for the courts.⁶²⁸ The Media Authority of South Sudan, which is the responsible administrative body for investigating alleged breaches of media ethics, while being guided by rule of law and freedom of expression principles, does not appear to have intervened in the case.⁶²⁹ An exchange of letters between the authorities and the lawyers who were engaged by the Union of Journalists of South Sudan, shows that no criminal charges had been filed.⁶³⁰ The Commission observed that members of the Government across multiple Ministries and bodies appear to have either endorsed the journalists' detention, or refrained from intervening for fear of political retaliation, given the sensitivity of the case.

406. The arrests and detentions of the seven journalists are arbitrary, in violation of constitutional rights and due process. Their situation is another example of the ongoing unlawful overreach of the NSS, particularly into civic space. The situation of the four journalists remaining in detention was particularly concerning because the place of detention, the NSS Blue House, is notorious as a site of torture and unlawful killings. Authorities have long-referred to the 2014 National Security Service Act as empowering NSS officers with broad powers of arrests and detention, including for arrests without a warrant in some cases.⁶³¹ Those powers are wholly incompatible with the Transitional Constitution of South Sudan, and with international human rights law, and contrary to core elements of the right to fair trial. Authorities announced in February 2023 that the powers of NSS officers to conduct arrests without warrants would be withdrawn; but, as of early March, such amendments did not appear to have been passed into law, and arrests without a warrant and accompanying detentions continued, as seen in the case of the four journalists who have not been released.⁶³² Prolonged detention without charge is an arbitrary deprivation of liberty and a violation of international human rights law.

D. Self-censorship resulting from fears of retaliation

407. Members of the public, journalists, human rights activists and members of civil society organizations told the Commission during 2022 that they fear having their cases raised by the United Nations, because of risks of retaliation against them, their families, and organizations they may be affiliated with. Some civil society members told the Commission they worry that the UN cannot protect them.⁶³³ For many individuals who require protection, there are limited options for support and livelihoods, both inside and outside the country. As noted above, multiple civil society actors told the Commission that self-censorship has increased in South Sudan since the crackdown on the PCCA that started in late 2021 and has continued since, and that many members of civil society are wary of associating with individuals who are known to be under State surveillance. Their treatment by State actors sends a clear message to others, especially journalists and activists, that severe consequences may follow from the voicing or reporting of views that are disliked by the authorities. As noted above, this severely undermines prospects for meaningful outcomes of the constitution-making and election processes envisaged under the Revitalized Agreement.

VIII. Conclusions and recommendations

408. These following conclusions and recommendations reflect those presented in the Commission's report, A/HRC/52/26, presented to the Human Rights Council in March 2023.

409. South Sudan is at a critical juncture in a difficult but important political transition. Its leaders must transcend political contestations and rivalries to achieve a credible conclusion to the Revitalized Agreement, following its two-year extension in August 2022. Done

⁶²⁸ M-100218.

⁶²⁹ 2013 Media Authority Law, sections 6 and 19.

⁶³⁰ M-100217.

⁶³¹ 2014 NSS Act, section 54.

⁶³² See "Rights defenders welcome decision to scrap security powers," Sudan Tribune, 26 February 2023, available at: <https://sudantribune.com/article271321/>.

⁶³³ 105777-105784, M-100219.

meaningfully, a new constitution and national elections can reflect the democratic aspirations of the people and contribute to recovery from years of destructive conflict.

410. The Revitalized Agreement remains a critical framework. Its full implementation, in particular of the priority tasks identified by the parties, is of great urgency. The leaders of South Sudan, across the political spectrum, should reinvest political efforts into finding durable settlements to the conflicts involving the various groups outside the Revitalized Agreement. As part of security arrangements, it is critical to establish the necessary unified forces as a credible force that will protect the human rights of the people.

411. Armed violence, reflecting ethnicized politics, continues to damage communities and blight the lives of the people of South Sudan, who have been subjected to gross human rights violations and abuses, including killings, torture, conflict-related sexual violence and the looting and destruction of homes and livelihoods. A multitude of State and non-State armed actors are involved in these conflicts and violations. Contestations over power have driven subnational violence and human rights violations, including in Western and Eastern Equatoria States, where competition between SPLM-IG and SPLM/A-IO has contributed to insecurity, human rights violations and displacement. In Warrap State, violence between rival communities has been exacerbated by the interventions of authorities, and has underscored the consequences of failed disarmament programmes. The significant displacement of civilian populations has often been an objective or a result of the violence, as documented in this report, including in Upper Nile and Unity and Warrap States. The extrajudicial killings in Unity State graphically illustrated the brazen impunity for serious crimes committed by government agents, even when captured on camera.

412. Justice is elusive, as effective prosecutions are rare and remain woefully insufficient. While the Government has sought to respond to some violations through ad hoc high-level investigative bodies and military courts, few have provided accountability. Mobile courts have filled some of the justice gaps, but all elements of the criminal justice system require strengthening. Holistic transitional justice measures, in particular the mechanisms in chapter V of the Revitalized Agreement, are essential for accountability. The transition of South Sudan will not succeed unless its leaders confront and take credible steps to reverse the culture of impunity.

413. Impunity enables and drives conflict and gross human rights violations throughout South Sudan, deeply damaging the fabric of the society. Certain Government officials known for their involvement in serious crimes, including the fomenting of ethnic violence, remain in public office. The Commission has identified individuals who may bear individual criminal responsibility for gross human rights violations amounting to serious crimes, perpetrated during 2022. Detailed in the emblematic situations within this report, these crimes include extrajudicial killings, torture and persecution involving widespread attacks against civilian populations. The State's failure to effectively investigate these crimes, and the lack of any related criminal trials, are violations of its international human rights law obligations.

414. In line with its mandate from the UN Human Rights Council, the Commission has compiled a non-exhaustive list of persons of interest that it considers warrant individual investigation for their roles in serious crimes. Some of these individuals, including senior public officials and military officers, are named in this report as warranting investigation for their role in serious crimes. These individuals must be promptly stood down from their official positions and face accountability.

415. Victims, including survivors of sexual violence, are unable to access medical care, let alone psychosocial support. The ongoing presence of children in armed forces and groups is largely attributed to the lack of adequate support for their demobilization and reintegration, and the prevailing climate of impunity for violations against them. Many of the violations documented by the Commission reflect the gendered nature of society, and many women and girls continue to experience the conflict through sexual violence.

416. South Sudan has obligations to fulfil the economic and social rights of citizens, but the continued and blatant diversion and misallocation of revenues, through corruption and the enrichment of certain political and economic elites, undermines these obligations. The human impact is seen in the scale of needs, which are almost entirely unaddressed by the State.

417. The virtual disappearance of civic and political space must be urgently addressed, to enable a conducive environment for open public debate and participation in critical political processes, including constitution-making, so that a credible conclusion to transitional governance arrangements under the Revitalized Agreement can be made possible.

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

- (a) Provide leadership and allocate the resources necessary to ensure the timely and credible implementation of the priority tasks of the Revitalized Agreement, while reinvigorating efforts to resolve outstanding conflicts, in particular with groups outside the Revitalized Agreement;
- (b) Conclude the implementation of transitional security arrangements, including by clarifying the number of necessary unified forces graduates, plans for their deployment, timelines for further graduations and programmes for the demobilization and reintegration of former combatants;
- (c) Immediately establish mechanisms under the Constitution-Making Process Act and foster an enabling environment for inclusive and meaningful public engagement, including by issuing a presidential directive to all relevant entities, reiterating the State's obligations to respect and protect freedoms of expression and association;
- (d) Fast-track the establishment of the transitional justice mechanisms under chapter V of the Revitalized Agreement – the Commission for Truth, Reconciliation and Healing, the Compensation and Reparation Authority and the Hybrid Court for South Sudan – and establish and resource an interim reparations programme;
- (e) Urgently take measures to reverse the culture of impunity by expeditiously holding accountable public officials, security personnel and other individuals complicit in serious crimes, including extrajudicial killings, attacks against civilians, sexual violence, acts of corruption and acts of repression, including by initiating criminal investigations and proceedings and removing from office those found to be complicit;
- (f) Enhance efforts to improve the status of women and girls and address the normalization of sexual violence against them, including by implementing existing commitments and instituting a zero-tolerance policy on all forms of gender-based violence, including among public officials;
- (g) Prioritize the protection of civilians from all attacks, including at sites with vulnerable displaced populations, and deploy necessary unified forces personnel in coordination and consultation with UNMISS, while clearly instituting a zero-tolerance policy on harassment and human rights violations against civilians;
- (h) Establish a credible and sustainable disarmament programme that addresses civilian concerns about insecurity and ensures that collected firearms are not redistributed;
- (i) Develop the criminal justice system and strengthen the rule of law, including by protecting the independence and security of the judiciary and other justice sector actors, ensuring that all sectors of the justice system are non-discriminatory towards women and allocating and mobilizing adequate resources for the administration of justice;
- (j) Increase resources for mobile courts and the specialized court for gender-based violence to enable them to address existing gaps in the criminal justice system on a greater scale, and take measures to ensure judicial independence in trials of members of security forces allegedly involved in crimes against civilians;
- (k) To address conflict-related sexual violence, address impunity, and undertake public and high-level acknowledgement of acts where it has been alleged to take place. Furthermore: undertake public and high-level acknowledgement of conflict related sexual violence where it has been alleged to take place by the relevant authorities; accelerate the implementation of various aspects of the

Action Plan for the Armed Forces on Addressing Conflict Related Sexual Violence in South Sudan, especially on documentation, investigation and prosecution of violations; translate into local languages, raise awareness, and popularise the Action Plan amongst communities across the country but with particular emphasis in highly affected states; inform the public about specific commitments from the joint Action Plan and how various actors are accountable to these at various levels; constitute an inter-ministerial committee, supported by subject matter experts, to identify the capabilities and resources required to investigate and prosecute conflict related sexual violence; develop the capabilities and capacities for documenting, investigating and prosecuting conflict related sexual violence; undertake a mapping of locations and hot spots where conflict related sexual violence is alleged to have repeatedly taken place over time and repeatedly; undertake a mapping of specific harms of a sexual nature as a result of conflict war that including screening for conflict war related harms; develop a specific measurable action plan to provide immediate interim assistance and reparation for immediate and urgent actions; and develop clear steps and milestones for ensuring conflict related sexual violence is well catered for in the design and implementation Chapter V of the Revitalized Agreement and other provisions;

- (l) Improve conditions in prisons and end the overuse of detention in pretrial and post-trial procedures and the unlawful detention of civilians at military sites;
- (m) Ensure that trials under the military justice system comply with international fair trial standards, military courts can exercise independence from military chains of command and cases involving civilian victims or perpetrators are referred to civilian courts, as required under the Penal Code and the SSPDF Act;
- (n) Implement a moratorium on executions, abolish the death penalty and prosecute perpetrators of extrajudicial killings;
- (o) Enforce the minimum age of criminal responsibility, establish more juvenile courts to hear children's cases, in line with the Child Act, and ensure special protective conditions for children involved in criminal justice proceedings;
- (p) Allocate budgetary resources to cater for the reintegration of children associated with armed forces and groups and ensure effective coordination on the rehabilitation and reintegration of children, including those released informally, such as in Central Equatoria and Western Equatoria States;
- (q) Substantially increase the budgetary allocations for investments in public health and education, pay civil servants decent and timely salaries and ensure that disbursements are both implemented and transparent;
- (r) Address the ongoing corruption and massive theft of the country's oil and non-oil revenues, which dramatically undermines the State's ability to fulfil its international human rights law obligations and to adequately resource the urgent needs required to implement the road map to conclude the peace process;
- (s) End the unlawful and unnecessary harassment of journalists, human rights defenders, as well as members of civil society and the public, which constitute human rights violations and severely undermine development of the political space required to enable free expression, healthy public debate, and genuine participation in the critical planned constitution-making and electoral processes.

419. The Commission recommends that all armed forces and non-State armed groups in South Sudan:

- (a) Order, clearly and publicly, all members of forces and allied militias to comply fully with international human rights law and international humanitarian law and hold violators accountable in line with international standards;
- (b) Allow timely and unhindered humanitarian access to conflict areas and prevent attacks on humanitarian facilities and the looting of aid, including by holding accountable the perpetrators of such attacks and of violence against aid workers;

- (c) Immediately end the recruitment of children and release all children associated with armed forces, including individuals who were recruited as children, and hold the perpetrators of such recruitment accountable;
- (d) Immediately vacate all schools, hospitals and other civilian infrastructure;
- (e) Ensure that forces are not stationed adjacent to civilian residences, unless their presence is strictly necessary to protect civilians from attacks.

420. The Commission recommends that the African Union, the Intergovernmental Authority on Development and regional governments:

- (a) As guarantors of the Revitalized Agreement, encourage and support the Government in establishing the transitional justice institutions envisaged in chapter V of the Revitalized Agreement, including through assistance in developing policy and legal frameworks;
- (b) Take steps to address the laundering of public money from South Sudan in the region, which robs the country of the resources required to address its enormous human rights challenges and undermines the investments of the African Union in the peace process.

421. The Commission recommends that Member States and international partners:

- (a) Provide the necessary political, financial and other support to the Government and other entities for the full implementation of the Revitalized Agreement, including the identified priority tasks for completing the transitions, action to combat impunity and support for the implementation of chapter V of the Agreement;
- (b) Continue to provide support to the Government and humanitarian agencies to address the dire humanitarian crisis, while seeking durable solutions;
- (c) Support the efforts and capacities of civil society and victims' and survivors' groups to ensure their effective engagement in electoral, constitution-making and transitional justice processes in South Sudan.

422. The Commission recommends that UNMISS and the United Nations system in South Sudan:

- (a) Continue support to ensure that return or resettlement initiatives remain based strictly upon humanitarian principles, including the principle of "doing no harm", and demonstrate heightened diligence in instances where displacement is linked to conflict along ethnic lines and where civilians require protection;
- (b) Continue critical support for the development and strengthening of the justice system, including to mobile courts in areas where permanent courts cannot yet host fair trials for serious crimes, while ensuring that assistance conforms to national law and international standards on the administration of justice.