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Report of the Commission on Human Rights in South Sudan*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 34/25, the Commission on Human Rights in South Sudan gives an overview of the human rights situation in South Sudan and provides information on incidents that occurred over the period 2016–2017, on which the Commission has been able to collect and preserve evidence.

The Commission concludes that some of the violations may amount to war crimes and crimes against humanity. The Commission provides an update on developments in the area of transitional justice and submits recommendations. The Commission has prepared a conference room paper, as background and for discussion purposes, that reflects in more detail the evidence that it has collected and its findings.¹

* The present report was submitted late in order to reflect the most recent developments.

¹ A/HRC/37/CRP.2.



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I. Introduction

1. In its resolution 31/20, the Human Rights Council established the Commission on Human Rights in South Sudan for a period of one year. The Commission submitted its first report (A/HRC/34/63) on 6 March 2017.
2. By resolution 34/25, the Council extended the mandate of the Commission for a period of one year and requested the Commission to continue to monitor and report on the human rights situation in South Sudan, to make recommendations to prevent further deterioration of the situation, and to report and provide guidance on transitional justice, including reconciliation.
3. The Council also requested the Commission 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 and ethnic violence, with a view to ending impunity and providing accountability. The Council further requested the Commission to make such information available also to all transitional justice mechanisms, including those to be established pursuant to chapter V of the Agreement on the Resolution of the Conflict in South Sudan, including the hybrid court for South Sudan, to be established in cooperation with the African Union.
4. On 14 June 2016, the President of the Human Rights Council appointed Yasmin Sooka, Kenneth Scott and Godfrey Musila as members of the Commission, with Ms. Sooka as its Chair. Mr. Scott resigned and was replaced by Andrew Clapham on 21 September 2017. Mr. Musila resigned on 31 January 2018.
5. The Commission was supported by a secretariat based in Juba. It conducted missions to Aburoc, Akobo, Bor, Kajo Keji, Lainya, Malakal, Pajok, Torit, Wau, Wau Shilluk and Yei in South Sudan; Addis Ababa and Gambella in Ethiopia; and Adjumani, Arua, Elegu, Gulu, Kiryandongo-Bweyale, Kampala Moyo, Palabek and Palarunya in Uganda. The Commission met with a wide range of victims, witnesses, government officials and members of civil society. It also organized a workshop on sexual and gender-based violence in Juba.
6. The Commission took over 230 detailed individual witness statements and gathered over 58,000 documents, including confidential records, covering incidents in South Sudan since December 2013. All evidence is preserved in the Commission's database and archives.
7. The Commission thanks the Government of South Sudan for facilitating its missions and responding to its requests for information. It is also grateful for the cooperation it received from the Governments of Ethiopia and Uganda during its missions to those States. The Commission also appreciates the assistance and contributions of the United Nations Mission in South Sudan (UNMISS) as well as United Nations agencies, civil society organizations and experts, and pays tribute to the assistance provided by the late Ambassador Kuol Alor Kuol Arop.

II. Methodology

8. The Commission focused on reporting the facts and circumstances of recent incidents in Western Bahr el Ghazal, Central Equatoria, Eastern Equatoria and Upper Nile, and on clarifying responsibility for alleged gross violations of human rights and related crimes committed in those locations in 2016 and 2017.
9. In the light of the mandate's emphasis on accountability, the Commission focused on establishing the occurrence of violations and identifying the individuals bearing responsibility for those violations and crimes. It sought to identify command structures, patterns of conduct and indicators of control and discipline.

10. Factual determinations on individual cases, incidents and patterns of conduct provided the basis for the legal qualification of human rights violations and, where appropriate, international crimes such as war crimes and crimes against humanity.

11. The Commission adopted a “reasonable grounds to believe” evidentiary standard. With respect to collection and preservation of evidence, the Commission’s work was informed by the necessity of collecting and preserving evidence to a standard that would support future accountability mechanisms, including criminal accountability.

12. Despite its time constraints, the Commission gathered an enormous amount of evidence. Additional time and resources are required to analyse that evidence. Where the Commission found information linking individual alleged perpetrators to specific violations or to patterns of violations that was sufficient to warrant criminal investigations or prosecutions, such information was retained on a strictly confidential basis. In some instances, there was not sufficient information to identify individuals responsible for violations, but armed groups responsible have been identified. In a few instances, although there was credible information that a violation had occurred, responsibility could not be established within the time available to the Commission.

13. The Commission employed the best practices of fact-finding aimed at assuring the safety, security and well-being of witnesses. That included the inclusion of information only where sources granted informed consent and where disclosure would not lead to the identification of sources or result in harm. The Commission thanks the victims and witnesses who shared their experiences.

III. Applicable law

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

15. South Sudan is a party to the African Charter on Human and Peoples’ Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, and the Convention on the Rights of the Child. Relevant rules of customary international human rights law are also applicable.

16. A non-international armed conflict broke out in South Sudan on 15 December 2013. Consequently, parties to the conflict are bound by common article 3 to the four Geneva Conventions of 1949 and their Additional Protocols II (1977) and III (2005), as well as by customary international humanitarian law.

17. South Sudan has committed to prosecuting violations of international criminal law through the hybrid court for South Sudan, which the African Union has been mandated to establish under the Agreement on the Resolution of the Conflict in South Sudan (the Conflict Resolution Agreement). The draft statute of the hybrid court sets out the court’s jurisdiction over genocide, crimes against humanity, war crimes and other serious crimes under international law and relevant laws of South Sudan.

IV. Context and background

18. There are currently three armed structures in South Sudan claiming the heritage of the Sudan People’s Liberation Army: the Government forces (known as SPLA), the SPLA-in-Opposition, loyal to Riek Machar (SPLA-IO/RM) and the SPLA-in-Opposition, loyal to First Vice-President Taban Deng (SPLA-IO/TD). The SPLA and the SPLA-IO/RM are supported by militias — the Dinka Mathiang Anyoor (now largely integrated into the SPLA) and the Nuer White Army, respectively. The three armed structures and their associated militias favour guerrilla hit-and-run tactics over conventional battles, achieving success with light arms and minimal training, while living off the land. The Shilluk

Agwelek militia has fought at different times alongside both SPLA and SPLA-IO/RM, and is primarily focused on the defence of Shilluk lands.

19. Since its outbreak in December 2013, the conflict has evolved beyond the power struggle between President Salva Kiir Mayardit and Riek Machar. Despite the signing of the Conflict Resolution Agreement in August 2015, the conflict has spread and is no longer one single conflict, but a series of inter and intracommunal conflicts, reigniting and encompassing historical localized conflicts and contests over land, resources and power.

20. SPLA suffered numerous defections, while SPLA-IO split into two factions in July 2016. The split served to strengthen the SPLA, as the SPLA-IO/TD supports the Government. SPLA and the SPLA-IOs demonstrate established hierarchical organizational structures that facilitate command and control and operational flexibility through the use of sectors, divisions, brigades and battalions. The majority of operations employ light infantry tactics, often with fire support from artillery and tanks. Priority is given to attack and, upon capture, little thought is given to defence against counter-attack. Inclusive planning, intelligence gathering and effective communication facilitate the exercise of command. Commanders on both sides have made use of poorly trained and undisciplined militias, which they have chosen to exploit rather than control.

21. New armed groups, currently estimated at 40, continue to emerge, mainly as a result of the spread of the conflict to the Equatoria region and the northern part of the Upper Nile. The fragile situation has been exacerbated by the creation of 28 — and later 32 — states along ethnic lines by Presidential Order. During 2017, a number of senior officers defected from SPLA and the two SPLA-IO factions to form and join these new groups. There are also a large number of other armed groups participating in the revitalization process.

22. There have been numerous violations of the cessation of hostilities agreements since 2014. The latest Cessation of Hostilities Agreement came into effect on 24 December 2017, following the revitalization forum sponsored by the Intergovernmental Authority on Development (IGAD), which called upon all forces to “immediately freeze in their locations”, halt actions that could lead to confrontation and release political detainees, women and children. Violations of the ceasefire were reported shortly thereafter, which have been condemned by the African Union, the United Nations and IGAD.

V. Attacks on civilians

23. Civilians have borne the brunt of the conflict as it evolved to include different ethnic, political and resource drivers. The incidents covered in the present report reflect those different dynamics that are at play in each region. Despite being multifaceted, however, the conflict reveals consistent patterns.

24. Evidence shows that SPLA has launched attacks directed against the civilian population, where no opposition armed forces were present to justify a military attack, and has intentionally killed unarmed and fleeing civilians in the incidents investigated by the Commission. The consistent narrative emerging from those attacks against civilians and intentional killings is that they were undertaken in retaliation for battlefield losses or killings of SPLA soldiers by opposition forces or because civilians were perceived as being sympathetic to the opposition owing to their ethnicity or place of residence in an opposition-controlled area.

25. The brutality of the attacks against civilians has not been limited to direct attacks on their lives but, importantly, has included systematic looting and burning of villages, thereby destroying people’s sense of security and ability to support and care for themselves. As a result, millions of civilians have been displaced and thousands are sheltering in the bush, resulting in untold deaths from starvation, thirst, exposure and lack of access to medical care. Such deaths are a direct and foreseeable result of the conflict and no less part of the casualties of war than those shot, beheaded, burned in their *tukuls* (thatched huts) or strung up from a tree.

VI. Sexual and gender-based violence

26. The Commission paid special attention to sexual and gender-based violence, which remains a central feature of the conflict. The Commission documented many accounts of rape, gang rape, forced stripping or nudity, forced sexual acts, castration and mutilation of genitalia, perpetrated by SPLA, Mathiang Anyoor, National Security Services and military intelligence personnel, as well as SPLA-IO during military attacks in Greater Upper Nile, the Equatoria region and Greater Bahr el Ghazal.

27. Some of the victims with whom the Commission spoke had been subjected to sexual violence multiple times. Various instruments were used in those acts, including sticks, tree branches, knives, pangas, pliers, pincers and firearms. One victim from Mathiang (Witness 302) in Upper Nile, told the Commission that she had been raped and had witnessed SPLA soldiers rape and kill a woman near Pagak in August 2017: *“The other woman [they were] trying to rape was killed because she resisted. First, they forced her to the ground and one soldier inserted the upper part of his rifle forcibly to the woman’s vagina and then shot her dead.”*

28. The Commission also met with men and boys who were victims or witnesses of sexual violence perpetrated during detention or as punishment during military attacks on civilians. One victim described how he was gang raped, forced to strip and watch women being raped at a checkpoint on the Yei-Juba road in April 2016.

29. The Commission observes, however, that there has been almost no progress in investigating and bringing to account perpetrators of human rights violations, including sexual violence in conflict. Despite the court-martial of 12 SPLA soldiers for the rape of humanitarian aid workers, among others, at the Terrain Hotel in Juba in July 2016, justice for thousands of other victims, including hundreds of women raped by SPLA and other security services during July 2016, has not been delivered.

VII. Impact of the conflict on children

30. The Commission paid special attention to violations and crimes against children, and documented all the six grave violations against children referred to in the Secretary-General’s reports on children and armed conflict: killing and maiming; recruitment or use of child soldiers; attacks against schools or hospitals; abduction; rape and other forms of sexual violence; and denial of humanitarian access.

31. In discussions conducted with children displaced from the Greater Equatoria region, Upper Nile and Jonglei, in Uganda and Ethiopia, the Commission heard of immediate relatives who were killed or fighting; witnessing of the rape or killing of a family member; and separation from their families. The Commission documented numerous accounts where children were victimized on the basis of their ethnicity or their relatives or community members’ perceived political affiliation. The Commission also documented sexual assault and rape of children outside UNMISS Protection of Civilian sites when they went to gather firewood.

32. Confidential documents received by the Commission showed an extensive presence of children among SPLA and SPLA-IO/TD forces in Upper Nile. The Commission also noted children — some as young as 12 years — associated with armed forces and armed groups in Eastern Equatoria and Central Equatoria, on the west bank of the Nile and in Western Bahr el Ghazal. Children told the Commission of being abducted from outside their homes and schools, and of voluntarily joining armed forces and groups to protect themselves and their families. Some children were forced to kill civilians or loot, and were subjected to corporal punishment if they did not obey orders. A recent report² by the Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM)

² See Ceasefire and Transitional Security Arrangements Monitoring Mechanism Report 2018/02 (15 January 2018), para. 1.1.

suggests that “the recruitment and employment of child soldiers goes on throughout the country”.

33. The conflict in South Sudan has destroyed the education system. The United Nations Children’s Fund (UNICEF) estimates that 72 per cent of South Sudanese children are out of school as most schools are non-functional due to the displacement of teachers or the destruction of facilities and materials. The lack of food is also among the leading causes for children to drop out of school. The denial of humanitarian access, including interference in the delivery of critical aid, attacks on personnel and damage to facilities, has further undermined the right to education. The Commission found that schools had been repurposed as military campsites and weapons and ammunition depots. Several children expressed despondence over the “impossible” choices that they were forced to make and the trauma of those experiences. Concerning the future, the children expressed hope for peace and justice in South Sudan, above all.

VIII. Emblematic incidents

34. The African Union Commission of Inquiry on South Sudan, UNMISS Human Rights Division, the South Sudan Human Rights Commission, Amnesty International, Human Rights Watch and a number of civil society organizations and non-governmental organizations (NGOs) in South Sudan have documented human rights violations and crimes committed by both sides to the conflict since December 2013. Given the extensive body of work already done, the Commission decided to focus on incidents that were emblematic of crimes and violations committed over the past two years, during which there was limited reporting. The Commission has sought to clarify responsibility for those acts, as far as possible.

A. Central Equatoria (July 2016–December 2017)

35. Central Equatoria is predominantly home to Bari-speaking Equatorian tribes. With the exception of Juba, most of the Central Equatoria state, including Yei, Lainya and Kajo Keji counties, remained relatively peaceful when the civil war broke out in South Sudan in December 2013. But by the end of 2015, SPLA-IO activity had started to increase in Central Equatoria, particularly in Yei and the surrounding areas.

36. Following the return of Riek Machar to Juba in April 2016, fighting erupted between government and opposition forces in Juba in July 2016. Those events and the human rights violations that occurred in Juba between 8 and 11 July 2016 were documented by UNMISS Human Rights Division and others.

37. Machar fled through the Equatoria region and into the Democratic Republic of Congo. A battalion of SPLA-IO troops reportedly remained in Central Equatoria and moved freely through the countryside of Yei and Lainya counties. Approximately 600 SPLA and Mathiang Anyoor forces were deployed around town centres in Yei. From July to September 2016, there were regular clashes throughout the Yei River state as SPLA carried out an intense military campaign to flush out remaining SPLA-IO elements.

38. By December 2016, SPLA-IO forces had established headquarters in Lasu and began guerrilla attacks against government installations and convoys from their locations in the bush and villages around Yei and Lainya counties. A bitter guerrilla war followed, characterized by SPLA-IO ambushes and hit-and-run attacks countered by a punitive SPLA counter-insurgency.

39. The Commission received numerous reports of extrajudicial killings of civilians, particularly young men suspected of supporting SPLA-IO. SPLA soldiers also repeatedly abducted civilians who were later found dead. UNMISS Human Rights Division documented the killing of 114 civilians by pro-Government forces around Yei between mid-July 2016 and mid-January 2017, and pointed out that the actual number of fatalities and injuries was likely to be much higher.

40. Multiple women and girls from the Lainya and Yei areas described how they were raped and gang raped by government (SPLA) soldiers, often while fleeing insecurity in the Lainya and Yei areas.

41. In addition to attacks on civilians, the Commission heard of widespread looting and destruction of civilian property by SPLA and Mathiang Anyoor in the Yei and Lainya areas. Witness accounts of widespread burning of homes were corroborated by satellite images showing 6,300 destroyed structures in the town of Yei and its outskirts by March 2017, and 18,318 destroyed structures from Yei southwards to the border.

42. As a result of the widespread violations against civilians, the civilian population fled en masse, predominantly to Uganda. The Office for the Coordination of Humanitarian Affairs (OCHA) reported that, by September 2016, 60 to 70 per cent of the Yei population had fled. Indeed, over 163,000 people had crossed into Uganda between 8 July and the first week of September 2016, with over 4,000 people arriving every day. Many died on the way due to starvation, thirst and lack of medical care.

43. As the fighting spread southward through Central Equatoria in the second half of 2016, the civilian populations from Lainya, Yei and Morobo fled eastward into Kajo Keji county. In December 2016, OCHA reported that there were approximately 30,000 internally displaced persons in Liwolo *payam* (administrative division) alone. Between October and December 2016, half of the population of Kajo Keji, including those displaced there, had fled to Uganda.

44. Witnesses interviewed by the Commission attributed the violations from July 2016 onwards to both SPLA (and its allied militia forces) and SPLA-IO. They included killings, arbitrary arrests and detention, torture, rape, beatings and looting of property. The victims of those violations included the displaced civilian population in Kajo Keji and those fleeing through the county to refugee camps in Uganda.

45. The attacks on civilians by SPLA and Mathiang Anyoor soldiers in Kajo Keji followed a pattern similar to those perpetrated in Yei and Lainya counties. Government forces arbitrarily detained and tortured youths in Kajo Keji, allegedly because they were children of SPLA-IO soldiers; they went door to door, killing and raping people and looted their properties. Consequently, between 22 January and 21 February 2017, 84,640 refugees — the majority from Kajo Keji — had fled to Uganda.

46. The situation was further complicated when SPLA Deputy Chief of General Staff for Logistics, Thomas Cirillo, from Central Equatoria, resigned in February 2017, accusing SPLA and Mathiang Anyoor of atrocities against civilians. General Cirillo founded the opposition group National Salvation Front (NAS) in March 2017. A number of SPLA-IO generals in Central Equatoria subsequently defected and joined NAS. Subsequently, SPLA-IO targeted civilians, with mainly young men detained and tortured on suspicion of supporting NAS.

Violations and alleged crimes — findings

47. Although this section has focused on violations that occurred in Yei, Lainya, and Kajo Keji counties since July 2016, the Commission was reliably informed of similar violations taking place across Central Equatoria. CTSAMM and UNMISS were repeatedly denied access to Lainya, Yei and Kajo Keji and their surrounding areas, which hampered information gathering.

48. The Commission finds reasonable grounds to believe that SPLA and Mathiang Anyoor forces engaged in killings, rape, arbitrary detentions, torture, looting and destruction of civilian property in Central Equatoria since July 2016.

49. The Commission also finds reasonable grounds to believe that SPLA-IO soldiers committed violations, including deprivation of physical liberty, rape, torture and theft in and around Kajo Keji county since July 2016.

50. Those acts amount to serious violations of human rights and humanitarian law, and may amount to war crimes and crimes against humanity.

B. Pajok, Eastern Equatoria (2017)

51. In Pajok *payam*, the division between Dinka and local populations were exacerbated by the fighting in the region, where pre-existing local conflicts between Acholi clans became part of the broader conflict. The Acholi-Pajok clan was considered to be supportive of SPLA-IO, while other Acholi clans supported SPLA.

52. Increasing SPLA-IO activity and SPLA crackdowns in neighbouring Magwi county, and the existence of an SPLA-IO base in the proximity of Pajok led to growing insecurity. In the days prior to the April 2017 attack on Pajok, there was a significant increase in SPLA troop deployment in the area. Amid rumours of an SPLA attack on the SPLA-IO base, some civilians fled, but many did not think that the town itself would be attacked.

53. On the morning of 3 April 2017, SPLA soldiers attacked the town of Pajok, killing a significant number of civilians and looting the town. Some soldiers followed the main road to Pajok, while others moved east of Pajok towards the SPLA-IO base.

54. SPLA soldiers reportedly crossed the river by the main road then fanned out into the southern parts of the town. One resident (Witness 584) told the Commission that, when he heard gunfire to the north, he had time to flee with his family. Nearly 1,000 people had already fled. He returned to get his father who, being too old to run, had been left behind. However, as the gunfire had become heavy, his father urged him to run and leave him behind. The witness later learned that his father had been shot and his house had been burned down. The Commission also spoke with the witness' cousin, who said that he had buried the old man's body, which was one of 13 that he had found in the town.

55. Although the Commission could not confirm the final number of civilians killed on 3 April 2017, comparison of the names in the various reports indicates 22 to 25 civilian deaths. Many more were injured. One witness (Witness 571) said that he saw advancing soldiers shooting in the air, but when they saw him and some other people running away, they shot at them and his shin bone was broken: *"I could no longer walk; I had to leave all my luggage...; I begged people to help me, but everyone was running for their lives, so I hopped. I would hop and stop, hop and stop ..."*

56. Systematic looting of the town followed the killing of civilians. Nine days after the attack in Pajok, soldiers were still removing civilian property, including bedding, solar panels and cooking utensils, and transporting everything to a guarded house, with full knowledge of the military leadership. Houses, shops, schools and the clinic were looted. A large quantity of looted items were seen being loaded onto military trucks heading to Magwi under military escort. An investigation by local Members of Parliament found that the "ferrying of looted properties to Magwi, Juba and other nearby *payams* was still going on with the knowledge of the military leadership".

57. UNMISS Human Rights Division received reports of three incidents of sexual violence involving six women. In one incident, SPLA soldiers gang-raped four women, who subsequently fled to Uganda. The Commission interviewed a woman (Witness 388) who had witnessed part of the same incident. She said that she was fleeing with her three children when they were captured by soldiers and taken to a deserted village, along with three other women. The soldiers beat her and threatened to kill her if she did not give them all her money. In the course of the attack, she saw soldiers take a 16 year-old girl into a hut, where they raped her.

58. The number of incidents of sexual assault committed during the attack on Pajok may be much higher than reported. A community leader told the Commission that, for cultural reasons, Acholi women have reservations about speaking about being raped, due to stigma within the family and the community.

59. The April 2017 attack resulted in virtually all of the civilian population fleeing the town. Approximately 30,000 residents fled to Palabek refugee settlement in northern Uganda. Most were still there when the Commission visited on 18 December 2017.

60. The Commission finds reasonable grounds to believe that SPLA deliberately attempted to prevent information about the events in Pajok from becoming public, and prevented UNMISS and CTSAMM from accessing Pajok immediately after the killings.

Violations and alleged crimes — findings

61. The Commission finds reasonable grounds to believe that SPLA intentionally directed attacks against the civilian population and deliberately killed civilians in Pajok on 3 April 2017. Furthermore, there are reasonable grounds to believe that SPLA engaged in systematic looting and theft of private property, for personal or organizational use, in the aftermath of the attack. The SPLA attack on civilians in Pajok in April 2017 directly led to the displacement of nearly the entire population of the town.

62. Those acts amount to serious violations of human rights and humanitarian law, and may amount to war crimes and crimes against humanity.

C. Wau, Western Bahr el Ghazal (2016–2017)

63. Wau in Western Bahr el Ghazal is an ethnically mixed town comprising several groups, including Fertit and Dinka, who have a history of conflict. Since the beginning of the current conflict, Wau has been consistently under government control. However, due to the presence of opposition forces in the surrounding areas south and west of Wau — known as the Wau Triangle — fighting has been ongoing there since late 2015.

64. In late 2015, there was large-scale recruitment into opposition groups as well as additional deployments of mostly Dinka SPLA soldiers and Mathiang Anyoor. This coincided with an increase in attacks on Fertit villages and neighbourhoods in Wau and the surrounding area. A pattern developed of opposition forces ambushing SPLA forces. In retaliation for their losses, SPLA attacked the civilian population, which it perceived as supporting the opposition. Killing, rape, looting and burning of houses by SPLA soldiers led to thousands of civilians being displaced.

65. Since December 2015, there has been a number of major outbreaks of violence against civilians in Wau, including on 17–18 February 2016, in early April 2016, on 24–25 June 2016 and on 10 April 2017, in addition to ongoing military skirmishes in the Wau Triangle.

66. In mid-June 2016, hostilities escalated, including a number of ambushes against SPLA, in which soldiers were killed. That appears to have triggered the massive attack on civilians in Wau on 24–25 June.

67. On 24 June 2016, Dinka groups from the eastern side of the Jur River attacked residents in the largely Fertit neighbourhoods of Wau. Severe fighting broke out between two armed groups of youths and later, government forces, including SPLA, got involved. The fighting lasted throughout the night into the following day. Witnesses recounted that SPLA soldiers intentionally shot at and killed Fertit civilians, including as they fled their homes toward the UNMISS base for protection.

68. Between 39 and 69 bodies were collected and recorded by the police, including those of at least 15 women and 10 children. The death toll is, however, likely to be much higher. Burning of homes and looting of over 100 shops by SPLA soldiers was also reported. The fighting and attacks on civilians resulted in massive population displacement, with between 26,000 and 36,000 people — mainly Fertit — sheltering in places of refuge in Wau by 28–29 June 2016.

69. Regular armed clashes continued to occur in the Wau area after the June 2016 events. In early April 2017, there was a considerable reinforcement of SPLA forces in Wau. On 8 April 2017, SPLA mounted a new offensive against SPLA-IO forces who were in control of the Bazia area, south and west of Wau. In the course of that operation, on 9 April, an SPLA convoy was ambushed and two high-ranking SPLA officers and three soldiers were killed. One of the officers was the brother of the Governor of Rumbek. That

incident appears to have been the specific catalyst for the subsequent outbreak of violence against non-Dinka civilians in Wau, which began during the night of 9–10 April 2017.

70. On 10 April 2017, there was heavy shooting in the south and south-west areas of Wau, and SPLA soldiers and groups of armed men launched attacks on civilians. Witnesses recounted how the attackers went from house to house targeting Luo and Fertit by checking their ethnicity prior to shooting them.

71. Between 24 and 29 deaths were reported to the police as a result of the violence. The victims were almost exclusively male and appear to have been targeted on the basis of their Luo and Fertit ethnicity. The International Organization for Migration estimated that between 22,000 and 25,000 people were displaced in Wau as a result of the 10 April 2017 violence.

72. Signs indicating active military engagement were observed south of Wau. Reports indicated that a number of clashes between SPLA and SPLA-IO took place between mid-April and June 2017. The Baggari area was abandoned and attacks on civilians were reported by displaced people from the Bazia area. In December 2017, Bazia was largely deserted; the school, health clinic, public buildings and water points were destroyed by SPLA. Reportedly over 100 people were killed and eight women were raped, including girls under the age of 10, during the clash on 16 April 2017. Burnt houses were observed in and between Taban and Bazia. UNMISS and CTSAMM were prevented from carrying out patrols to Bazia for a number of months, which made it impossible to monitor the human rights situation.

Violations and alleged crimes — findings

73. The Commission finds reasonable grounds to believe that SPLA soldiers engaged in the killing of civilians and the looting and destruction of private property in Wau on 24–25 June 2016 and the killing of civilians in Wau on 10 April 2017. Those acts amount to serious violations of human rights and humanitarian law, and may amount to war crimes and crimes against humanity.

74. The Commission received reports that human rights and humanitarian law violations had occurred in February and April 2016 in Wau and from April to October 2017 in the Bazia/Taban area. However, it recommends that further investigations be made into those events prior to making factual findings.

D. Offensive on the west bank of the Nile (2017)

75. Historical grievances between the Shilluk and the Dinka Padang over claims to Malakal and other lands on the east bank of the Nile were reignited after Shilluk Major General, Johnson Olony, defected from the government forces. By August 2015, the Government was holding Malakal and virtually the entire east bank of the White Nile, while SPLA-IO and the Agwelek controlled the west bank. Tensions were exacerbated by the creation of new states that included contested parts of the east bank in the Dinka-dominated Eastern Nile state, with Malakal as its capital; many perceived this as a power grab of Shilluk lands.

76. In late January 2017, fighting to the east and south of Malakal was followed by an SPLA coordinated offensive on the west bank of the White Nile. SPLA worked its way up the west bank, pushing SPLA-IO and the Agwelek northwards, and generally resorting to mortar and artillery shelling of villages. There are reasonable grounds to believe that an SPLA aircraft bombed areas near Wau Shilluk.

77. By early February 2017, SPLA had brought in 3,000 soldiers as reinforcement to capture the Shilluk-populated Wau Shilluk, 10 kilometres north of Malakal. Heavy firing and shelling continued. Wau Shilluk was deserted except for those unable to flee due to age or infirmity. A number of shells killed at least three civilians. Witnesses stated that, when the SPLA ground offensive reached the village, soldiers shot civilians as they fled. A number of older residents were burned to death in their *tukuls*.

78. Civilian and humanitarian objects, including schools, churches, medical clinics and the market, were looted, damaged or destroyed. A similar pattern of destruction and looting was witnessed in nearby Fathau, Bot and Padit villages.

79. Witnesses also observed multiple groups of Dinka Akoka civilians and SPLA soldiers arriving by boat and removing all remaining possessions, including building and household items, and livestock from Wau Shilluk.

80. The SPLA offensive continued to push north, displacing internally displaced persons from Wau Shilluk up the west bank to Padit, Fathau, Lul and Kodok then, as SPLA shelled those areas, onwards to Aburoc. By 10 February 2017, an estimated 13,000 internally displaced persons had arrived in Aburoc. Others were living in the bush around Wau Shilluk, Fashoda and Panyikang counties and in Sudan. A Shilluk man (Witness 438) told the Commission of his devastating flight: *“Four of the villagers whom I was running and hiding with, died of hunger, thirst and fatigue while in the bushes on our way to Aburoc. The heat of the sun worsened our physical condition. So, during the day we took shelter in the almost balding bushes and moved up north in the evening to save the remaining energy that we had. One among those four individuals that died in our journey was my 11-year-old son who got so weak due to starvation, thirst and exhaustion.”*

81. Meanwhile, in mid-February 2017, government aircraft from Juba began transporting mainly Dinka internally displaced persons from Central Equatoria and Eastern Equatoria to Malakal. Multiple flights were observed bringing over 2,000 people. According to a government official, a total of 15,000 internally displaced persons would be relocated in the region.

82. In late April 2017, the northward offensive along the west bank of the Nile resumed, reportedly with a massive reinforcement of approximately 5,000 SPLA and SPLA-IO/TD soldiers. The area between Padit and Lul saw extensive firing, including with heavy artillery. SPLA captured Lul on 25 April. According to a witness, there was one Agwelek company in Lul, which was lightly armed and which fled before the government forces arrived. A number of witnesses said that, despite the lack of armed resistance, SPLA soldiers fired at civilians and villages, reportedly killing at least three people. The soldiers looted food supplies and farm animals, before burning houses. Witnesses gave very similar accounts from Bol, Bot and Oteng villages.

83. When the offensive reached Kodok on 26 April, it resulted in further displacement of civilians to Aburoc, where approximately 30,000 civilians, mostly the elderly, women and children sought refuge. A further 20,000 civilians fled across the border into Sudan between 29 April and 6 May 2017. The fighting in Kodok forced humanitarian organizations to evacuate staff to Aburoc. Villagers in Kodok later recounted that they did not have food because soldiers from both sides had looted everything. Women also mentioned specific incidents of rape.

84. The SPLA offensive between January and May 2017 resulted in the government controlling the entire stretch of the White Nile from Malakal north to Renk. Minor clashes between SPLA and SPLA-IO and Agwelek forces and intra-Agwelek clashes continued over the next couple of months. That led to the defection of some Agwelek fighters to SPLA-IO/TD and culminated in the capture of Aburoc by SPLA-IO/TD forces on 11 September 2017. In the shelling and firing, three women were reportedly killed. Amid allegations of looting, up to 10,000 people were displaced.

Violations and alleged crimes — findings

85. Based on the evidence collected, the Commission finds reasonable grounds to believe that SPLA soldiers deliberately killed civilians and extensively looted and destroyed civilian property during their ground offensive along the west bank of the Nile in 2017. The evidence provides reasonable grounds to believe that SPLA directed attacks against the civilian population. Those acts amount to serious violations of human rights and humanitarian law, and may amount to war crimes and crimes against humanity.

86. The Commission also has reasonable grounds to believe that the SPLA and SPLA-IO/TD offensive led to a massive displacement of Shilluk civilians. The evidence makes it

clear that such displacement was a direct result of widespread violations committed by SPLA forces. The displacement gave rise to serious violations of human rights law.

87. The list of violations is not exhaustive. Access limitations enforced by SPLA have restricted reporting and documentation. For example, allegations of rape and sexual violence could not be comprehensively investigated due to time constraints. The Commission recommends that those allegations be thoroughly investigated.

E. Pagak offensive (2017)

88. The south-eastern part of Upper Nile state, bordering Ethiopia, has been under SPLA-IO/RM control since the conflict began in late 2013, with the main headquarters of SPLA-IO/RM being located in the border town of Pagak. According to many accounts, the Pagak offensive to “liberate” the area from SPLA-IO/RM, coupled with the reconfiguration of the Northern Upper Nile state on 6 July 2017, was an attempt to safeguard the Palouch oil fields and their associated economic benefits among the Dinka community.

89. In June 2017, SPLA launched a sophisticated operation to dislodge SPLA-IO/RM from Pagak through Guelguk, Mathiang and Maiwut, north-east of Pagak. SPLA forces utilized heavy artillery bombardment to attack numerous towns and villages along the line of advance. Government forces reportedly engaged in systematic and widespread attacks on civilians, and in looting and destroying civilian objects throughout the campaign, causing over 40,000 people to flee to Gambella, Ethiopia, between mid-July 2017 and mid-January 2018. The Governor, the local SPLA Commander and the majority of SPLA troops involved in the campaign were from the Nuer community. That led several witnesses (Witnesses 184, 189, 292, 333, 344 and 371) to voice their concerns about further intra-ethnic fragmentation and a wider government strategy to eradicate the Nuer community.

90. By 2 July 2017, SPLA forces had arrived in Mathiang and continued to engage in mortar and heavy artillery fire. SPLA-IO/RM and the Nuer White Army resisted the attack before withdrawing. SPLA forces destroyed humanitarian compounds, schools, a church, water points and a local hospital. The Commission received information that SPLA-IO/RM forces had abducted three humanitarian workers. It also received numerous reports of civilians being subjected to arbitrary killings, assault and gruesome acts of sexual violence, in addition to destruction and looting of their property.

91. One witness from Malow (Witness 301) told the Commission how she watched as SPLA soldiers castrated her husband then forced her to hold his bloody testicles in one hand as she shielded their newborn child with her other hand. She then watched three SPLA soldiers rape her 70-year-old mother and coerce her 12-year-old son into having sex with his grandmother. After raping the grandmother, the SPLA soldiers shot and killed her. The woman’s husband and one-month-old baby subsequently died during their flight to Ethiopia.

92. As SPLA continued east towards Maiwut, their tanks got bogged down in the seasonal mud, which stalled the advance. The SPLA Chief of General Staff deployed attack helicopters to reinvigorate the campaign, with SPLA forces reaching Maiwut in late July.

93. Despite the SPLA-IO/RM base being located 2 kilometres outside the town of Maiwut, SPLA ground forces stormed Maiwut, raped women and massacred civilians in the town and surrounding villages. SPLA troops embarked on a similar pattern of wide-scale looting and destruction, burning schools, the hospital, NGO facilities and homes, before advancing to Pagak.

94. One witness (Witness 333) recounted that he had returned from the bush where he had been seeking shelter to find that his mother had been blinded by SPLA soldiers who had gouged her eyes out with spears when she unsuccessfully tried to prevent her 17-year-old daughter from being raped by 14 soldiers. He said that 17 SPLA soldiers then raped his blinded mother. He found his father beheaded with his castrated penis stuffed in his mouth.

95. Witnesses reported that, when SPLA forces arrived in Pagak in late July 2017, they began shooting at civilians who had fled from other points earlier in the offensive. Fierce

fighting continued until the town was captured by 7 August 2017. SPLA-IO/RM forces had already counter-attacked to recover Mathiang and Maiwut.

96. Meanwhile, civilians who had fled earlier in the government offensive described walking for four to five days without food or water to reach Pagak and the Ethiopian border, with family members becoming separated, or children dying along the way from starvation and thirst. Several women were reportedly raped as they sought food for their children.

97. The intense fighting led to the evacuation of nearly all humanitarian personnel, which resulted in a dearth of aid for an estimated 50,000 civilians in an already dire humanitarian situation.

98. Buoyed by the success of SPLA in Pagak, the Minister of Defence, Kuol Manyang Juuk, declared that SPLA would “crush all remaining rebels in South Sudan within 30 days”. Intermittent fighting continued around Pagak up until December 2017.

Violations and alleged crimes — findings

99. The Commission finds reasonable grounds to believe that SPLA soldiers engaged in killings of civilians, rape and other forms of conflict-related sexual violence, theft, pillage and destruction of civilian and humanitarian objects in Mathiang, Maiwut and Pagak and the surrounding villages and areas during its offensive in south-eastern Upper Nile in 2017. The evidence provides reasonable grounds to believe that SPLA directed attacks against the civilian population.

100. The Commission also has reasonable grounds to believe that the SPLA offensive through south-eastern Upper Nile in 2017 led to a massive displacement of civilians. The evidence makes clear that the displacement of civilians was a direct result of the widespread violations of international humanitarian law and human rights law committed by SPLA forces. This displacement gave rise to serious violations of human rights law.

IX. Legal findings

101. The Commission finds reasonable grounds to believe that SPLA, both factions of SPLA-IO, as well as the armed groups that support the parties to the conflict have committed serious human rights violations and international humanitarian law violations throughout the country. Such violations have included deliberately targeting civilian populations and individual civilians, including on the basis of their ethnic identity and/or perceived political affiliations, and by means of killings, abductions, rape and sexual violence, as well as the destruction of villages. Further violations include attacks against civilian objects; humanitarian assistance or peacekeeping personnel; arbitrary arrest and detention; looting and pillaging; and the conscripting of children under the age of 15 years into armed forces. The Commission also finds reasonable grounds to believe that those violations and alleged crimes have directly resulted in the massive displacement of the civilian population of South Sudan.

102. Those acts amount to serious violations of human rights law, including under the Transitional Constitution of South Sudan, 2011, in particular the right to life and human dignity (art. 11), the right to liberty and security of person (art. 12), the rights of the child (art. 17), the right to freedom of movement and residence (art. 27) and the right to property (art. 28). With regard to events occurring after 19 August 2016, when the African Charter on Human and Peoples’ Rights came into effect for South Sudan, those events also amount to equivalent violations under the African Charter.

103. Those acts constitute crimes under the Penal Code of South Sudan, 2008, including murder (sect. 206), rape (sect. 247), theft (sect. 293) and mischief with intent to destroy house (sect. 324). Moreover, SPLA soldiers are subject to the provisions of the Sudan People’s Liberation Army (SPLA) Act, 2009, and the SPLA Rules and Regulations, in particular section 57, which establishes the offences of destroying and damaging property, plunder and committing any offence against the property or person of any inhabitant or resident of a country in which he or she is serving.

104. The Commission finds that all parties to the conflict have failed to abide by the principle of distinction and have violated their obligation to distinguish at all times between civilian objects and military objectives. There have been violations of the principle of precaution, which demands that, in the conduct of military operations, constant care must be taken to spare civilians and civilian objects.

105. Furthermore, in relation to each of the incidents examined, the Commission finds reasonable grounds to believe that there was a nexus between the commission of the crimes and the ongoing non-international armed conflict in South Sudan since 15 December 2013. As such, those crimes constitute violations of international humanitarian law under customary international law, as well as violations of common article 3 to the Geneva Conventions and Additional Protocol II, which South Sudan has incorporated into its domestic law in its Geneva Conventions Act of 2012. Those crimes may also amount to war crimes under articles 4 and 5 of the draft statute of the hybrid court for South Sudan.

106. The Commission finds reasonable grounds to believe that, in a number of instances, the attacks occurred as part of widespread or systematic attacks directed against the civilian population. As such, those alleged crimes may amount to crimes against humanity. In particular, the violations are being exacerbated by the ethnic dimension of the conflict, the temporary integration of ethnic militias into operations carried out by SPLA and SPLA-IO/RM and the defections and creation of new armed groups along ethnic lines. The ethnic dimension has led a battle of “them against us” for land, resources and control. In that regard, the Commission notes, in particular, that the targeted nature of some of the attacks against victims based on their ethnicity and/or perceived political affiliation may amount to the crime against humanity of persecution under article 3 (h) of the draft statute of the hybrid court for South Sudan.

A. Individual responsibility

107. In relation to the incidents examined, the Commission has been able to identify several SPLA commanders and, in some instances, commanders of other armed groups and governors of states, in relation to whom there are reasonable grounds to believe that they exercised command responsibility at the time that the violations and alleged crimes occurred.

108. In most instances, the Commission obtained evidence that, although there were instances when military discipline broke down, the military hierarchies of SPLA and SPLA-IO functioned effectively in terms of issuance, transmission of and respect for orders. In the light of evidence of functioning lines of communication and the recurrent patterns of conduct of soldiers, there are reasonable grounds to believe that commanders knew or had reason to know of the conduct of the soldiers under their command. The recurrent nature of the violations as well as the limited number of examples of punishment raise questions as to whether the commanders took reasonable measures to prevent or punish the alleged crimes. The Commission considers that there are reasonable grounds upon which criminal investigations and prosecutions should be undertaken in relation to those commanders under article 8 (4) of the draft statute of the hybrid court for South Sudan.

B. State responsibility

109. The human rights violations committed by SPLA and government-controlled forces give rise to state responsibility on the part of South Sudan. The Government has a duty to investigate and prosecute those crimes and to provide reparations for the victims.

110. Investigation committees at the national and state levels have been established to investigate and report on some of the incidents covered in the present report, including the Wau incidents of February 2016, June 2016 and April 2017, the events in Yei in 2016 and the events in Pajok in April 2017. The reports on those incidents contain multiple findings and recommendations, including that SPLA prosecute the soldiers accused of committing atrocities against civilians and undertake a number of preventive steps to prevent the

recurrence of such acts in the future. However, the government authorities themselves have acknowledged that most of the recommendations have not been implemented.

X. Accountability and transitional justice

Accountability

111. Accountability for human rights violation and abuses in South Sudan is a priority for the Human Rights Council and underpins the establishment of this Commission. In March 2017, the Council expanded the mandate of the Commission to, *inter alia*, collect and preserve evidence of alleged gross violations and abuses of human rights and related crimes, and to make such information available to all transitional justice mechanisms, including the proposed hybrid court for South Sudan.

112. The grave lack of accountability for gross human rights violations and serious violations of international humanitarian law committed by all parties since 2013 is the foremost factor for the perpetuation of the current conflict. In rare instances when perpetrators have been prosecuted for conflict-related crimes, it has been before military tribunals. Following the violence in July 2016, the Government announced the establishment of court martials to prosecute SPLA soldiers allegedly responsible for crimes against civilians. The Government reported that 77 soldiers had been convicted for various offences, including murder, rape, theft and looting. Civil society groups reported that the trials did not meet international fair trial standards and involved awarding the death penalty. In April 2017, following an SPLA-IO ambush in Wau, in which SPLA soldiers were killed, SPLA forces attacked civilians, killing more than 20 people. The Governor of the state established a committee to investigate the attacks, but to date there has not been any confirmation that perpetrators have been arrested.

113. Following intense international pressure, a military tribunal was constituted by SPLA to deal with the attack on the Terrain Hotel in July 2016. Twelve SPLA soldiers are on trial for killing, looting, arson, rape, gang rape and sexual violence committed against civilians. The trial process has been beset by irregularities, including the restriction of access by defence attorneys to the defendants. However, the use of some witness protection measures during the trial set a precedent to support vulnerable victims and witnesses willing to testify in future trials relating to sexual violence. The Commission is concerned that no senior commanding officers have been put on trial. It notes that the Government of South Sudan has consistently failed to prosecute soldiers for crimes against civilians in civilian courts, in accordance with its own domestic law and international norms.

Transitional justice

114. South Sudan presents one of the most complex and challenging environments for ensuring accountability and promoting transitional justice. Chapter V of the Agreement on the Resolution of the Conflict in South Sudan provides for the establishment of a hybrid court, a commission for truth, reconciliation and healing, and a compensation and reparations authority. The African Union, IGAD and the international community remain committed to the implementation of chapter V of the Agreement as the only viable option for addressing impunity. However, implementation has largely stalled despite recent initiatives to revitalize it.

Hybrid court for South Sudan

115. The Conflict Resolution Agreement entrusts the African Union with the responsibility for establishing the hybrid court for South Sudan to investigate and prosecute individuals responsible for violations of international law and/or the applicable law of South Sudan committed since 15 December 2013. In December 2017, the South Sudan Council of Ministers approved the legal instruments for the establishment of the court, including a draft statute and a draft memorandum of understanding between the African Union and the Government of South Sudan. The memorandum of understanding is said to be with the Legislative Assembly, together with a Constitutional Amendment bill, which will incorporate the peace agreement into the domestic law of South Sudan. The draft

statute for the hybrid court sets forth the jurisdiction of the court in relation to genocide, crimes against humanity, war crimes and other serious crimes under international and relevant domestic laws.

116. The delay in the signing of the memorandum of understanding and the failure to domesticate the draft statute sends a signal to those committing atrocities that they will not be held accountable, as the Government may have no real intention of establishing the court.

117. The hybrid court is expected to strengthen and complement the national justice system. Given its focus on prosecutions for the most serious crimes, the impunity gap is expected to be addressed by the national courts. Prosecutions will require a strengthened and independent judiciary and independent prosecutors and investigators capable of operating without political interference.

Commission for truth, reconciliation and healing

118. The Government of South Sudan has also failed to establish a commission for truth, reconciliation and healing or conduct national consultations so as to inform legislation to establish such a commission. Although the Government has established a technical committee to support preliminary sensitization activities regarding such a commission and held a few consultations, there has been no further progress in establishing the commission.

119. Given that political divisions triggered the current crisis, the process of establishing a commission for truth, reconciliation and healing needs to be transparent and include opposition groups, civil society organizations, women's groups and religious organizations. The Government's decision to simultaneously establish its national dialogue compromises the establishment of the commission and signals a lack of political commitment.

120. A survey by Norwegian People's Aid indicated that the majority of South Sudanese have a limited understanding of the proposed transitional justice mechanisms. Addressing this requires a comprehensive outreach programme (beyond a national dialogue) to inform and educate South Sudanese, including victim communities.

121. Documentation of human rights violations remains critical, while ensuring that the "do no harm" principle is respected and a gender-sensitive approach is taken, especially with regard to victims of sexual violence.

Compensation and reparation authority

122. The Conflict Resolution Agreement also provides for the establishment of a compensation and reparation authority for citizens whose property and livelihoods have been destroyed by the conflict. The Government needs to urgently establish an interim reparations programme. Victims and survivors have described their desperate struggle to support themselves after the loss of breadwinners in the conflict. The high levels of mental and physical trauma necessitate an emergency response with specific provisions for both male and female victims of rape and sexual violence. Victims and witnesses need an interim reparations programme for prompt medical and psychosocial services.

123. The Commission was informed that work on establishing such a body has not begun due to lack of funds. Funding for reparations will require that the Government of South Sudan reprioritize its spending on the military and security in order to assist victims. It should also set up a trust fund for victims funded from the national budget on an annual basis.

National dialogue

124. The Government has prioritized the national dialogue as its solution to the conflict. At best, there is only limited participation from opposition figures. Participants say that they are afraid to speak their minds openly because of the presence of national security forces. Millions of South Sudanese who are refugees in neighbouring countries have also rejected the national dialogue, with many refusing to talk to members of the steering committee who visited refugee camps in Ethiopia and Uganda.

125. The national dialogue process is now perceived by most South Sudanese as compromised and an attempt to override the implementation of the peace agreement. The Commission believes that any genuine dialogue process must be anchored in chapter V of the Conflict Resolution Agreement and led by an independent and credible entity.

XI. Conclusions and recommendations

A. Conclusions

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

127. The violations of international law and the commission of related crimes by the individuals concerned are being exacerbated by the ethnic dimension of the conflict, the temporary integration of ethnic militias into operations carried out by SPLA and SPLA-IO and the defections and creation of new armed groups along ethnic lines.

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

129. The Commission has been able to identify a number of individuals, units and groups who bear responsibility for the violations and crimes, and the individuals concerned should face prosecution. Their names have been communicated on a strictly confidential basis to the United Nations High Commissioner for Human Rights. Access to that information will be determined according to protocols established between the Commission and the Office of the High Commissioner.

130. Sustainable peace in South Sudan requires that the African Union, the Intergovernmental Authority on Development (IGAD), the United Nations and the wider international community address serious international crimes through the yet to be established hybrid court for South Sudan. It was agreed under chapter V of the Conflict Resolution Agreement that the African Union would be responsible for establishing the hybrid court. This should happen now.

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

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

133. Conflict-related sexual violence is endemic. Rape, mutilations of sexual organs and other forms of sexual violence, targeting girls, boys, women and men, are often committed in front of children, humiliating the victims, their families and their communities and destroying the social fabric. That leaves behind a traumatized people and sows the seeds of yet more violence.

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

B. Recommendations

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

(a) Comply with its obligations under both national and international law to promote and protect the rights of civilians, including issuing clear, public orders to all armed forces, security agencies and militias to prevent and end all violations of human rights and international humanitarian law, including unlawful killings, arbitrary detentions, torture, enforced disappearances, crimes of sexual and gender-based violence, and theft and looting of civilian property;

(b) Sign as soon as possible with the African Union the memorandum of understanding on the establishment of the hybrid court;

(c) Take the necessary steps for the establishment of the commission for truth, reconciliation and healing and ensure that the selection and appointment of members of the commission are conducted in an open and transparent manner, with candidates subjected to an independent vetting and screening process to ensure their independence, credibility and impartiality;

(d) Take the necessary measures to establish the compensation and reparation authority;

(e) Establish an interim reparations programme and provide prompt medical services, including psychosocial support, to address the immediate needs of survivors, incorporating a gender-sensitive approach and paying particular attention to conflict-related sexual violence;

(f) Investigate all allegations of serious violations of human rights and international humanitarian law, as well as serious crimes under the laws of South Sudan, committed by SPLA and other members of the security forces, and ensure that prosecutions conform with fair trial standards;

(g) Initiate a process to reform the security sector with a view to building a pluralistic and ethnically inclusive security sector;

(h) Ensure and protect the freedom of movement of the population, humanitarian workers, humanitarian aid and commercial goods across the country;

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

(j) Ensure the security, freedom of expression and work of civil society actors, including the media and human rights defenders, and create an environment conducive to the freedoms of speech, association and the media;

(k) Initiate civic engagement and consultations with victims, civil society, including human rights defenders, women leaders, and religious and traditional leaders so as to raise awareness on the issues at hand, and frame the transitional justice mechanism to meet their demands and context within South Sudan.

136. The Commission recommends that the armed forces of South Sudan, the opposition armed groups and militias:

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

(b) Immediately vacate all schools and hospitals;

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

(d) Allow unfettered access to the United Nations, the International Committee of the Red Cross, humanitarian organizations and human rights defenders to enable them carry out their work in accordance with international law and their respective mandates.

137. The Commission recommends that the African Union, the United Nations and the Intergovernmental Authority on Development (IGAD):

(a) Immediately establish the hybrid court for South Sudan, in accordance with the Conflict Resolution Agreement, and appoint a prosecutor with immediate effect, to identify those against whom indictments could be issued based on available evidence;

(b) Set realistic deadlines for the establishment of the commission for truth, reconciliation and healing and the compensation and reparation authority.

138. The Commission recommends that UNMISS:

(a) Support the technical working committee in embarking on a comprehensive outreach and education programme on the institutions to be established under chapter V of the Conflict Resolution Agreement and assist with establishing those institutions in accordance with best international practices;

(b) Continue to support national justice institutions in prosecuting serious crimes and ensure that all witnesses and victims receive appropriate protection and support;

(c) Continue to support United Nations agencies and civil society organizations in documenting conflict-related sexual violence, and design and establish mapping and documentation programmes which also disaggregate data on specific incidents of gender-based violence and conflict-related sexual violence, ensuring that the confidentiality and security of witnesses and victims are protected with a view to ensuring future accountability.
