



# General Assembly

Distr.: General  
18 February 2019

Original: English

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## Human Rights Council

### Fortieth session

25 February–22 March 2019

Agenda item 4

### Human rights situations that require the Council's attention

## Report of the Commission on Human Rights in South Sudan\*

### *Summary*

In the present report, submitted pursuant to Human Rights Council resolution 37/31, the Commission on Human Rights in South Sudan provides an overview of the human rights situation in South Sudan and updates the Council on critical developments and incidents that occurred in 2018, on which the Commission has collected and preserved evidence.

The Commission concludes that despite the signing of the peace agreement, violations including rape and sexual violence continue to occur which may amount to international crimes, including war crimes and crimes against humanity. The Commission provides an update on the political economy and transitional justice developments and submits recommendations. The Commission has prepared a conference room paper for discussion purposes which reflects in greater detail the evidence that it has collected and its findings.<sup>1</sup>

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

<sup>1</sup> A/HRC/40/CRP.1

## I. Introduction

1. 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 another year and requested it 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 on 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 it to make such information available to all transitional justice mechanisms, including those to be established pursuant to Chapter V of the Agreement on the Resolution of the Conflict in South Sudan (ARCSS), including the Hybrid Court for South Sudan, to be established in cooperation with the African Union.
4. In its Resolution 37/31, the Council renewed the Commission's mandate on 23 March 2018 for an additional year with the same mandate.
5. The current members of the Commission, appointed by the President of the Human Rights Council, are Yasmin Sooka, Andrew Clapham, and Barney Afako, with Ms. Sooka as its Chair.
6. The Commission was supported by a secretariat based in Juba. It conducted missions to Bentiu, Dablual, Goli, Kuruki, Leer, Mayendit, Panyume, Wau, and Yei within South Sudan, as well as to Addis Ababa in Ethiopia, Arua, Imvepi, Kampala and Kiryandongo in Uganda, Nairobi and Kakuma in Kenya, and El Daein, El Fasher, Khartoum, and Nyala in Sudan. The Commission met with a range of victims, witnesses, government officials, and members of civil society. It also organized a workshop on sexual and gender-based violence.
7. The Commission took 135 detailed individual witness statements and gathered over 3,100 documents, including confidential records, covering incidents in South Sudan since December 2013. It also undertook analysis of material gathered in the previous mandate. All evidence is preserved in the Commission's confidential database and archives.
8. The Commission thanks the Government of South Sudan for facilitating its missions. It is also grateful for the cooperation it received from the Governments of Ethiopia, Kenya, Sudan and Uganda during its missions to those States. It also appreciates the assistance and contributions of the United Nations Mission in South Sudan (UNMISS), United Nations agencies, civil society organizations, and experts.

## II. Methodology

9. The Commission focused on establishing the facts and circumstances of incidents occurring in 2018 in Unity, Western Bahr el Ghazal, and Central Equatoria States. In 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 specific incidents and patterns of conduct provided the basis for the legal qualification of human rights violations and, where appropriate, international crimes including war crimes and crimes against humanity.

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

12. 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 insufficient information to identify individuals responsible for violations, but the armed forces or armed groups responsible have been identified.

13. The Commission employed the best practices of fact-finding aimed at assuring the safety, security, confidentiality and well-being of witnesses. Accordingly, information has only been included 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 and its Protocol on the Rights of Women in Africa, 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, the Convention on the Rights of the Child and two of its Optional Protocols, and the African Union Convention Governing Specific Aspects of Refugee Problems in Africa. Relevant rules of customary international human rights law are also applicable. The Commission welcomes South Sudan’s accession in 2018 to two of the Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography, as well as the Refugee Convention of 1951 and its 1967 Protocol.

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 and III, and by customary international humanitarian law. Despite the signing of the permanent ceasefire and peace agreement, the Commission assesses that hostilities have persisted to a degree that international humanitarian law has continued to apply throughout 2018.

### **IV. Context and Background**

17. The High Level Revitalization Forum launched by the Intergovernmental Authority on Development which produced the Agreement on Cessation of Hostilities on 17 December 2017, progressed through the first half of 2018, resulting in the first meeting since July 2016 between President Kiir and former First Vice President Riek Machar on 20 June 2018 in Khartoum, and a permanent ceasefire in the Khartoum Declaration on 27 June 2018.

18. On 12 September 2018, the parties to the conflict signed the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), guaranteed by Sudan and Uganda. However, some members of the South Sudan Opposition Alliance, including the National Salvation Front, led by Thomas Cirillo Swaka, refused to sign.

19. Since the signing of the R-ARCSS, the parties have been working on establishing the National Pre-Transitional Committee and the various bodies overseeing the Agreement’s implementation. Although progress has been made on many fronts, many deadlines in the R-ARCSS have been missed. The parties began from a position of zero

trust, which remains a major impediment to the timely implementation of the Agreement and has the potential to derail the fragile peace.

20. Since the signing of the R-ARCSS, there has been a marked decline in fighting across the country with the exception of Central Equatoria and Western Bahr el Ghazal States.

21. While the signing of the peace agreement has brought hope to the South Sudanese, it has not delivered immediate relief of their humanitarian situation. Due in large part to the conflict, 60 percent of the South Sudanese population is severely food insecure, and there remain 2.2 million refugees and 1.9 million internally displaced persons.

22. This situation continues to be exacerbated by the deliberate obstruction of the work of humanitarian actors. Indeed, for the third consecutive year, South Sudan has been ranked the most dangerous place in the world for humanitarian workers. In 2018, 14 humanitarian workers were killed in South Sudan while others were detained and humanitarian premises attacked and looted resulting in the suspension of services. For example, youth protests in Maban County resulted in the looting and burning of humanitarian premises and the relocation of approximately 400 humanitarian workers in July 2018.

23. Civic space available to journalists, human rights activists, and civil society to inform, debate, and dissent has continued to shrink. Citizens face legal, administrative, and security deterrents to political participation resulting in growing censorship and self-censorship at a time when more, not less, engagement is needed. In particular, the National Security Service has taken an increasingly active role in curtailing the freedom of the press and multiple journalists described to the Commission being detained by National Security Services agents because of their work.

## **V. Securitization of the State: Arbitrary Detention, Enforced Disappearance, Torture and Cruel, Inhuman or Degrading Treatment**

24. A characteristic of the conflict since 2016 has been the increasing securitization of the State with the intelligence arms of the security sector playing a pivotal role in the increasing repression resulting in individuals being deprived of their fundamental freedoms and civic space shrinking. The Commission has documented at least 47 first-hand accounts of individuals who have been arbitrarily arrested, detained, and/or subjected to torture or cruel, inhuman or degrading treatment by the National Security Service and the SPLA Military Intelligence between December 2013 and late 2018.

25. Witnesses reported being held in various locations in and around Juba, including National Security Services facilities at Riverside, “Blue House” Headquarters, Hai Jalaba, and Juba International Airport, Jubek State Security facilities, police stations and unofficial detention facilities, as well as in the SPLA Military Barracks at Bilpham, Giada, and Gorum. The Commission documented arbitrary arrests and transfers including between Malakal, Palouch, Wau, Yambio and Yei, demonstrating the widespread and systemic use of security-related detention throughout South Sudan. Indeed, in October 2018, the South Sudan Human Rights Commission reported on arbitrary detention and torture by the National Security Services at its Luri training facility.

26. Most of the cases the Commission documented involved adult males; however, it also documented cases of women being detained, including pregnant women. Members of the media, businesspeople, intellectuals, human rights defenders, and political dissidents feature prominently among people targeted, signalling attempts to stifle participation in public and political discourse. Witnesses described being identified based on perceived political or ethnic affiliation. The subsequent arrest of those identified occurred reportedly because of surveillance undertaken across different sectors, including in hospitals, government agencies, airports, banks, media houses, oil fields, and civil society organizations.

27. The periods of detention ranged between a few hours and more than three years. Almost no detainees were informed of the reasons for their arrest or had charges filed against them. Witnesses reported having their property searched and confiscated without being returned. Witnesses also described being removed from their cells in the middle of the night for “investigation”. Some detainees were interrogated over several months. None of those interrogated were given access to legal representation, and in most instances, neither were their families informed about where they were being held.

28. A standoff between prisoners and guards at National Security Services’ “Blue House” Headquarters on 7 October 2018 highlighted the prevalence of prolonged detention without trial, *incommunicado* detention, solitary confinement, and limited access to family, medical attention and legal representation.

29. Witnesses described being subjected to several forms of torture and cruel, inhuman or degrading treatment, including being threatened, beaten with blunt objects or whipped, burned with plastics, electrocution, watching other detainees being executed or assaulted, cases of positional torture including suspension, and limited instances of sexual assault. The Commission observed that the cases at Giada and Gorum Military Barracks tended to be the most severe in terms of the frequency and severity of torturous acts. The Commission also documented cases of gunshot wounds, skin lesions arising from restraints used, and back injuries allegedly sustained during assault.

30. Detention facilities are overcrowded, lack sunlight and ventilation, and are infested with vermin. Substandard medical care, inadequate food leads to malnutrition, and, sometimes, starvation. Access to toilet facilities and potable water is limited with poor hygienic and sanitation conditions taking a toll on detainees’ health. The Commission documented numerous cases where witnesses contracted infectious diseases and infections as the result of these conditions.

31. Witnesses, particularly those who had survived more than one year of detention, underscored the continuing adverse effects on their psychological well-being, their professional and family lives, even years after their release.

32. Many detainees have died because of being extra-judicially executed, detained in inhuman conditions, including being held in metal shipping containers with no ventilation in extreme heat, or denied medical care. Many others have been forcibly disappeared while in State custody.

33. There is little to no access to detention facilities by outsiders. Furthermore, while the South Sudanese economy has struggled over the past years, the National Security Services has continued to receive significant resource allocation, spending, and weapons procurement, to the detriment of other areas of need.

34. The absence of procedural safeguards in the National Security Services Act (2014) accentuates the lack of accountability of the National Security Services. Furthermore, it is unclear from where the SPLA Military Intelligence Directorate derives its powers to arrest, detain, search and seize property.

35. The Commission is also concerned by the long reach and collaboration of South Sudanese state security organs with neighbouring countries, notably Kenya and Uganda, where it received information about cases of post-release monitoring, abduction, and attempted abduction. At least eight witnesses indicated that they saw Aggrey Izbon Idris and Dong Samuel Luak in National Security Services custody in South Sudan shortly after they disappeared from Nairobi in late January 2017. When Commission raised their cases with the South Sudanese Government, however, it denied having any knowledge of their whereabouts, stating that the Commission should make inquiries of the Government of Kenya.

## VI. Attacks on Civilians

36. Attacks on civilians mainly by the SPLA have continued in the country, despite the December 2017 Cessation of Hostilities Agreement, the June 2018 Khartoum Declaration, the permanent ceasefire and the September 2018 R-ARCSS.

37. As peace negotiations gained momentum, Government forces sought to gain control of opposition held areas particularly in Unity and Western Bahr el Ghazal States. During these operations, Government forces adopted a hostile position toward the civilian population as if they were members or supporters of the opposition forces. Government forces directed attacks against the civilian population even though they took no active part in the hostilities, and their campaigns involved killing fleeing civilians, detaining and beating men, raping and gang raping women, burning down peoples' homes and looting their possessions. The brutality of these attacks has resulted in massive displacement and terrible humanitarian conditions for civilians.

## VII. Sexual and Gender-Based Violence

38. Sexual and gender-based violence remain a central characteristic of the conflict, used as a tactic of warfare by all parties to sow terror. The Commission documented incidents of rape and gang rape, committed in the presence of the victims' children, as well as sexual mutilation; forced marriage; and abduction perpetrated against women, girls, boys, and elderly women.

39. The offensive in southern Unity State between April and June 2018, witnessed sexual violence on a massive scale as militias were told they could take women as wives as payment for their services during attacks.

40. The surge of sexual assaults against women and girls in the greater Bentiu area and in close proximity of the Bentiu Protection of Civilians site involved a number of unidentified perpetrators following the signature of the R-ARCSS. The Commission also investigated instances of sexual violence against men and boys, which remains significantly under-reported due to social stigma.

41. Attacks have a gendered aspect, as young men are often specifically targeted, killed, beaten and detained as they are suspected of being actual or potential members of armed groups, while women and girls are raped, beaten and sometimes also killed, and vulnerable people, especially elderly men, have been killed and burned in their *tukuls* (thatched huts).

42. South Sudan remains a deeply patriarchal society in which custom and tradition entrench the subservience of women and girls to men. The prevailing inequalities, discrimination and unequal power relations between men and women, lack of access to resources and inability to access quality education result in women and girls being susceptible to sexual and gender-based violence. This exacerbated by the protracted conflict impacting on gender norms and the roles of women and men.

43. Impunity for sexual violence in South Sudan is a result of the lack of political will to hold perpetrators accountable and the absence of appropriate institutions to build accountability. The creation of a specialised sexual and gender-based violence court in Juba is therefore to be welcomed as is the successful convictions in the Terrain Hotel case. The largely dysfunctional statutory court system remains an impediment to accountability for sexual and gender-based violence leaving customary courts as the only forum to seek justice. Customary courts are not mandated to hear serious criminal cases and are not suited to providing justice to women and victims of sexual violence given gender biases and the lack of procedural safeguards.

44. Many survivors continue to suffer from the physical and psychological impact of violence, and reported feelings of depression, hopelessness, anxiety, and suicidal thoughts and have difficulty focusing, sleeping, and performing routine tasks. The Commission reiterates its concern about the inadequate medical and psychosocial support available to survivors.

45. Early marriage is not new in South Sudan with 52 percent of girls in South Sudan are married by age 18. The bride price paid for wives in the context of economic and physical insecurity linked to the conflict, as well as misconceptions of physical protection offered by marriage, has led to an increase in child marriage. Early marriage is an obstacle to the realisation of women and girls' rights, including to health and quality education. The Commission encourages the Government to take active steps toward meeting its commitment to ending child marriage by 2030.

46. The Commission acknowledges the legal and policy reforms aimed at eradicating discrimination against women and gender inequality, including the adoption of the National Action Plan on Women Peace and Security, and the accession to CEDAW and its Optional Protocol. Substantively, the lives of South Sudanese women and girls have not improved because of discriminatory traditional practises.

47. The UN and UNMISS remain committed to fight sexual exploitation and abuse. Since early 2018 to January 2019, seven cases of sexual exploitation and abuse involving 18 alleged UNMISS perpetrators have been registered in the UN Sexual Exploitation and Abuse Database. These cases were swiftly investigated resulting in the repatriation of members of the Ghanaian Formed Police Unit, implicated in sexual activity with women at the Protection of Civilians site in Wau. The Commission welcomed the swift action of the UN in dealing with these cases, noting the complex jurisdictional environment and the need to ensure justice for the victims.

## VIII. Impact of the conflict on Children

48. Children continue to be killed and injured in South Sudan as a result of being directly targeted or caught in the crossfire of ongoing military operations. In all three regions that the Commission focussed on in this mandate, it found evidence of violence against children including deliberate attacks. The Commission heard accounts of children being shot in the back as they fled, and being deliberately beaten, including a baby being swung against a tree. The Commission also continued to document cases of sexual violence against children including the rape of girls as young as seven years old and the sexual mutilation of a 12-year-old boy.

49. While the recruitment and use of children in armed forces and groups has been declining in South Sudan with approximately 1,000 children having been released and demobilized from several groups in 2018; thousands remain. The Commission continued to receive information about abductions and the forcible recruitment of children.

50. The rehabilitation and reintegration of child soldiers remains a challenge given the shortage of services including in hard-to-reach areas, the lack of social and psychosocial resources, the lack of education and employment opportunities, and the risk of re-recruitment.

51. Children make up over 60 percent of South Sudan's IDPs and refugees. Many have been separated from their parents and guardians and have undertaken arduous, risky journeys to safety unaccompanied. They are particularly vulnerable to physical violence, psychological distress from being exposed to traumatic events, recruitment into armed forces and armed groups, and limited access to education and health care. While there has been progress on family tracing and reunification, even with the peace agreement, it will be a long road before displaced children are resettled into the support of their communities.

52. Access to education is particularly concerning: South Sudan has the highest proportion of out-of-school children in the world with at least 2.2 million school-aged children not attending school. While educational opportunities have been a challenge since before the conflict, it has exacerbated the situation as schools have been closed due to the conflict either because of being targeted, damaged, or occupied for military purposes. Even where schools are operational, they are severely under-resourced. Teachers are regularly not paid contributing to absenteeism and a shortage of qualified teachers. While the 2018/2019 budget has significantly increased the education budget, it remains far below defence and security spending.

53. Despite the signing of the R-ARCSS auguring peace, children and youth in South Sudan face significant challenges, which will only be overcome through commitment and investment on the part of the Government, the international community, and all South Sudanese. Failing this, the conflict may leave the damaging legacy of a lost generation.

## **IX. Redrawing Administrative Boundaries**

54. In view of the revitalized peace agreement, the Commission considered it appropriate to address issues that have fomented conflict and the resulting human rights violations, which have the potential to derail progress towards peace. This includes the impact of the redrawing of administrative boundaries and South Sudan's political economy.

55. One of the most fraught and fundamental issues facing South Sudan is how its government and administrative structures are defined and seen to serve all its communities and citizens equally. In the last three years, the question of the number and boundaries of the states and when and what form of federalism or devolution should be introduced have been prominent and divisive. The creation, by decree, of the 28, then 32 states in 2015 and 2017, respectively, was highly controversial, generating new conflict dynamics and triggering serious human rights violations. This issue has exacerbated historical divisions between ethnic and political factions, particularly as the decision-making process has been challenged for lack of legality, legitimacy and transparency.

56. The Commission has taken account of how the 28 States Decree triggered conflict in former Upper Nile State, when Malakal with a significant Shilluk population, was merged into the new Dinka-controlled Eastern Nile State. In Bahr el Ghazal, the creation of Lol State, joining Raga County, sparsely inhabited by Fertit, to Aweil North and West Counties, densely populated by Dinka, also tilted the balance of power in the Raga area toward the Dinka. In both these cases, civil servants belonging to minority ethnic groups were summarily dismissed from their positions, and new conflicts were triggered by the redrawing of administrative boundaries—perceived to privilege the Dinka population.

57. As South Sudan seeks to implement the new peace agreement, this will remain one of the most delicate, controversial and potentially destabilising issues. During the negotiations, the parties failed to reach an agreement on the number of states and their boundaries, and instead created an Independent Boundary Commission and a Technical Committee to resolve the matter, failing which, it will be put to a referendum. Fundamentally, however, these governance questions require inclusive and representative solutions; otherwise, South Sudan will reap the consequences of fomenting marginalisation and deep grievances.

## **X. Political Economy of the Conflict**

58. South Sudan's economy continues to be almost completely reliant on oil, with the result that control of this resource has had enormous repercussions for the socio-political and security situation and has been a central dynamic of the conflict.

59. The Petroleum Revenue Management Act (2013) provides that oil producing states and communities are to receive two and three percent, respectively, of the oil revenue thereby creating significant incentives to ensure state boundaries are drawn to include oil fields. This is widely perceived to motivate the redrawing of state boundaries to ensure that more oil fields fall within Dinka-controlled states.

60. In 2018, the desire for the Government to take control of the oil industry manifested in the SPLA offensive to drive the SPLA-IO (RM) out of its strongholds in southern Unity State starting in April. The aim of this offensive was to gain control of the road running south from Bentiu to Adok port, an area including the Tharjath oil field in Block 5A. Ensuring that Block 5A became operational was specifically referred to in the Khartoum Declaration in June 2018 as one of the aims of permanent ceasefire. The offensive, however, resulted in serious human rights violations including killings and forcible displacement of the population.



61. Human rights have become a casualty in oil producing areas of the country, where the armed conflict has continued, coupled with the increased militarization and securitization of the oil industry by Government forces. The National Security Services, in particular has been expanding its involvement in the oil sector, including through its control over the state-owned Nilepet oil company. Nilepet's operations have been characterized by a lack of transparency and independent oversight. Furthermore, oil revenues, and income from other natural resources such as illegal teak logging, have continued to fund the war, enabling its continuation and the resulting human rights violations.

## **XI. Emblematic Incidents**

62. The Commission focussed on incidents that were emblematic of violations and crimes committed in 2018 and has sought to clarify responsibility for those acts, as far as possible.

### **A. Unity State**

63. Unity State has been one of the main centres of conflict since 2013. While a majority Nuer state, it is ethnically diverse and quite divided in loyalties. The northern Abiemnom and Pariang Counties are majority Padang Dinka who, not surprisingly, have consistently supported the Government throughout the conflict. Although the state is mainly dominated by Nuers, there are significant divisions among the Nuer communities.

64. Following the outbreak of fighting in Juba in December 2013, clashes followed in Bentiu and its surrounds in late December 2013. Since then, the state has remained unstable with major offensives launched by the SPLA and affiliated forces into the SPLA-IO held areas of southern Unity in 2014 and 2015. These offensives resulted in some of the worst violations of human rights and international humanitarian law of the conflict.

65. In October 2015, with the introduction of the 28 States Decree, Unity State was divided into three states. In the north, Ruweng State was formed of Abiemnom and Pariang Counties. The middle section of Unity State became Northern Liech State, and encompassed Rubkona, Guit, Mayom, and Koch Counties. Southern Liech State was created out of Leer, Mayendit, and Panyijjar Counties. Although the 2015 ARCSS provided for the SPLA-IO to nominate the Governor for Unity State, the President appointed the Governors of the new states.

66. Following the events of July 2016, when Riek Machar fled the country and Taban Deng Gai was installed in his place as First Vice-President, the SPLA-IO split between those who remained loyal to Riek Machar (SPLA-IO (RM)) and those who followed Taban Deng Gai (SPLA-IO (TD)). Since the split of the SPLA-IO in 2016, Guit County, from where Taban Deng Gai originates, has been an important base for SPLA-IO (TD) forces who have aligned with SPLA forces in ongoing operations.

67. Southern Unity State has remained turbulent despite the signing of the Agreement on Cessation of Hostilities on 21 December 2017 and the relaunch of the peace negotiations in February 2018. In mid-March 2018, a new SPLA 4 Division commander arrived in Bentiu and shortly thereafter, a major offensive was launched in southern Unity State to gain control of the territory, in particular the road running from Bentiu to Adok Port and past the Tharjath oil field near Koch. In April, weapons and ammunition were delivered from Juba and planning meetings were held.

68. By late April, the joint forces of the SPLA 4 Division and SPLA-IO (TD) moved southward to Koch where the youth militia of the Gany (former Koch) County Commissioner joined them. These combined forces continued southward toward Leer, then divided forces and fanned out. From Leer, some troops continued south toward Pilling, Thonyor (the SPLA-IO (RM) area headquarters) and on to Adok Port.

69. Over the next two months, SPLA and SPLA-IO (TD) soldiers and affiliated militia conducted offensives throughout Leer and Mayendit Counties attacking at least 40 towns and villages, in which they targeted civilians with astonishing brutality. The Commission

was told of old men being hung from trees, people being burned in their *tukuls*, and children being run down by tanks as they fled. Civilians fled into the swampy areas but were pursued by amphibious military vehicles and deliberately shot at. Some hid in the swamps for a month, eating water lilies to survive. Some drowned.

70. Most witnesses described rampant rape and sexual violence perpetrated against women and girls, including lactating mothers and girls as young as seven years old. Some women died because of the brutality of the rapes and at least one woman was shot and killed when she resisted being gang raped. Women and girls were also abducted by Government soldiers and affiliated militia and forcibly taken as “wives”.

71. Soldiers and militia looted people’s possessions, burning *tukuls* and villages. Satellite images reveals that approximately 7,345 structures were damaged or destroyed in the area during the offensive. The offensive resulted in massive population displacement and ensuing food insecurity. Displaced civilians in desperate need of assistance were unable to access it as humanitarian organisations reported their properties being attacked and looted, leading to the withdrawal of their staff in some instances.

72. Although the fighting in southern Unity State had largely subsided by the end of June 2018, the area remains of concern. The Commission received reports of recruitment in the area even after the signing of the R-ARCSS in September 2018 although the Government’s explanation for this is the re-integration of SPLA-IO (TD) forces into the Government forces.

#### **Violations and alleged crimes – findings**

73. The Commission finds reasonable grounds to believe that the SPLA 4 Division, SPLA-IO (TD) and militia from Koch County engaged in killings, rape, beatings, abductions, and looting and destruction of property in Mayendit and Leer Counties between April and June 2018. Evidence in the Commission’s possession provides reasonable grounds to believe that these forces directed attacks against the civilian population and did so with the intent to forcibly displace the civilian population.

74. These acts amount to serious violations of human rights and humanitarian law, and should be investigated and prosecuted as war crimes and crimes against humanity.

## **B. Central Equatoria State**

75. Since 2016 when the Central Equatoria was brought into the conflict after then First Vice President Riek Machar fled southward from Juba and many of his troops remained in Central Equatoria, it has been one of the most fractured areas of the conflict. Government forces have consistently held most towns and the main roads. In so doing, they have carried out attacks against the civilian population.

76. Initially, a significant number of Equatorians joined the SPLA-IO out of discontent over the perceived Dinka domination of political and security institutions and abuses allegedly perpetrated by the SPLA against Equatorian communities. However, in 2018 an increasing number of Equatorians defected from the SPLA-IO to join other groups including the National Salvation Front and South Sudan National Movement for Change as they came to view the SPLA-IO as behaving no better toward their communities than the SPLA. The Commission documented instances of arbitrary arrests and detentions, extrajudicial killings, rapes and looting by both the SPLA and the SPLA-IO in Central Equatoria in 2018.

77. The situation has been further complicated and destabilised by a number of groups, including the National Salvation Front, refusing to sign the peace agreement, mainly because it does not guarantee the introduction of federalism and power-sharing. This has created division among these opposition groups, resulting in an ever more fractured situation in Central Equatoria.

78. One particularly outrageous attack occurred in Goli in May 2018. Goli is located in Central Equatoria State approximately 30 km to the north-west of Yei town along the Yei-

Tore-Maridi road. While the Government holds both Yei and Tore, SPLA forces do not exercise control in the territory between and surrounding the towns, including the Goli area, and the SPLA-IO move freely.

79. Emmanuel Christian College is located in Goli. Its compound includes a clinic, a chapel, and residences for teachers and students. Since the July 2016 conflict, it has only offered primary level schooling as the main college was moved to Yei for security reasons. Since 2016, the College has hosted approximately 4,000 IDPs in its compound.

80. On the morning of 14 May 2018, a large number of SPLA soldiers from the Presidential Guard Tiger Division based in Tore launched an attack on the College, ostensibly searching for weapons and “rebels” in the compound. They rounded up and separated men and boys from the women and girls, questioning the men about weapons and threatening to kill them. A number of men were thereafter detained and beaten by soldiers with the butts of guns and sticks.

81. Ten men and boys were ultimately shot and killed with four, including two students, a watchman and an IDP lined up and executed at point-blank range near the chapel and three others killed near the dormitories. A 12-year-old boy was shot in his bed and had a stick forced up his anus. Two others were also killed: an IDP and a watchman who was shot while making his morning tea. The Commission documented two cases of rape by SPLA soldiers, one of them involving two soldiers.

82. The soldiers also looted the compound. As the soldiers left, after their 12-hour attack on the College, “they were shooting in the air and celebrating in jubilation.”

#### **Violations and alleged crimes – findings**

83. The Commission finds reasonable grounds to believe that both the SPLA and SPLA-IO have been responsible for killings, arbitrary arrests and detentions, rape, beatings, and looting in Central Equatoria in 2018. In particular, the SPLA Tiger division based in Tore committed killings, rape, beatings, and looting at the Emmanuel Christian College on 14 May 2018. These acts amount to serious violations of human rights and humanitarian law, and should be investigated and prosecuted as war crimes.

### **C. Western Bahr el Ghazal State**

84. Western Bahr el Ghazal is an ethnically mixed state comprising several groups, including Fertit, Luo, and Dinka, who have a history of conflict. Since the beginning of the current conflict, Wau town has been consistently under Government control. The presence of opposition forces in the areas south and west of Wau — known as the Wau Triangle — has resulted in intermittent fighting there since late 2015. The Commission’s last report described a number of outbreaks of violence and human rights violations in Wau town since 2015.

85. In the first half of 2018, the Wau area remained relatively stable; however, on 3 June, a new SPLA 5 Division Commander arrived in Wau. Within two weeks, and as the negotiations for the R-ARCSS gathered speed, the SPLA launched a series of attacks in the Wau Triangle, seeking to dislodge the SPLA-IO from the area.

86. Over the course of five months from mid-June 2018, there was sporadic fighting in the Mboro, Baggari, and Bisselia areas between the SPLA and the SPLA-IO. In the course of this offensive, the SPLA engaged in a concerted campaign against the civilian population in the Wau Triangle, attacking at least 10 towns and villages. The attacks extended past the signing of the R-ARCSS into at least early November 2018.

87. In many instances, attacks were launched on villages where no opposition forces were present and followed a pattern: SPLA soldiers would attack in the morning, arriving in military vehicles and firing into the village as inhabitants fled, killing civilians including children and the elderly. One witness from Tagoti Vimoi, which was attacked on 5 November, told the Commission “they just shot at everyone”.

88. The soldiers then systematically looted people's possessions and loaded them onto lorries some of which were then sold in the Wau market. After looting, they set fire to people's *tukuls*. In Mboro, which was attacked on 28 June, satellite imagery established that approximately 200 structures were damaged or destroyed. As the attacks progressed, people started hiding their crops in the bush in attempts to save them from being looted; however, soldiers set fire to the surrounding bush areas as well.

89. The attacks on the civilian population resulted in significant population displacement, with many people being displaced multiple times as the places they had fled to for refuge also came under attack. When the village of Ngo Pere came under attack in September, it was sheltering 2,000 people already displaced from Mboro in addition to its 1,000 inhabitants. The impact of the displacement on the population was magnified by the fact that humanitarian actors were denied access to the Wau Triangle for more than two months from mid-June.

90. A similar attack was launched on the village of Wadhalelo located to the southeast of Wau town. The origins of the conflict in Wadhalelo are somewhat different from those in the Wau Triangle as it is a Luo village, which traditionally had good relationships with the Dinka cattle herders in the area. However, when those relationships soured, the village came under SPLA-IO control in early 2017 and thereafter a number of clashes erupted between the SPLA and the SPLA-IO. The inhabitants of Wadhalelo complained that: "We are stuck there in the middle between the SPLA and the IO, both mistreat us."

91. On 11 June 2018, just over a week after the arrival of the new SPLA 5 Division Commander in Wau, the SPLA launched an attack on SPLA-IO positions in Wadhalelo ostensibly under instruction to conduct disarmament in the area. The attack started in the early morning with heavy shooting and the burning of *tukuls*. The houses of those suspected of being SPLA-IO members were deliberately targeted resulting in the males in the house fleeing and women, children and family members remaining being beaten. People's possessions were looted.

92. Multiple women reported being raped and gang raped by SPLA soldiers in Wadhalelo including one woman who described to the Commission: "[The soldier] raped me while my children were watching; they didn't understand and thought he was killing me and were crying. [...] After he left I took the children and sat under a tree and cried."

93. By September, Wadhalelo was largely deserted, except for the SPLA stationed there, with civilians living in the bush or displaced to surrounding towns. The SPLA occupied the primary school, which had previously already been occupied by SPLA-IO forces such that it was not operational.

#### **Violations and alleged crimes – findings**

94. The Commission finds reasonable grounds to believe that SPLA soldiers committed killings, rape, beatings, arbitrary detention, looting and destruction of private property in the Wau Triangle from mid-June until at least early November 2018 and in Wadhalelo on 11 June 2018. These acts amount to serious violations of human rights and humanitarian law, and should be investigated and prosecuted as war crimes and crimes against humanity.

95. The Commission also received information that the SPLA-IO engaged in incidents of looting and forced recruitment over the period it occupied Wadhalelo from early 2017.

## **XII. Legal Findings**

96. The Commission finds reasonable grounds to believe that SPLA, both factions of SPLA-IO, and affiliated armed groups have committed serious violations of human rights violations and international humanitarian law. Such violations have included deliberately targeting civilian populations and individual civilians, including on the basis of their perceived political and ethnic affiliations, and by means of killings, abductions, rape and sexual violence, and the looting and 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 these violations and alleged crimes have resulted in the massive displacement of the civilian population of South Sudan.

97. There are also reasonable grounds to believe that National Security Service and the SPLA Military Intelligence Directorate have committed arbitrary detention, torture and other cruel, inhuman or degrading acts, killings, and enforced disappearance of detainees, in many cases on the basis of perceived political or ethnic affiliation.

98. These 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 (article 11), the right to liberty and security of person (article 12), the rights of the child (article 17), the right to freedom from torture (article 18), the right to a fair trial (article 19), the right to freedom of movement and residence (article 27) and the right to property (article 28). They also amount to equivalent violations under the African Charter on Human and Peoples' Rights, the Convention against Torture and the Convention on the Rights of the Child.

99. These acts constitute crimes under South Sudan's Penal Code (2008), including murder (section 206), criminal force (section 224), rape (section 247), wrongful confinement (section 284), theft (section 293) and mischief with intent to destroy house (section 324) and violations fair trial rights in the Code of Criminal Procedure Act (2008). Moreover, SPLA soldiers are subject to the provisions of the Sudan People's Liberation Army (SPLA) Act, 2009, particularly section 57 which establishes the offences of destroying and damaging property, plunder and committing any offence against the property or person of any inhabitant or resident of a country in which he or she is serving.

100. The Commission finds that all parties to the conflict 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.

101. 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. As such, those crimes constitute violations of international humanitarian law under customary international law, as well as common article 3 to the Geneva Conventions and Additional Protocol II, which is incorporated into South Sudan's domestic law through the Geneva Conventions Act (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.

102. 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.

## **A. Individual Responsibility**

103. In relation to the incidents examined, the Commission has been able to identify several commanders from the SPLA, both factions of the SPLA-IO, and other armed groups as well as two governors of states and a country commissioner, in relation to whom there are reasonable grounds to believe that they exercised command or superior responsibility at the time that the violations and alleged crimes occurred.

104. In most instances, the Commission collected evidence that the military hierarchies of SPLA and SPLA-IO functioned effectively in terms of the issuance, transmission of and respect for orders. In 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 soldiers under their command. The recurrent nature of the violations and the limited examples of punishment suggest the commanders failed to take 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, including under article 8(4) of the Draft Statute of the Hybrid Court for South Sudan.

105. In a number of instances, the Commission has also been able to identify that these same individuals also committed, planned, ordered, and aided and abetted the crimes.

106. In this regard, the Commission has identified a number of members of the National Security Service and SPLA Military Intelligence who committed or aided and abetted the arbitrary detention, torture or cruel, inhuman or degrading treatment, and enforced disappearance of individuals detained. The Commission has received no information about any related investigations, the prosecution of individuals involved these crimes, or adequate compensation for victims.

## **B. State Responsibility**

107. The human rights violations committed by the SPLA, the National Security Service, and wholly 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.

108. A limited number of investigation committees at the national and state levels have been established to investigate and report on some of the incidents, including the incident at Emmanuel Christian College in Goli in May 2018 and the alleged rapes in the Bentiu area in after the signing of the R-ARCSS. However, such reports only have the mandate to make recommendations and the government authorities themselves have acknowledged that most of the recommendations from such reports have not been implemented. The Commission has repeatedly been informed that investigations and prosecutions have not proceeded due to a lack of judicial infrastructure and resources, resulting in very few instances of prosecutions for these violations, abuses, and crimes.

## **XIII. Accountability and Transitional Justice**

### **Accountability**

109. The lack of accountability for decades of violence during the struggle for independence has helped to fuel the current conflict in South Sudan. Since December 2013, tens of thousands of civilians have been killed in brutal attacks, often targeted on the basis of their ethnicity or perceived allegiances. Attempts by the Government to hold perpetrators accountable for gross violations of human rights and serious violations of international humanitarian law, include the Terrain Hotel case, but pervasive impunity still remains the norm. The promotion of some senior officials despite allegations of human rights violations and crimes have raised concerns and scepticism as to the Government's commitment to deal with past crimes. Where the government has initiated mechanisms to ensure criminal accountability, little or no information has been made the public on the identity of the accused, the nature of investigations, or subsequent convictions, raising questions about the credibility of the process.

110. In August 2018, President Kiir declared a general amnesty for "Riek Machar and other estranged armed groups who waged war against the Government of the Republic of South Sudan" without any limitations or exceptions for allegations of crimes against humanity, war crimes or genocide. This raised serious concerns, although the government later clarified that these amnesties did not apply to gross violations of human rights and serious violations of international humanitarian law as they remain incompatible with South Sudan's obligations under international law. Amnesties do not constitute a bar from prosecution before the Hybrid Court for South Sudan.

## **Transitional Justice**

111. In 2018, R-ARCSS reaffirmed the commitment to the transitional justice framework adopted in the 2015 ARCSS. The framework reflects a holistic approach, emphasising transformative goals to which accountability, truth telling, reparations and processes of reconciliation and healing contribute. However, the Hybrid Court for South Sudan, the Commission for Truth Reconciliation and Healing, and the Compensation and Reparation Authority, which are to be complemented by customary and other community-centred mechanisms, are yet to be established. Although, the African Union's Peace and Security Council endorsed the Hybrid Court in September 2015, in line with the recommendations of the Obasanjo Commission, little progress in setting up transitional justice institutions has been made since then.

## **Revitalized Agreement**

112. The R-ARCSS introduces new implementation timelines for the transitional justice mechanisms, to be established from May 2019. Women's participation in the mechanisms must now meet the 35 percent general threshold of the ARCSS. A gender perspective in the implementation of transitional justice framework will be essential to meet the different experiences and needs of men and women in the conflict. South Sudan's women and girls have faced discrimination and disadvantage as well as economic and political marginalization, exacerbated during the conflict reflected in unspeakable levels of violence against them, including sexual and gender-based violence. Women and girls' special status must be assured in the design and implementation, especially of reparations.

113. Concerns about new provisions of the R-ARCSS include: the sole power granted to the government to select national commissioners for the Commission for Truth, Reconciliation and Healing; and, the suggestion that following investigations, the Hybrid Court should prosecute only 'where necessary'. Furthermore, the government states that the three mechanisms can only be set up once national legislation has been enacted. The government should enact the legislation henceforth, ensuring the process is credible, transparent, inclusive, and consultative.

114. The African Commission for Human and Peoples' Rights indicated that it would activate its role under the R-ARCSS; in monitoring and reporting on new human rights issues in South Sudan; and deepen its collaboration with other African Union and United Nations human rights and peace and security bodies, including this Commission. All entities assigned specific roles in the ARCSS, particularly the Intergovernmental Authority on Development and the African Union, must discharge their obligations towards the people of South Sudan.

## **The Hybrid Court for South Sudan**

115. The process of establishing the Hybrid Court for South Sudan has stalled. Lack of political will and uncertainty about the future of government contributed to this. Officials continued to cite, two (undisclosed) outstanding issues preventing completion of the memorandum of understanding to establish the court. The Hybrid Court has primacy over domestic courts and will likely focus on emblematic cases and high-level perpetrators. The national justice and legal system must be strengthened to play its complementary role, and national prosecutorial policy must be developed. This would bolster the confidence of the public in justice and state institutions generally.

## **Commission for Truth, Reconciliation and Healing**

116. Despite official efforts to hold consultations on the Commission for Truth, Reconciliation and Healing, a recent survey by the South Sudan Civil Society Forum, found that most South Sudanese remained unaware about the truth-seeking process, many holding back due to uncertainty about its relevance and credibility. The Commission for Truth,

Reconciliation and Healing will have an important role to play in promoting victims' access to remedies and reparations, and in recommending institutional reforms. This Commission has offered to advise the Government on questions of design and legislation for the Commission for Truth, Reconciliation and Healing.

### **Compensation and Reparation Authority**

117. The designing of a comprehensive reparations programme including, setting up the Compensation and Reparation Authority has not begun. The Government cites a lack of resources. The Commission has continued to emphasise to the Government that reparations are a much broader concept, going beyond financial payments. They include symbolic reparations, which are deeply embedded in the customary and traditional justice practices of South Sudanese communities.

### **National Dialogue and Reconciliation**

118. The National Dialogue continues to analyse information gathered from within and outside the country in preparation for three regional conferences and a national conference to be held by mid-2019. Many South Sudanese remain profoundly cynical about the process, which failed to reach several communities. Many who did respond were candid in expressing that the process should not substitute for accountability or jeopardise establishment of the Chapter V mechanisms. Following the revitalization process, the opposition is still considering whether it should join the process.

119. Reconciliation is an essential pillar of the transitional justice framework. It requires a conducive environment for genuine interaction and engagement, which the government must provide. Because the ongoing armed conflict has assumed ethnic dimensions, community-led efforts, facilitated by cultural and religious leaders, will need to play an important role in the pursuit of reconciliation.

120. South Sudan's challenges are immense given the protracted conflict, its ethnic dimensions and deep divisions; the inability of the population to access the economy; the lack of financial capacity and capable organisational and human resources; and, a dysfunctional and predatory elite system of government; amongst others. With sustained political will and effective leadership, the transitional justice framework and the Chapter V mechanisms can facilitate the South Sudanese deal with the past and secure their stability and prosperity.

## **XIV. Conclusions and Recommendations**

### **A. Conclusions**

**121. The Commission has identified a number of individuals and groups who bear responsibility for the violations and related crimes, and the individuals concerned should face prosecution.**

**122. Sustainable peace in South Sudan requires meaningful progress towards accountability for past crimes. The stasis in the establishment of the Hybrid Court for South Sudan, and the minimal steps taken at the national level to prosecute war crimes including crimes of sexual violence, are leading to multiple frustrations and anger, doing nothing to reduce the chances of further violence.**

**123. The lawless activities of the National Security Services and Military Intelligence, often linked to protecting economic interests particularly with regard to the oil sector, risk turning South Sudan into a police state built on fear, rent-seeking and corruption.**

**124. The protracted conflict in South Sudan has had the most profound impact on women and girls, who daily have to confront a horrific variety of sexual violence**



committed by government forces and armed actors belonging to the opposition. Such acts include: the savagery of gang rapes, sexual violence, sexual exploitation, rape, forced marriage, forced pregnancy, forced abortion, and mutilation of sexual organs.

125. Shortcomings within both the formal and customary justice systems prevent the resolution of gender violence, which is deeply anchored in cultural beliefs. Structural inequalities, poverty and discrimination continue to obstruct access of women and girls to justice and security as well as to transitional justice processes.

126. The structure of the South Sudanese economy shifted in the post-independence period from relying predominantly on agriculture to oil. The armed conflict in South Sudan is being driven primarily by the need to control the oil producing areas in Unity and Upper Nile states, and has been a major driver of the continuing ethnic violence, which has led to enormous human suffering, and the commission of violations of human rights and international humanitarian law. South Sudan's oil industry including the state owned petroleum company Nilepet have been militarized and securitized with the National Security Services having expanded their involvement in the oil production and management.

127. After delays in implementing the transitional justice provisions of the ARCSS (2015), the R-ARCSS (2018) has recommitted the parties to a transitional justice framework, which in addition to the Hybrid Court, the Commission for Truth Justice and Reconciliation, and the Compensation and Reparation Authority includes traditional mechanisms. However, the Revitalized Agreement has also stipulated new timeframes for the establishment of these mechanisms, commencing in May 2019.

128. South Sudan is a diverse society in which ethnic communities continue to provide identity and a sense of belonging for most citizens. Customary justice, while manifesting many weaknesses, especially in relation to women's rights, remains an important instrument of access to justice for most South Sudanese.

129. The scale of violations and crimes committed during the course of the conflict demands an urgent and holistic approach, which involves all South Sudanese, including forced migrants, in the pursuit of accountability, reconciliation and healing.

## **B. Recommendations**

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

### **Advancing the Rights of Women**

(a) Fast track, the finalization of the National Gender Policy, including measures to implement the equality provisions set out in the Transitional Constitution and Bill of Rights which guarantees equality and equity between women and men, including and a 25 percent quota for women in all spheres as temporary positive measure to redress past imbalance;

(b) Ensure that the national justice system including the plural legal system is strengthened to protect victims/survivors of gender-based violence, ensuring access to justice and to an effective remedy which facilitates the investigation and prosecution of sexual and gender-based crimes;

(c) Ensure that gender-based violence against women is not mandatorily referred to alternative dispute resolution procedures, such as mediation and conciliation;

(d) Eliminate discriminatory evidentiary rules and procedures, including procedures allowing for women's deprivation of liberty to protect them from violence, practices focused on 'virginity' and legal defences or mitigating factors based on culture, religion or male privilege. Such procedures also include traditional apologies, pardons from victims'/survivors' families or the subsequent marriage of the victim/survivor of sexual assault to the perpetrator, procedures that result in the harshest penalties, including stoning, lashing and death being often reserved to

women, as well as judicial practices that disregard a history of gender-based violence to the detriment of women defendants;

(e) Ensure that a data system is established to regularly collect, analyse and publish statistical data on the number of complaints about all forms of gender-based violence against women, including technology mediated violence, the number and types of protection orders issued, the rates of dismissal and withdrawal of complaints, prosecution and conviction rates as well as time taken for disposal of cases;

#### Security and Detention

(f) Halt the use of secret detention in so-called ‘safe houses’, the torture and ill treatment of detainees, and urgently address the conditions in all places of detention;

(g) Embark on radical reform of the arrangements for national security to ensure compliance with international human rights obligations;

(h) Cease the interference with the media and civil society so that freedom of expression can be reasonably exercised in order to ensure that the peace process is properly understood, that there can be accountability for past violations, that issues of corruption can be exposed, and that the process of healing can take place across the country;

(i) Re-confirm its former commitment to a moratorium on executions as a contribution to peace and nation-building; to confirm its commitment to respecting its international human rights obligations by declaring that no one who was under 18 at the time of the commission of their offence will be sentenced to death or executed;

(j) Consider carefully the draft legislation, which incorporates international crimes in national law in order that all forms of liability relevant to such crimes are included so, that there can be complementarity between the national criminal legal order and any international tribunals with jurisdiction;

#### Political Economy

(k) To ensure the implementation of Articles 4.8.1.1 and 4.8.1.2 of the R-ARCSS of the Petroleum Revenue Management Act which facilitate transparency, accountability and an equitable allocation of oil revenues among the present and future population of the country, including the closure of any petroleum revenue accounts not established under the Act, within three months of the start of the Transition period;

(l) To establish an appropriate monitoring mechanism to monitor the transfer of an equitable share of the revenue to states and ensure public reporting;

(m) To ensure that the Government expedites the operationalization of Future Generations Fund and the Oil Revenue Stabilization Account and review and audit allocations and transfers of the two percent and three percent made to oil producing states since 2011;<sup>2</sup>

(n) To ensure that the review called for by the R-ARCSS, of both the national oil company Nilepet and the National Petroleum and Gas Commission, are dealt with expeditiously to transform and “empower them to exercise their responsibilities as stated in the Amended Constitution and Law”;<sup>3</sup>

#### Transitional Justice

<sup>2</sup> R-ARCSS, Articles 4.8.1.14.7 and 4.8.1.14.9.

<sup>3</sup> R-ARCSS, Article 4.8.1.14.14.

(o) Establish expeditiously the commission for truth, reconciliation and healing, with effective and transparent consultation of South Sudanese stakeholders;

(p) Adopt a broad approach to reparations, to include provisions of collective and symbolic forms of reparation, beyond the financial payments envisaged by the mandate of the compensation and reparation authority; and

(q) Ensure that the outcomes of all prior genuine consultations on how to address South Sudan's past and to shape its future, including the recommendations and outcomes of the national dialogue, are given due consideration and harmonised with transitional justice mechanisms of Chapter V of the Revitalized Agreement, and the Permanent Constitution-making process.

131. The Commission recommends to the United Nations Mission in South Sudan:

(a) Increase, in conjunction with humanitarian actors, protection for women, girls and boys during their movements outside the camps to collect water and firewood, ensuring the training of men and boys to assist with the 'protection' of women, girls and children and promoting establishment of mixed sex and age watch groups, as well as movement in bigger groups; and

(b) Expand the current database, which reflects incidents of SEA involving UN Peacekeepers to include incidents of SEA involving personnel of implementing partners.

132. The Commission recommends to Humanitarian Actors:

Strengthen referral systems to support women, girls, boys and men who have been affected by GBV or who require psychosocial support due to the crisis, so that they are able to access the appropriate service providers for their different needs - and within the appropriate period of time (within 72 hours for survivors of sexual violence). Service provision should likewise be strengthened and training on the clinical management of rape should be provided, as well as post-exposure prophylaxis (PEP) kits and Mama Kits (for safe delivery).

133. The Commission recommends to Civil Society:

Raise awareness among families of the value of the girl child, changing stereotypes and attitudes from considering girls as family property – which results in early arranged marriage as a means to escape poverty. Awareness raising on the rights of the child may be encouraged to include protection of the boy child.

134. The Commission recommends to the Parties to the Revitalized Agreement:

Ensure that during the Pre-Transitional Period and beyond, the parties fully support the necessary full implementation of all transitional justice processes.

135. The Commission recommends to the African Union

Engage and support the Government of South Sudan, on the basis of the Peace and Security Council Communiqué 547, to complete expeditiously the necessary steps for establishing the Hybrid Court and the other transitional justice mechanisms and processes.