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### 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 46/23, the Commission on Human Rights in South Sudan provides an overview of the situation of human rights in South Sudan and updates the Council on critical developments and incidents on which the Commission has collected and preserved evidence.

Ten years after gaining independence, South Sudan should be a country full of hope. Instead, it is in the grip of a humanitarian and economic crisis. Political competition and ongoing localized conflict are responsible for fragmentation and increasing ethnic divisions, in which women and girls are acutely at risk of sexual violence. Young people in South Sudan are seeing their prospects for a better life withering away.

While resilient, the people of South Sudan need their political leaders to demonstrate the political will to end the violence and ensure that the peace process holds. The African Union, the Intergovernmental Authority on Development and the international community as a whole must do more to ensure that the goals of the Revitalized Agreement on the Resolution of the Conflict in South Sudan are met in order to transform the lives of the people of South Sudan.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



## I. Introduction

1. In 2016, by its resolution 31/20, the Human Rights Council established the Commission on Human Rights in South Sudan for a period of one year. In April 2017, by its resolution 34/25, the Council extended the Commission's mandate for one year and requested the Commission to continue to monitor and report on the situation of human rights in South Sudan, to make recommendations to prevent further deterioration of the situation and to report and provide guidance on transitional justice.
2. The Commission was also mandated to determine and report the facts and circumstances of, to collect and preserve evidence of and to clarify responsibility for alleged gross violations and abuses of human rights and related crimes, including sexual and gender-based violence, with a view to ending impunity and providing accountability. Furthermore, the Human Rights Council requested the Commission to make such information available to transitional justice mechanisms, including those set out in chapter V of the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (the Revitalized Agreement), including the Hybrid Court for South Sudan, to be established in cooperation with the African Union.<sup>1</sup>
3. The Human Rights Council subsequently extended the mandate of the Commission, each time for an additional year, in its resolutions 37/31, 40/19, 43/27 and 46/23. The current members of the Commission, appointed by the President of the Council, are Yasmin Sooka (Chair), Andrew Clapham and Barney Afako.
4. The Commission is supported by a secretariat based in Juba. In 2021, it conducted several missions to locations within South Sudan, including Tambura and Yambio (Western Equatoria State), Yei (Central Equatoria State), Kuajok and Warrap (Warrap State), Bentiu (Unity State), Malakal (Upper Nile State) and Wau (Western Bahr el-Ghazal State). It also conducted missions to Ethiopia and Uganda. The Commission met with victims, witnesses, government officials, members of civil society and other key stakeholders.
5. In implementing its mandate during the reporting period, the Commission took more than 180 detailed individual witness statements, conducted focus group discussions with 184 participants and gathered more than 200 documents, including confidential records. The evidence collected is preserved in the Commission's secure and confidential database and archives.
6. During the reporting period, the Commission conducted a second conference on transitional justice, held in Nairobi from 13 to 15 December 2021 (see paras. 87–88 below).
7. The Commission extends its gratitude to the Revitalized Transitional Government of National Unity for facilitating its missions and is grateful for the cooperation that it received from Governments in the region. It also appreciates the assistance and contributions of the African Union, the United Nations Mission in South Sudan (UNMISS), United Nations agencies, civil society organizations and experts.

## II. Methodology

8. In the present report, the Commission focuses primarily on establishing the facts and circumstances of incidents occurring from January to December 2021. The thematic human rights issues and the case studies of subnational conflict that are detailed in the present report do not reflect the totality of the human rights situation in South Sudan. Rather, they were selected for their significance and to illustrate certain human rights issues in the country. More detailed findings are available in two accompanying conference room papers.<sup>2</sup>

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<sup>1</sup> In pursuance of its mandate, the Commission collects and preserves evidence that it stores and that it catalogues by a unique evidence registration number (ERN). Reference is made to these numbers throughout the report so that States and the African Union may use them when requesting to consult the evidence.

<sup>2</sup> To be made available in March 2022 from <https://www.ohchr.org/en/hrbodies/hrc/cohsouthsudan/pages/index.aspx>.

9. The Commission conducted its work while taking into account the domestic law of South Sudan, international humanitarian law, international human rights law and relevant criminal law. Factual determinations on specific incidents and patterns of conduct provide the basis for the legal qualification of human rights violations, crimes under the law of South Sudan and crimes under international law.

10. The Commission's mandate emphasizes accountability, ensuring a focus on establishing responsibility for violations and identifying individuals and entities bearing responsibility for violations and crimes. The Commission has adopted a "reasonable grounds to believe" evidentiary standard. Its work is guided by the requirement to collect and preserve evidence to a standard that would support future accountability mechanisms, including criminal accountability.

11. Where the Commission found information linking alleged perpetrators to specific violations that would be sufficient to warrant future criminal investigations or prosecutions, such evidence was collected and preserved on a strictly confidential basis. Where insufficient information was available to identify the individuals responsible for violations and the acts or omissions led to the responsibility of organs or offices of the Government of South Sudan, the State was identified as responsible. Where the acts point to the responsibility of an armed group or security force, that group or institution was also identified.

12. The Commission employed international best practices for fact-finding, thereby ensuring the safety, security, confidentiality and well-being of witnesses. Only information for which sources had granted their informed consent and the disclosure of which would not lead to the identification of sources or result in harm was used. The Commission thanks those victims and witnesses who shared their experiences. The Commission was at all times guided by the principles of confidentiality and "do no harm".

### III. Political and security developments

13. The Revitalized Agreement raised the hopes of the people of South Sudan for a long-delayed peace and the recovery and reconstruction of their country. However, further delays in establishing the Government and fierce political contestation between the signatories to the Agreement reflect the continuing failure of leaders to reach a position of political accommodation and manage diversity and are fuelling insurgencies and localized conflicts. Led by the President, Salva Kiir Mayardit, the Sudan People's Liberation Movement in Government (SPLM-IG) remains the dominant political force in South Sudan, through its effective control of the defence and security agencies and of resources, including oil revenues. Meanwhile, the National Salvation Front (NAS) and other armed groups outside of the Agreement have continued their insurgency.<sup>3</sup>

14. The deeply disillusioned people of South Sudan lament the delays and failings of the key parties and the fragmentation of various armed forces, which remain under different, ethnically aligned, command structures.<sup>4</sup> In December 2021, the interim Chair of the reconstituted Joint Monitoring and Evaluation Commission, Charles Tai Gituai, warned of the growing frustrations of citizens, while the Special Representative of the Secretary-General for South Sudan criticized the reduced momentum on implementing critical aspects of the Agreement.<sup>5</sup>

15. Delays in completing the security sector arrangements appear to be a deliberate strategy on the part of SPLM-IG to retain its dominance by frustrating military integration and the unification of command structures.<sup>6</sup> SPLM-IG and the Sudan People's Liberation

<sup>3</sup> "NAS" is the name derived from Arabic by which the group is commonly known, not an acronym.

<sup>4</sup> ERNs FGD-04, FGD-05, FGD-07, 104884–104886, 104892–104897, 104887–104891, 104937–104940 and 104949–104951.

<sup>5</sup> See <https://unmiss.unmissions.org/statement-special-representative-secretary-general-mr-nicholas-haysom-united-nations-security>.

<sup>6</sup> Confidential meeting held in November 2021 on the report on the status of implementation of the Revitalized Agreement, July–September 2021, paras. 28–29 (see <https://www.jmecsouthsudan.com/index.php/reports/rjmec-quarterly-reports>).

Movement/Army in Opposition (SPLM/A-IO), led by the First Vice-President, Riek Machar, have failed to reach an understanding on the ratios of senior officer appointments for SPLM-IG and SPLM/A-IO, respectively. Meanwhile, the cantonment exercise has also floundered: those who have reported to designated sites – mostly SPLM/A-IO forces – lack food, clean water, sanitation and other basic amenities.<sup>7</sup> Several sites have been abandoned owing to flooding.<sup>8</sup> Poor service conditions, including meagre and delayed salaries, have led numerous soldiers of the South Sudan People's Defence Forces to desert and to then prey on communities.<sup>9</sup>

16. After a two-year delay, the Transitional National Legislative Assembly was established and held its inaugural sitting in August 2021. In December, it passed a bill incorporating the Revitalized Agreement into the Transitional Constitution. The backlog of key bills, including on constitution-making and restructuring the security sector, now require urgent attention. The first forum of state Governors was held in November 2021. State assemblies were eventually also appointed, except for in Western Bahr el-Ghazal.

17. Ongoing political contestation and defections, said to be instigated by SPLM-IG elements, are having an adverse impact on SPLM/A-IO. In Upper Nile, between August and December 2021, deadly fighting erupted between SPLM/A-IO forces and the Kitgwang faction led by General Simon Gatwech Dual, which reportedly left hundreds of people dead and thousands displaced in Magenis and Thor Gwang. The Kitgwang faction claimed control in areas of northern Upper Nile, indicating that Machar's forces had left the area. On 16 January 2022, SPLM-IG signed two agreements in Khartoum: one with the Kitgwang faction and another with General Johnson Olony's Agwelek group. Both groups had broken away from SPLM/A-IO around August. Amnesty clauses in the agreements are yet another blow in the fight against impunity.<sup>10</sup>

18. The national political competition in Upper Nile and the failure to address the concerns of the minority Shilluk community are key drivers of the violence and instability. Members of the Shilluk community feel betrayed by the current political leadership, suggesting that violence will continue if their historical grievances, which include the fact that they have been dispossessed of their ancestral land in Upper Nile by other ethnic groups, particularly the Dinka, remain unaddressed. Community members told the Commission that they believed that the splits in SPLM/A-IO had been deliberately instigated by SPLM-IG as part of an intensified national political struggle ahead of the national elections envisioned for 2023.<sup>11</sup>

19. Western Equatoria remained a place where national and local power dynamics and rivalries, including between SPLM/A-IO and SPLM-IG, triggered serious human rights violations. In Tambura, people told the Commission that members of the political elite were politicizing ethnicity and fomenting conflict between members of the Azande and Balanda communities.

20. Amid ongoing clashes between the South Sudan People's Defence Forces and NAS in Western, Central and Eastern Equatoria, President Kiir promised to return to the peace talks held in Rome with hold-out armed groups. Despite the declaration of principles signed in March 2021, no additional agreements have been made. The fact that the Intergovernmental Authority on Development (IGAD) and the African Union have been preoccupied with other crises in the Horn of Africa, including in Ethiopia and the Sudan, has meant that less attention has been paid to implementing the Revitalized Agreement. At the end of November 2021, however, the President of Uganda convened an international meeting in Kampala to energize implementation of the Agreement and another meeting was planned to be held late in February 2022.

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<sup>7</sup> See <https://ctsamvm.org/wp-content/uploads/2021/12/SIGNED-CTC-OUTCOMES-25-NOV-2021-1.pdf>, p. 9.

<sup>8</sup> Confidential meetings, September and November 2021.

<sup>9</sup> Confidential meetings, November 2021 and January 2022.

<sup>10</sup> ERNs D126664–D126666.

<sup>11</sup> Confidential meetings, October and November 2021.

21. Riven by power struggles and dominated by SPLM-IG, the Government has failed to honour key goals, benchmarks and reforms envisaged in the Revitalized Agreement, including genuine power-sharing and transparency and probity in the management of the oil economy. Donors and creditors remain concerned about failures to address corruption and economic mismanagement.

#### **IV. A shrinking civic space and the ongoing repression of civil society**

22. State repression in South Sudan, including through harassment, surveillance, unlawful arrest, arbitrary detention, torture and extrajudicial killing of civil society members by overzealous security forces, foster an atmosphere of fear and oppression, severely impeding participation in legitimate civic activities.

23. A crackdown by State security agents, including large deployments of police in Juba and elsewhere in late August, forced the cancellation of a public assembly planned by the People's Coalition for Civil Action for 30 August 2021.

24. Exacerbating an already fraught situation, widespread Internet outages on 29 and 30 August first affected the MTN mobile network and later the country's other main network, Zain.<sup>12</sup> That sequence suggests that the cuts were deliberate and not a technical fault as suggested by the Minister of Information, Telecommunications and Postal Services.<sup>13</sup> The Government has offered no credible explanation for the outages in response to a request from the Commission.<sup>14</sup>

25. Numerous individuals associated with the People's Coalition for Civil Action were detained by the National Security Service, in different parts of the country. Several of their homes and offices were raided.<sup>15</sup> Four months later, one person, despite being ill, remained in detention in Juba without charges being brought against him.<sup>16</sup>

26. Several individuals associated with the planned assembly fled the country following death threats. Jame David Kolok and Michael Wani, civil society activists involved in the discussions on transitional justice, have told the Commission that, even outside South Sudan, the State continues to try to locate them. The Commission has raised their situation with the national authorities and the Human Rights Council.

27. Moreover, Mr. Kolok and Mr. Wani are among five individuals and four non-governmental organizations affected by a directive of the Bank of South Sudan issued on 6 October 2021 to all South Sudanese banks ordering the freezing of accounts<sup>17</sup> based on their affiliation with the People's Coalition for Civil Action.<sup>18</sup> The purpose is undoubtedly to cripple and incapacitate the organizations, forcing their closure, and to harm the individuals.

28. All these repressive measures, including the banking directive, appear to be arbitrary, be without any legal basis and lack a process for judicial or other review. The brutal State crackdown on the People's Coalition for Civil Action implicates National Security Service, police, military and telecommunications officials, as well as the central bank, and suggests coordination and direction at the highest levels. The violations, emblematic of broader patterns documented by the Commission, severely undermine prospects for credible elections

<sup>12</sup> ERNs 104670–104672. "Internet disrupted in South Sudan ahead of planned anti-government protests", Netblocks, 30 August 2021; "Internet disrupted, streets quiet in South Sudan after call for protests", Reuters, 30 August 2021.

<sup>13</sup> "Protests in South Sudan fizzle amid security presence, Internet outage", Voice of America, 30 August 2021.

<sup>14</sup> Letter to the Government, 19 October 2021.

<sup>15</sup> Confidential meeting, October 2021.

<sup>16</sup> Letter to the Government, 19 October 2021. See also "Kuel Aguer family calls for his release on humanitarian grounds", Eye Radio, 12 November 2021.

<sup>17</sup> Previously bank account freezes have not directly targeted civil society, although persons under criminal investigation have been affected.

<sup>18</sup> The directive is on file with the Commission.

and for public participation in the transitional justice and constitution-making processes envisaged in the Revitalized Agreement.

## V. Arbitrary detention and enforced disappearance

29. The Commission has documented numerous cases of arbitrary detention and enforced disappearance in South Sudan. A man detained in the country's north was forced to sign a confession for criticizing the Government on Facebook and was then transferred to the National Security Service's "blue house" in Juba for further interrogation.<sup>19</sup> Similarly, a high-profile artist was detained in Wau and then transferred to Juba in connection with his songs about limited government services and the low salaries of civil servants.<sup>20</sup> Another young man described his education and livelihood opportunities having been ruined after he had to go into hiding following threats to his life by National Security Service officials upset with his social media posts.<sup>21</sup>

30. The Commission has documented numerous instances of South Sudanese citizens unlawfully detained, beaten, tortured and locked up for prolonged periods in small and crowded cells with no sanitation facilities.<sup>22</sup> The Commission reviewed a case involving a community leader who was pressured – by being repeatedly detained and held incommunicado – into stepping down as Chair of a civil society group and being replaced by a serving National Security Service official.<sup>23</sup>

31. Enforced disappearances have in many instances been the outcome of arbitrary detention. For example: four Juba-based government officials were detained by the National Security Service, which suspected them of sharing information about State corruption with civic or media organizations. The Commission has reasonable grounds to believe that at least one of the four detainees was killed after being detained at the "blue house" and that high-level officials of the National Security Service are aware of the case.<sup>24</sup>

32. Arbitrary detentions, enforced disappearances, unlawful killings and threats to life have become commonplace in South Sudan. These acts are violations of the rights to life and liberty, which are protected under national law and applicable international human rights law and which typically also involve other human rights violations. The targeting of civil society actors for their membership of, or association with, civic organizations constricts the civic space and discourages public participation. This, in turn, prevents the emergence of a culture of accountability, transparency and respect for human rights.

## VI. Extrajudicial killings

33. Extrajudicial killings began in Warrap soon after General Aleu Ayieny Aleu assumed duties as Governor. Upon his arrival there on 26 February 2021, Governor Aleu addressed a rally and warned of severe penalties for cattle-rustling and intercommunal violence, purportedly as part of a mandate from the President to address criminality.<sup>25</sup> Soon thereafter, on a "peace tour" during which he met with chiefs and communities throughout the State, Governor Aleu invited residents to report serious crimes for prompt retribution.<sup>26</sup> The Commission learned that the extrajudicial killings that occurred during his tour were carried out by the Governor's bodyguards, some of whom were members of the National Security

<sup>19</sup> ERNs 104457–104460 and 104419–104425.

<sup>20</sup> "Popular S. Sudan musician Larson Angok has been released on bail", *Northern Corridor Morning Post*, 23 April 2021.

<sup>21</sup> ERNs 104526–104529.

<sup>22</sup> ERNs 104707–104711, 104461–104465, 104466–104470, 104522–104525 and 104479–104483.

<sup>23</sup> ERNs 104534–104542.

<sup>24</sup> ERNs 104534–104542 and 104674–104678.

<sup>25</sup> See the Facebook post of the Office of the President, 26 February 2021. See also "Warrap Governor vows to restore law and order in the State", *Radio Tamazuj*, 2 March 2021; "Aleu under strict instructions to end Warrap violence", *Eye Radio*, 23 February 2021.

<sup>26</sup> ERNs 104567–104570 and 104727–104732. Confidential meeting, May 2021.

Service, the South Sudan National Police Service and the South Sudan People's Defence Forces.<sup>27</sup>

34. Cases documented by the Commission include the killing of a man on the outskirts of Romich on 28 March 2021. When visiting the area, Governor Aleu learned that a man had been detained in connection with a murder committed during a dowry dispute.<sup>28</sup> He ordered the suspect's transfer from police detention into the custody of his bodyguards who, accompanied by the Governor, executed the man later that day.<sup>29</sup> Similarly, while visiting Pagol Payam on 11 April 2021, the Governor learned of a group of males detained in connection with a recent road ambush in the area. Governor Aleu ordered them to be transferred into the custody of his bodyguards, whom he accompanied later that day to a site where the five males were executed.<sup>30</sup> Among them was a 14-year-old boy.<sup>31</sup>

35. In Lakes, extrajudicial killings began after General Rin Tueny Mabor, formerly Head of Military Intelligence of the South Sudan People's Defence Forces, became Governor on 8 June 2021.<sup>32</sup> Just seven weeks later, UNMISS published reports of 13 extrajudicial killings in the State.<sup>33</sup> This included the killing, in mid-July, of four men near the State capital Rumbek, including a man killed as punishment for a murder for which he had already served prison time and paid reparations.<sup>34</sup>

36. Numerous extrajudicial killings were recorded throughout 2021 in Lakes and Warrap, as recently as November, indicating that the unlawful practice continues.<sup>35</sup>

37. Extrajudicial executions have been justified as responses to intercommunal violence and cattle-rustling, with Governor Aleu describing the killings as necessary for delivering swift justice.<sup>36</sup> President Kiir has expressly commended Governor Rin Tueny Mabor's approach to addressing criminality since his appointment.<sup>37</sup>

38. Governor Aleu and Governor Mabor, who appear publicly in military uniform and refer to themselves as soldiers rather than as government officials, are responsible for extrajudicial killings and for entrenching a culture of lawlessness and impunity by undermining due process for those accused of crimes in South Sudan.

## VII. Sexual and gender-based violence

39. The conflict in South Sudan has been characterized by sexual and gender-based violence. Parties to the ongoing conflict continue to use sexual violence as a weapon of terror and political repression and as a tactic to advance their strategic objectives, including to displace the civilian population in order to control contested territory.

40. The Commission has continued to document incidents of sexual and gender-based violence, including the rape of women and girls by armed men.<sup>38</sup> The Commission has also documented incidents of sexual violence by armed forces in Western Equatoria perpetrated along ethnic lines, including by members of forces that have enjoyed impunity for widespread

<sup>27</sup> ERNs 104629–104643, 104613–104616, 104683–104687, 104466–104470, 104688–104701, 104607–104612 and 104625–104628.

<sup>28</sup> ERNs 104683–104687, 104688–104701 and 104625–104628.

<sup>29</sup> ERNs 104629–104643, 104683–104687, 104688–104701 and 104625–104628.

<sup>30</sup> ERNs 104629–104643, 104870–104873 and 104607–104612. See also "South Sudan: summary executions in north", Human Rights Watch, 29 July 2021.

<sup>31</sup> ERNs 104629–104643, 104870–104873, 104688–104701, 104625–104628, 104727–104732 and 104747–104750.

<sup>32</sup> "Governor Tueny vows to protect lives and property in Lakes State", Radio Tamazuj, 15 July 2021.

<sup>33</sup> "UNMISS deeply concerned at spate of extra-judicial executions", 26 July 2021.

<sup>34</sup> ERNs 104712–104726.

<sup>35</sup> ERNs 104629–104643, 104567–104570, 104588–104591, 104601–104606 and 104674–104678.

<sup>36</sup> ERNs 104567–104570 and 104601–104606.

<sup>37</sup> "President Kiir commends Governor Tueny for stabilizing security situation", Nyamilepedia, 30 November 2021. Confidential meeting, December 2021.

<sup>38</sup> For additional detailed information, see the Commission's conference room paper, to be made available in March 2022.

conflict-related sexual violence, including sexual slavery, perpetrated in 2018 and 2019.<sup>39</sup> In Central Equatoria, the Commission has documented the persistence of sexual violence during military operations, particularly where civilians live close to military units and armed groups (see paras. 59–80 below).<sup>40</sup> Much of the violence in the Equatorias and Upper Nile is attributed to fracturing alliances, while intercommunal clashes have intensified in Jonglei and the Greater Pibor Administrative Area, and in Warrap and Lakes, leading to increased abductions for forced marriage and sexual slavery.

41. Rape and sexual violence are part of the multiplicity of the violations experienced by South Sudanese girls and women. Others include killings, torture and brutal beatings. Their property, including livestock, is stolen, looted or burned. The intersectionality of these experiences, including marginalization, and trauma from witnessing brutal violations, has left many survivors and victims with physical injuries and psychological scars.

42. Rape and sexual violence also have an impact on families and communities, as both men and women have been forced to witness wives, sisters and mothers raped and gang raped, have seen their young children or babies murdered as a form of punishment or have been forced to rape and violate loved ones.

43. Civilians who fled Tambura have violent scenes and images imprinted on their minds; they have spoken of hiding in the forest from attackers and of seeing multiple corpses, some mutilated and clearly subjected to sexual violence.<sup>41</sup> Attention must be paid to providing psychosocial support and counselling to those affected. Numerous survivors have described to the Commission the long-term consequences of rape and genital harm on their sexual and reproductive functions.

44. In Yei County in late 2020, a military court, in a rare development, convicted soldiers of the South Sudan People's Defence Forces of crimes, including rape and sexual violence, against civilian women. However, victims have reportedly still not received the compensation ordered by the court.<sup>42</sup> While the military courts alone are not appropriate or sufficient to achieve justice for victims, civil society groups and officials welcomed the process as an important step taken by the Government to deal with impunity for crimes of sexual violence, with potential scope for replication in other States.<sup>43</sup> Nevertheless, victims of rape and sexual violence in South Sudan continue to face reprisals for reporting sexual and gender-based crimes.

45. In January 2021, the Joint Defence Board of South Sudan adopted an action plan for the armed forces on addressing conflict-related sexual violence, which consolidates and reinforces the commitments made by the parties to the Revitalized Agreement and lists indicators against which progress can be measured.

46. Like the action plan, the country's gender-based violence and juvenile court, launched by the Ministry of Justice at the end of 2020, as well as the mobile and other courts outside the capital that hear sexual violence cases, should be monitored to assess whether these initiatives deliver justice and whether political will for accountability exists.

47. South Sudanese society remains deeply patriarchal. In August 2021, the Minister of Humanitarian Affairs and Disaster Management, Peter Mayen Majondit, beat and stabbed his wife, Aluel Garang, a prominent women's soccer player.<sup>44</sup> Months earlier, he publicly disrupted a football match by storming onto the pitch and dragging his wife away, with gunshots fired among his entourage.<sup>45</sup> The Minister has not been held accountable either criminally or politically for acts of gender-based violence against his wife. Furthermore,

<sup>39</sup> A/HRC/43/56, para. 62.

<sup>40</sup> *Ibid.*, para. 69.

<sup>41</sup> ERNs 104847–104854, 104859–104864, 104865–104869 and 104842–104846. Confidential meeting, November 2021.

<sup>42</sup> Confidential meeting, November 2021. ERNs 104837–104841.

<sup>43</sup> Confidential meeting, November 2021.

<sup>44</sup> "Women activists demand dismissal of Minister Peter Mayen", Radio Tamazuj, 10 August 2021.

<sup>45</sup> See also "Women are on their own in unequal South Sudan", New Frame, 14 December 2021.

neither President Kiir nor members of the Cabinet, including the Minister of Gender, Child and Social Welfare, have spoken out.

## VIII. Humanitarian situation

48. The humanitarian situation in South Sudan has become a human rights crisis of epic proportions: more than 8.3 million people, amounting to 70 per cent of the population, required humanitarian assistance in 2021, with more than half of them children, of whom 1.4 million were malnourished.<sup>46</sup> More than 7 million people (over 60 per cent of the population) experienced acute food insecurity<sup>47</sup> and hunger-related deaths linked to the suspension by the World Food Programme of lifesaving assistance owing to global funding shortfalls were reported in several camps for internally displaced persons.<sup>48</sup> This also affected South Sudanese refugees in Ethiopia and Uganda, whose situation became increasingly desperate.<sup>49</sup>

49. Subnational conflict and insecurity persisted in 9 of the country's 10 states, causing internal displacement and further exacerbating the humanitarian crisis. Forced displacements are changing ethnic demographics and affecting land and housing rights. Internally displaced persons and refugees have not only experienced personal and economic insecurity, trauma and the consequences of impunity for perpetrators of violence; for many of them, it is often impossible to return to their places of origin.<sup>50</sup>

50. Insecurity and armed clashes affected the operations of humanitarian workers, who faced threats of violence, roadside ambushes, the looting of warehouses and bureaucratic impediments to their work. At least four humanitarian aid workers were killed in 2021.<sup>51</sup>

51. More than 835,000 people were affected by a third consecutive year of heavy rainfall and flooding, displacing thousands.<sup>52</sup> These unseasonal weather patterns are linked to the global climate emergency, which is felt particularly acutely in South Sudan, where people, particularly children, are already vulnerable.<sup>53</sup>

52. The coronavirus disease (COVID-19) pandemic has aggravated existing vulnerabilities and weakened an already fragile health system's ability to treat people. South Sudan has extremely limited access to COVID-19 vaccines. Global inequity in access to vaccines could result in new variants emerging and prolonging the pandemic.<sup>54</sup> In South Sudan, case numbers were increasing in December 2021.<sup>55</sup>

<sup>46</sup> Nutrition Cluster estimates. See also the Office for the Coordination of Humanitarian Affairs humanitarian snapshot, September 2021.

<sup>47</sup> See

<https://reliefweb.int/sites/reliefweb.int/files/resources/WFP%20Situation%20Report%20%23296%20-%2029%20October%202021.pdf>.

<sup>48</sup> "Cash shortage triggers food suspensions for 100,000 displaced", 13 September 2021.

<sup>49</sup> ERNs FGD-01, FGD-02, FGD-07, 104874–104877, 104878–104880, D126625–D126625, D126486–D126567 and D126603–D126620.

<sup>50</sup> ERNs D126486–D126567 and FGD-01.

<sup>51</sup> The Office for the Coordination of Humanitarian Affairs documented 489 incidents from January to September 2021. See the humanitarian snapshots available from [https://reliefweb.int/updates?search=%28primary\\_country.iso3%3A%22ssd%22%29+AND+%28source.shortname%3A%22OCHA%22%29+AND+%28title%3A%22access+snapshot%22%29](https://reliefweb.int/updates?search=%28primary_country.iso3%3A%22ssd%22%29+AND+%28source.shortname%3A%22OCHA%22%29+AND+%28title%3A%22access+snapshot%22%29). See also "Humanitarian Coordinator a.i. in South Sudan condemns the murder of a humanitarian worker during an armed attack on a UN convoy", 20 December 2021.

<sup>52</sup> See

[https://reliefweb.int/sites/reliefweb.int/files/resources/south\\_sudan\\_flooding\\_sitrep\\_december\\_2021\\_14dec2021.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/south_sudan_flooding_sitrep_december_2021_14dec2021.pdf).

<sup>53</sup> UNICEF, *The Climate Crisis is a Child Rights Crisis: Introducing the Children's Climate Risk Index*, August 2021.

<sup>54</sup> "WHO chief warns COVID booster programs may prolong pandemic", Voice of America, 22 December 2021.

<sup>55</sup> "Emerging impacts of COVID-19 on the human rights situation and peace process in South Sudan", 23 June 2021; for detailed findings, see [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_CRP\\_2.pdf](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_CRP_2.pdf).

53. In total, some 3 million South Sudanese people are either internally displaced (1.7 million) or living as refugees (1.3 million) in the region.<sup>56</sup> Furthermore, some 300,000 refugees from neighbouring States, most of whom are women and children, are living in South Sudan.<sup>57</sup> The Office of the United Nations High Commissioner for Refugees (UNHCR) has characterized the situation as the largest refugee crisis in Africa.<sup>58</sup>

54. The Government has failed to invest in services and support for populations in need, choosing not to realign State spending and resources towards essential services and infrastructure. Instead, the Government has disputed and undermined the expert reports of a technical working group that used the Integrated Food Security Phase Classification to warn of famine-like conditions in parts of the country.<sup>59</sup>

## IX. Economic crimes

55. Since independence, South Sudan has lost billions of United States dollars in illicit financial flows, with no evidence of the Government having taken steps to recover the monies stolen. South Sudan is endowed with some of the largest petroleum reservoirs in sub-Saharan Africa. These reservoirs generate approximately 90 per cent of the country's overall fiscal revenue. The Commission found that a significant proportion of that total had been, and continues to be, illegally diverted by government officials with the aid of members of the political elite and international accomplices.<sup>60</sup> The Commission also documented how non-oil revenues have been syphoned off. This grand-scale theft has a detrimental impact on the Government's ability to realize the socioeconomic rights of its citizens.

56. Chapter IV of the Revitalized Agreement provides an important framework for better managing the economy and equitably distributing resources and finances, including oil revenues. Yet, despite the commitments made in the Agreement, the political leaders of South Sudan have failed to address the problem of economic crimes, depriving the Government and the country of the revenue necessary to fulfil its human rights obligations, including in the areas of education and health.

57. The national authorities have not invested in the infrastructure or the services, such as health care and education, necessary to improve the quality of life. Many South Sudanese citizens lead lives that are unbearable. They must endure poverty, hunger and inequality, in addition to the impacts of the COVID-19 pandemic, while the Government prioritizes the financing of military and security apparatuses and overlooks the rampant theft of the country's wealth and resources, thereby reneging on its obligation to ensure the realization of the economic, social and cultural rights of its people.

58. Increased transparency, strengthened oversight and improved management of both oil and non-oil revenues are of critical importance to improving the situation. Political commitment is required to build a more inclusive and prosperous society. Members of the elite must regard the nation's resources as a common good held in trust for all citizens, not as a pot to be plundered and fought over.

<sup>56</sup> Office for the Coordination of Humanitarian Affairs humanitarian snapshot, October 2021.

<sup>57</sup> ERNs D122147–D122228 and D126625–D126625. See also <https://reliefweb.int/report/south-sudan/south-sudan-monthly-population-statistics-september-2021>.

<sup>58</sup> "Update of UNHCR's Operations in the East and Horn of Africa, and the Great Lakes Region", 2 March 2021.

<sup>59</sup> [S/2021/365](#), paras. 60–66.

<sup>60</sup> For detailed findings, see <https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoHRSouthSudan/A-HRC-48-CRP.3.pdf>.

## X. Subnational conflict

### A. Central Equatoria

59. Central Equatoria continues to be highly militarized. The South Sudan People's Defence Forces and NAS are the main protagonists, although a range of other parties are also involved in armed conflict and violence.<sup>61</sup> The quest for territorial control and access to gold mines, as well as illicit taxation, smuggling and retaliation against persons suspected of supporting opposing parties, are driving conflict.<sup>62</sup> The violence used in cattle-rustling, land grabbing and intercommunal conflict is exacerbated by the proliferation of arms, which in turn aggravates the insecurity.<sup>63</sup>

60. Soldiers of the South Sudan People's Defence Forces have reportedly committed human rights violations in the course of counter-insurgency operations against NAS. The Commission documented incidents of sexual violence against women and girls, whose description of perpetrators matched that of soldiers of the Forces.<sup>64</sup> Raids on villages often involved house-to-house searches,<sup>65</sup> with the burning down of homes being commonplace.<sup>66</sup> Widespread looting of food, farm produce, livestock and property was reported in Yei, Laniya and Juba Counties.<sup>67</sup> Some civilians were subjected to forced labour, including to porter stolen goods;<sup>68</sup> a widow told the Commission that her husband died while he was being forced to collect food.<sup>69</sup> Civilian detainees constitute a source of income for soldiers at the Mosark barracks of the South Sudan People's Defence Forces in Yei County, who extort ransoms from families for their release.<sup>70</sup> Young male detainees have been subjected to torture and enforced disappearance.<sup>71</sup> Violence-related displacements also severely affected peoples' access to basic needs and services.<sup>72</sup>

61. Soldiers of the South Sudan People's Defence Forces in Central Equatoria face extreme difficulties linked to the fact that they have been deliberately neglected by the Government and to the delayed payment or non-payment of their very low salaries. The Government's neglect of its soldiers and its deliberate tolerance of violations perpetrated against civilians has encouraged a military culture of predation involving unrestrained perpetration of serious crimes.<sup>73</sup> Senior military officials and certain government officials have the authority to enforce discipline and allocate resources, but do not do so; they therefore bear responsibility for the persistence of these related crimes under national and international law.

62. NAS has also become notorious for attacks on public commercial vehicles, particularly on the road connecting Juba to Morobo through Laniya County. On 17 September 2021, a convoy carrying World Food Programme aid was ambushed and a driver was killed in a manner bearing all the hallmarks of a NAS attack.<sup>74</sup> It was one of several road ambushes

<sup>61</sup> While not party to the Revitalized Agreement, NAS has signed the 2017 agreement on the cessation of hostilities and has participated in the Rome peace talks.

<sup>62</sup> See also [A/HRC/43/56](#), para. 27.

<sup>63</sup> Confidential meetings, September 2021 and January 2022. See also "Land grabbing, cattle-related incidents remain major challenge in CES, says Governor Adil", Eye Radio, 24 December 2021.

<sup>64</sup> Confidential meeting, November 2021. ERNs 104833–104836, 104855–104858, 104837–104841 and 104823–104826.

<sup>65</sup> Confidential meeting, January 2022.

<sup>66</sup> ERNs 104898–104900, 104914–104916, 104917–104919, 104945–104948 and 104949–104951.

<sup>67</sup> ERNs 104929–104933, 104934–104936, 104937–104940, 104941–104944, 104898–104900, 104904–104906, 104907–104910, 104911–104913 and 104914–104916.

<sup>68</sup> ERNs 104929–104933 and 104904–104906.

<sup>69</sup> ERNs 104941–104944.

<sup>70</sup> ERNs 104898–104900, 104904–104906 and 104907–104910.

<sup>71</sup> ERNs 104901–104903, 104904–104906 and 104907–104910.

<sup>72</sup> ERNs 104898–104900, 104907–104910, 104911–104913, 104920–104922, 104923–104925, 104937–104940 and 104941–104944.

<sup>73</sup> Confidential meeting, November 2021. ERNs 104837–104841 and 104904–104906.

<sup>74</sup> Confidential meeting, January 2022. See <https://www.humanitarianresponse.info/ru/operations/south-sudan/document/press-release-humanitarian-coordinator-ai-south-sudan-condemns-2>.

affecting the provision of humanitarian assistance.<sup>75</sup> Members of NAS forces were also implicated in abductions and killings.<sup>76</sup>

## B. Tambura County, Western Equatoria

63. In Tambura County, Western Equatoria, an increase in violent conflict saw human rights violations and abuses peaking from May to October 2021. Political tensions and military clashes between the South Sudan People's Defence Forces and SPLM/A-IO had been rising since the State was reconstituted in February 2020. In March, local SPLM/A-IO commander General James Nando and forces loyal to him defected to the Government. In June, SPLM/A-IO Lieutenant General Alfred Futuyo took office as Governor, weeks after a deadly attack on SPLM/A-IO soldiers by government forces.<sup>77</sup>

64. As the political conflict escalated, it took on an ethnic dimension. As well as being the first SPLM/A-IO Governor of Western Equatoria, Governor Futuyo is the first Balanda to hold such a position.<sup>78</sup> On the other side, the serving County Commissioner and the Paramount Chief of Tambura are Avungara, an Azande clan that has traditionally produced leaders, including several senior SPLM-IG members in Juba.<sup>79</sup> General Nando and the Deputy Governor, an SPLM-IG appointee, are also Azande.

65. Between January and April 2021, tensions increased in Tambura as word spread of killings carried out along ethnic lines.<sup>80</sup> In April, hundreds of mostly Balanda residents were displaced in South Yubo,<sup>81</sup> where General Nando's forces were stationed and were recruiting Azande boys and young men.<sup>82</sup> Violent attacks on several villages in May were attributed to either Azande youth or unidentified armed men.<sup>83</sup>

66. The situation deteriorated significantly in mid-June, when deadly attacks were carried out on several villages near Tambura town by an Azande youth militia, raised by the Paramount Chief and the County Commissioner, and by General Nando's forces, which had aborted a planned attack on the SPLM/A-IO base in Namutina.<sup>84</sup> Around that time, the Paramount Chief's house was attacked by a new armed youth group mostly comprised of Balandas and led by Angelo Davide, an Azande who reportedly refused to join the Azande militia.<sup>85</sup> This mixture of groups carried out significant strikes and attacks until late October 2021.<sup>86</sup>

67. Azande, Balanda and mixed-descent residents detailed to the Commission the widespread and horrific violence perpetrated against civilians, which included relatives and neighbours being attacked by men armed with machetes, such as a Balanda man who was

<sup>75</sup> Confidential meeting, January 2022.

<sup>76</sup> ERNs 104907–104910. Confidential meeting, January 2022. See also [https://ctsamvm.org/wp-content/uploads/2021/09/CTSAMVM-REPORT-2021\\_12-1-1.pdf](https://ctsamvm.org/wp-content/uploads/2021/09/CTSAMVM-REPORT-2021_12-1-1.pdf) and <https://reliefweb.int/sites/reliefweb.int/files/resources/RJMEC-3rd-Qtr-2021-Report-FINAL-2.pdf>, para. 16.

<sup>77</sup> "SPLA-IO officer killed in SSPDF attack in Western Equatoria", South Sudan News Now, 19 June 2020.

<sup>78</sup> His father is Balanda and his mother is Azande.

<sup>79</sup> Confidential meeting, October 2021.

<sup>80</sup> ERNs 104652–104655, 104489–104493 and 104543–104547.

<sup>81</sup> Approximately 20 km south-west of Tambura town. See the Office for the Coordination of Humanitarian Affairs humanitarian snapshot, April 2021.

<sup>82</sup> ERNs 104827–104832, 104660–104664, 104579–104584, 104548–104552, 104484–104488 and 104431–104436.

<sup>83</sup> ERNs D126667–D126686, 104451–104456, 104530–104533, 104489–104493, 104543–104547 and 104847–104854.

<sup>84</sup> ERNs D126667–D126686, 104451–104456, 104507–104511, 104517–104521. Namutina is around 30 km north of Tambura town.

<sup>85</sup> Davide is a former member of the "arrow boys" group, as are Futuyo, Nando and Tartizio, the SPLM/A-IO commander in Namutina. ERNs 104665–104669, 104656–104659, 104548–104552, 104489–104493 and 104543–104547. Confidential meetings, November and December 2021.

<sup>86</sup> In July, UNMISS established a temporary operating base in Tambura for peacekeeping troops.

chased down the street and cut to death by Azande youth.<sup>87</sup> Civilians were killed during raids on homes and, in one illustrative case that was documented, militiamen shot dead a Balanda family, including children aged 7 and 10.<sup>88</sup> There were targeted killings against prominent Azande leaders, and, according to credible reports, a Balanda doctor was the victim of a paid assassination carried out by soldiers of the South Sudan People's Defence Forces.<sup>89</sup>

68. Some Azande were also killed for being in relationships with Balanda, or for not joining Azande militias.<sup>90</sup> According to several reports, Azande men were found dead after leaving camps in search of food or livelihoods.<sup>91</sup> Abductions appeared to be common and many families suspected that loved ones who had gone missing had been killed.<sup>92</sup>

69. Sexual violence was reported to be rampant and widespread and to implicate members of all the armed groups. The Commission has documented rapes of Balanda women and girls mainly perpetrated by groups of Azande males armed with guns or machetes.<sup>93</sup> The rapes were carried out along ethnic lines, with male family members forced to watch.<sup>94</sup> Reported abductions of Azande women by Balanda men indicate that additional incidents of sexual violence occurred.<sup>95</sup>

70. Scores of children were deliberately killed during attacks on villages. A Balanda mother said she witnessed soldiers beat her infant son to death.<sup>96</sup> Child recruitment was rampant: boys were given arms and girls were exploited as slaves and made to take on a range of gender-stereotypical tasks.<sup>97</sup> And, for at least two months, General Nando's forces occupied a major school in Tambura town.<sup>98</sup>

71. The Commission documented multiple human rights violations and abuses.<sup>99</sup> While the full extent of the violence remains unknown and is presumed to be underreported by local officials,<sup>100</sup> the size of the displaced population, estimated at 111,890 people, is likely to be indicative of the scope of the violations.<sup>101</sup> Although many camps for displaced persons host both Azande and Balanda,<sup>102</sup> ethnicity-based segregation may happen in the future, entrenching social divisions.

72. Following several high-level State interventions,<sup>103</sup> violence diminished late in October, when the Joint Defence Board convened key parties to the conflict for talks in

<sup>87</sup> ERNs 104530–104533 and 104575–104578.

<sup>88</sup> ERNs 104562–104566.

<sup>89</sup> ERNs 104751–104756 and 104558–104561.

<sup>90</sup> ERNs 104751–104756, 104484–104488 and 104489–104493.

<sup>91</sup> Confidential meeting, November 2021. ERNs 104644–104647 and 104426–104430.

<sup>92</sup> ERNs 104530–104533. Confidential meeting, November 2021.

<sup>93</sup> ERNs 104859–104864 and 104494–104497.

<sup>94</sup> ERNs 104847–104854.

<sup>95</sup> ERNs 104644–104647. Abductions by SPLM/A-IO members have previously been linked to rapes. See OHCHR and UNMISS, "Violations and abuses against civilians in Gbudue and Tambura States (Western Equatoria), April–August 2018", 18 October 2018.

<sup>96</sup> ERNs 104827–104832.

<sup>97</sup> ERNs 104847–104854, 104656–104659, 104660–104664, 104579–104584, 104484–104488, 104548–104552, 104426–104430, 104431–104436 and 104437–104441. Confidential meeting, November 2021.

<sup>98</sup> ERNs 104656–104659, 104507–104511, 104553–104557, 104579–104584, 104548–104552 and 104751–104756. Confidential meeting, October 2021.

<sup>99</sup> ERNs 104665–104669, 104652–104655, 104489–104493. Confidential meetings, October and November 2021. See also "South Sudan: survivors describe killings, mass displacement and terror amid fighting in Western Equatoria", Amnesty International, 9 December 2021.

<sup>100</sup> The figure of 300 deaths mostly fails to account for Balanda fatalities and incidents outside urban areas.

<sup>101</sup> State-wide assessment by humanitarian agencies, November 2021. ERNs D126687–D126696.

<sup>102</sup> Confidential meetings, December 2021.

<sup>103</sup> Including meetings in Juba hosted by President Kiir and First Vice-President Machar. See the Facebook post of the Office of the First Vice-President's Press Unit, 15 July 2021, and the Facebook post of the Ministry of Information, Telecommunications and Postal Services, 27 August 2021.

Tambura town.<sup>104</sup> Whether the resultant withdrawals of the armed forces will improve the situation will depend on progress in implementing envisaged security arrangements in Western Equatoria. The practice of integrating armed men into the State armed forces, without any form of accountability, is unlikely to deter or otherwise address such human rights violations in the long run.<sup>105</sup>

73. The Commission notes with concern the significant number of boys involved, many of whom are too young to join the national armed forces and are unsuitable candidates for community reintegration without support.<sup>106</sup> This remains an enduring human rights and security concern.

74. The violence in Tambura cannot be attributed simply to the appointment of a Balanda as State Governor, although this has undoubtedly provided a rationale for mobilizing along ethnic lines. The conflict in Tambura must be viewed within the broader context of national politics and historical contestation between SPLM/A-IO and government-aligned forces, which has involved many atrocities.<sup>107</sup>

75. The Commission established that several senior members of SPLM-IG played an important role in orchestrating and supporting the violence, including by directing and providing material support to General Nando and the local authorities in Tambura. The Commission has reasonable grounds to believe that the Paramount Chief and the County Commissioner of Tambura mobilized Azande youth militias, who attacked civilians and supported General Nando's forces, including by facilitating their shelter in a school. Several leaders and members of SPLM/A-IO and Balanda-affiliated youth militias were also identified as being complicit in human rights violations and abuses.

76. In line with the mandate given to it by the Human Rights Council,<sup>108</sup> the Commission has drawn up a list of persons of interest that it considers warrant individual investigation for their roles in human rights violations, abuses and related crimes. Some of their acts may amount to serious crimes under national and international law. This list of names, with links to the evidence collected and preserved by the Commission, forms part of the Commission's archives.

### C. Tonj North and Tonj East Counties, Warrap

77. The conflict in Tonj North that had begun in 2020 continued. It mostly consisted of attacks between armed men and boys from Rualbet, Akop, Alabek, Kangor and Kirik Payams on one side and from Awul and Rualatok Payams on the other side.<sup>109</sup> In January 2021, government officials reported that more than 25,000 people had been displaced by the conflict.<sup>110</sup> In mid-February, as many as 27 civilians, including children, were killed in an attack on Rualbet and a counterattack on Awul.<sup>111</sup> Witnesses told the Commission that armed men had entered villages at night, set fire to houses and shot people who fled.<sup>112</sup> An Awul resident said that lootings, killings and rapes at gunpoint were perpetrated during the attacks,

<sup>104</sup> "Tombura calm after Gen. Nando, Davide reconcile", *The City Review*, 29 October 2021. Some local civil and security authorities also signed an agreement to resolve the conflict. The memorandum of understanding of 26 October 2021 is on file.

<sup>105</sup> Confidential meeting, November 2021. ERNs 104847–104854. The Government informed the Commission that senior police officers had investigated the violence.

<sup>106</sup> Confidential meeting, November 2021.

<sup>107</sup> See the conference room paper of the Commission, available from <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ListReports.aspx>, paras. 280–357.

<sup>108</sup> Human Rights Council resolution 46/23, para. 25 (b).

<sup>109</sup> See the conference room paper, available from [https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A\\_HRC\\_46\\_CRP\\_2.pdf](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session46/Documents/A_HRC_46_CRP_2.pdf), paras. 116–131.

<sup>110</sup> "“We survive on wild leaves’ Tonj displaced say as they call for urgent aid”, Radio Tamazuj, 24 January 2021.

<sup>111</sup> ERNs 104022–104029, 104030–104035, 104350–104354 and 104727–104732.

<sup>112</sup> ERNs 104350–104354, 104613–104616, 104617–104620 and 104760–104764.

and that these were illustrative of incidents seen elsewhere in Tonj North during 2021.<sup>113</sup> In July, in Marial-Lou, armed men from the Luanyjang community ransacked a health clinic and looted a United Nations aid warehouse, prompting clashes that displaced thousands and may have killed as many as 25 people.<sup>114</sup> These clashes ignited a series of retaliatory attacks and revenge killings.<sup>115</sup>

78. Tonj East saw similar patterns of violence involving groups of armed men from rival communities. For instance, as many as 27 people were killed around 15 August during clashes involving Luanyjang men against men from Marial-Lou and Thiik communities, and 13 people were killed in attacks by Luanyjang men in mid-October.<sup>116</sup> Additionally, some neighbouring communities imposed a blockade on Luanyjang areas, which discouraged humanitarian agencies from transporting supplies for fear of ambushes. Most aid deliveries were suspended in 2021, just as humanitarian needs increased alongside displacement, exacerbating the pre-existing crises of hunger and malnutrition in parts of Tonj East.<sup>117</sup>

79. The Commission has reasonable grounds to believe that National Security Service Director General Akol Koor Kuc, who is from Awul, fuelled the violence and insecurity in Tonj North and Tonj East Counties by facilitating the transfer of military grade weapons and ammunition to the area.<sup>118</sup> The National Security Service Chief, promoted by President Kiir in April 2021, has a known track record of arming members of cattle-keeping militias in the Tonj Counties.<sup>119</sup> The Commission is further concerned that Warrap Governor Aleu, referring to a mandate from President Kiir, recruited members of cattle-keeping militias to swell the ranks of the security forces and provided them with arms that are likely to end up in communities in conflict.<sup>120</sup>

80. The ongoing flow of arms into Warrap fuels the ferocity, scale and continuance of cyclic violence and associated human rights violations and abuses, while severely compromising any prospects of peacebuilding. The actions of government officials implicated in providing arms is completely antithetical to the stated objectives of disarmament efforts and to the State's human rights obligations.

## XI. Transitional justice

81. Chapter V of the Revitalized Agreement provides a comprehensive, holistic framework for transitional justice. It includes references to the Commission for Truth, Reconciliation and Healing, the Hybrid Court for South Sudan and the Compensation and Reparation Authority and associated fund as mechanisms to address accountability and the legacies of historical injustices and widespread human rights violations and abuses committed in the context of the conflict in South Sudan.

<sup>113</sup> ERNs 104760–104764.

<sup>114</sup> ERNs 104512–104516, 104674–104678. See also <https://reliefweb.int/sites/reliefweb.int/files/resources/WFP%20Situation%20Report%20%23291%20-%2016%20July%202021.pdf>.

<sup>115</sup> ERNs 104461–104465, 104526–104529, 104512–104516, 104674–104678.

<sup>116</sup> ERNs 104522–104525, 104526–104529 and 104674–104678. See also “Warrap State officials say 27 killed, 29 wounded in communal clashes”, Radio Tamazuj, 17 August 2021.

<sup>117</sup> See [https://www.afro.who.int/sites/default/files/2021-10/South%20Sudan%20Humanitarian%20Situation%20Report\\_%2316%20-16%20-%2030%20September%202021.pdf](https://www.afro.who.int/sites/default/files/2021-10/South%20Sudan%20Humanitarian%20Situation%20Report_%2316%20-16%20-%2030%20September%202021.pdf); <https://reliefweb.int/sites/reliefweb.int/files/resources/WFP%20Situation%20Report%20%23294%20-%2031%20August%202021.pdf>; and [https://reliefweb.int/sites/reliefweb.int/files/resources/REACH\\_SSD\\_Brief\\_Rapid-Assessments-Tonj-North\\_September-2021.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/REACH_SSD_Brief_Rapid-Assessments-Tonj-North_September-2021.pdf).

<sup>118</sup> ERNs 104030–104035, 104350–104354, 104674–104678, 104617–104620, 104688–104701, 104607–104612, 104727–104732, 104522–104525 and 104479–104483. New weapons appear to include AK47s. Guns procured from locally based soldiers of the South Sudan People's Defence Forces were also in circulation.

<sup>119</sup> ERNs 104727–104732, 104526–104529 and 104512–104516. See also [S/2020/1141](https://www.unhcr.org/refugees/2020/11/141), annex IV.

<sup>120</sup> See <https://www.youtube.com/watch?v=0gOCWFzSr5g>.

## A. Status of transitional justice processes

82. In January 2021, the Council of Ministers finally took steps, including the adoption of a resolution, to implement chapter V of the Revitalized Agreement. The Minister for Justice and Constitutional Affairs established a technical task force for transitional justice in his Ministry and reconstituted the technical committee charged with conducting national consultations on the Commission for Truth, Reconciliation and Healing.<sup>121</sup> On 31 December 2021, in his new year remarks, President Kiir announced that the Government would embark on the process of establishing the Commission for Truth, Reconciliation and Healing in January 2022, but failed to mention any steps for the Hybrid Court for South Sudan or the Compensation and Reparation Authority and associated fund.

83. While the Commission commends the Government for beginning the process of establishing the Commission for Truth, Reconciliation and Healing, it reiterates that chapter V of the Revitalized Agreement envisages the establishment of that Commission, the Hybrid Court for South Sudan and the Compensation and Reparation Authority and associated fund as complementary and mutually reinforcing mechanisms, a view affirmed by the citizens of South Sudan and other stakeholders, including the African Union.

84. Without progress on other measures, the decision by the Government to establish the Commission for Truth, Reconciliation and Healing is selective and contrary to the spirit and vision of chapter V, the implementation of which requires political will, national ownership and the full participation of all stakeholders. A conducive environment, financial resources, technical support and expertise are other requisites.

85. To encourage and enable citizen participation, public outreach to raise awareness of the transitional justice mechanisms set out in chapter V is critical. Most of the people of South Sudan with whom the Commission engaged were unaware of the transitional justice mechanisms to be established. Only a handful of people, mostly literate urban elites who have access to the media or have participated in related trainings, seem to know about them.<sup>122</sup> The technical committee for national consultations on the Commission for Truth, Reconciliation and Healing planned to commence its activities in January 2022 but was hamstrung as the Government had pledged only 20 per cent towards its budget of \$970,000.<sup>123</sup> Without adequate funding, it will be extremely difficult to carry out the consultations or to implement the holistic transitional justice programme that is required.

86. National consultations on transitional justice and participation in the constitution-making process require a conducive environment. The Commission is deeply concerned that the shrinking civic space and insecurity caused by the National Security Service will prevent the meaningful inclusion and participation of victims and citizens. Victims and human rights actors told the Commission that they felt deep apprehension about engaging in transitional justice and accountability processes for fear of reprisals from individuals within their communities and of threats of revenge attacks and harassment by State security actors.<sup>124</sup>

<sup>121</sup> Ministerial orders No. 01/2021 and No. 02/2021. The technical committee has 36 members representing the Government, political parties signatories to the Agreement and civil society. A first round of national consultations on establishing the Commission for Truth, Reconciliation and Healing was conducted in 2017 and 2018.

<sup>122</sup> ERNs FGD-01, FGD-02, FGD-04, FGD-05, 104892–104897, 104887–104891, 104881–104883, 104907–104910, 104442–104447, 104426–104430, 104431–104436, 104437–104441, 104770–104774, 104498–104501, 104733–104737, 104775–104779, 104502–104506, 104489–104493, 104751–104756, 104579–104584, 104765–104769 and 104815–104818.

<sup>123</sup> Technical committee presentation at the conference mentioned in paragraph 87.

<sup>124</sup> ERNs 104926–104928, 104923–104925, 104874–104877, 104878–104880, 104892–104897, 104887–104891, FGD-02, FGD-04, FGD-05 and FGD-07. Confidential meetings, November and December 2021. See also paras. 22–28 of the present report.

## **B. Conference hosted by the Commission to sustain momentum for transitional justice**

87. In December 2021, the Commission, in collaboration with UNMISS and the Office of the United Nations High Commissioner for Human Rights (OHCHR), held a second conference on transitional justice, entitled “Conference on sustaining momentum for transitional justice in South Sudan”. The conference brought together key State and non-State actors and stakeholders, including the African Union, regional partners, United Nations agencies and IGAD. The Government was represented by the Minister for Justice and Constitutional Affairs, Ruben Madol Arol Kachuo, the Minister of Defence and Veterans Affairs, Angelina Teny, the Minister of Gender, Child and Social Welfare, Aya Benjamin Warille, and the Minister of Peacebuilding, Stephen Par Kuol. The African Union Commissioner for Political Affairs, Peace and Security and other key officials of the African Union, as well as representatives of OHCHR, UNMISS and civil society, including transitional justice experts, participated in the conference.

88. The conference culminated in a number of resolutions that representatives of the Government committed themselves to implementing in collaboration with civil society and regional, international and development partners within six months (January–June 2022). The resolutions were on the following topics: opening communication channels between the African Union Commission and the Government to jumpstart the process of establishing the Hybrid Court for South Sudan; coordination of the transitional justice process; outreach programmes to raise awareness of transitional justice; how to ensure the inclusive participation of victims, stakeholders and community members in transitional justice processes; and the mobilization of financial and technical resources, including interim reparations measures, for conflict-affected victims.<sup>125</sup>

## **C. Unblocking the gridlock on establishing the Hybrid Court for South Sudan**

89. The Conference highlighted the lack of clarity and communication between the African Union and the Government about their respective roles in establishing the Hybrid Court for South Sudan and about the status of the draft 2017 memorandum of understanding. The Minister for Justice and Constitutional Affairs and the African Union Commissioner for Political Affairs, Peace and Security reaffirmed their commitment to reaching common ground on the Hybrid Court. The Minister also agreed to accelerate a joint review of the draft memorandum of understanding with the African Union, which would incorporate the views of parties not signatory to the Revitalized Agreement. Following that review, the Ministry would prepare draft legislation to establish the Hybrid Court.

## **XII. Conclusions**

90. **The transition in South Sudan is faltering owing to a lack of genuine political will to implement the Revitalized Agreement and address the root causes of the conflict. Key benchmarks of the Agreement have not been met, including the establishment of a unified military. A zero-sum political contest between SPLM-IG, which is in a dominant position, and SPLM/A-IO, alongside a fragile and deteriorating relationship between President Kiir and First Vice-President Machar, risks derailing the goals of the transition.**

91. **The failure to address the insurgencies by non-signatories to the Revitalized Agreement, particularly NAS in Central Equatoria, poses a severe threat to the peace process.**

<sup>125</sup> For a summary of the resolutions, see [https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoHRSouthSudan/Summary\\_Resolutions\\_Conference\\_13-15\\_Dec\\_2021.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoHRSouthSudan/Summary_Resolutions_Conference_13-15_Dec_2021.pdf).

92. A climate of repression and political intolerance, arbitrary arrests, disappearances and extrajudicial killings continue to constrict the civic space and underline the climate of impunity in South Sudan. This undermines the prospects for an environment conducive to the effective conduct of transitional justice processes, constitution-making and the holding of national elections.

93. Subnational conflicts in Tambura and in Tonj North and Tonj East Counties replicate the political contestation at the national level for power and territory and have strong ethnic dimensions. The politicization of ethnicity, the resistance to inclusive politics and the deliberate distortion of the ethnic composition of affected areas, all reflect the abject failure of the political leadership to manage the country's diversity.

94. These conflicts are also characterized by gross human rights violations and abuses, which include killings, torture, conflict-related sexual violence, abductions and sexual slavery.

95. The situation in Central Equatoria illustrates how the Government's failure to provide for and oversee the conduct of the soldiers of the South Sudan People's Defence Forces fosters predatory behaviour and impunity for conflict-related sexual violence given the limited number of prosecutions. In Warrap, the Government's response to the violence and crime has itself been unlawful and perpetuated further violence, including extrajudicial killings, the distribution of weapons and the fuelling and entrenching of cycles of violence. Resorting to illegal executions is not only criminal but also ineffective in addressing criminality and in fact further entrenches a culture of unlawful violence.

96. In their competition for political power and economic resources, predatory members of the elite have perpetrated economic crimes constituting a grand-scale theft of the nation's oil and non-oil fiscal revenues. The Government has consequently failed to prioritize and realize its socioeconomic rights obligations to the people of South Sudan, deepening the humanitarian crisis in the country.

97. On the basis of the evidence in its possession, the Commission has reasonable grounds to believe that members of the Government of South Sudan have engaged in acts amounting to serious human rights violations and abuses, as well as related serious violations of international humanitarian law amounting to war crimes in the context of armed conflict in Central Equatoria and Western Equatoria. Individual investigations are warranted, including of persons identified for their roles in the conflict in Tambura, particularly for their responsibility for grave violations against children.

98. After eight years of conflict, the Commission is profoundly concerned about the deepening atmosphere of insecurity across the country, which intersects with the sense of impunity and has contributed to gender-based violations.

99. Perpetrators of sexual violence, including conflict-related sexual violence, enjoy impunity, as cases are rarely reported and, even where reported, are rarely prosecuted. This results from a lack of political will to achieve accountability, compounded by an absence of institutions that are willing and able to provide justice, medical support, psychosocial support and reparations. Victims of sexual violence are unable to access medical care, let alone psychosocial support. Isolated and limited advances in the implementation of accountability mechanisms remain woefully insufficient.

100. The progress made by the Government on implementing the transitional justice measures set out in chapter V of the Revitalized Agreement has been slow and needs to be markedly energized. A holistic approach and demonstrations of political will are needed to ensure the establishment of an environment conducive to strengthening a sense of national ownership and to ensuring the full participation of victims' groups, civil society and stakeholders.

### **XIII. Recommendations**

101. The Commission recommends that the Government:

(a) **Ensure effective functionality, cooperation and leadership within the government to address the root causes of conflict, better manage ethnic diversity in the country and ensure the full implementation of the provisions of the Revitalized Agreement, particularly the urgent security arrangements in chapter II and the transitional justice mechanisms envisaged in chapter V;**

(b) **Finalize the process for the adoption of the memorandum of understanding with the African Union to establish the Hybrid Court for South Sudan, including by establishing a forum to address the impasse between the African Union and the Government of South Sudan, as was identified as a next step in December 2021 at the conference hosted by the Commission;**

(c) **Lead the development of a road map for the implementation of chapter V of the Revitalized Agreement, with a matrix to include and define the following elements:**

(i) **The preparation of relevant legislation for the establishment of the Commission for Truth, Reconciliation and Healing, the Hybrid Court for South Sudan and the Compensation and Reparation Authority, ensuring their effectiveness and independence, with clear timelines;**

(ii) **The identification of ways of funding the transitional justice mechanisms and processes, thereby ensuring their effectiveness and independence;**

(iii) **Measures for strengthening domestic criminal justice, including the military justice system;**

(iv) **The identification of community-based, including traditional, mechanisms for promoting accountability, reconciliation and reparation within the communities of South Sudan;**

(v) **The consideration of relevant outcomes from the national dialogue and other consultations conducted by faith-based and other organizations;**

(vi) **The development of a consultation plan for the continual engagement and awareness-raising of citizens, victims and domestic stakeholders in the development and implementation of the above-mentioned measures, with special regard for the participation of women, young people and members of marginalized groups;**

(vii) **The definition and clarification of working relationships and responsibilities between implementing entities, including the Government, the African Union, IGAD, the reconstituted Joint Monitoring and Evaluation Commission, UNMISS and international and regional actors;**

(d) **Establish an interim reparations programme to address the immediate needs of victims and survivors, including through medical and psychosocial support, incorporating a gender-sensitive approach and focusing in particular on sexual and gender-based violence;**

(e) **In order to address impunity for conflict-related sexual violence, establish a committee with members from the Ministry of Gender, Child and Social Welfare, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), UNMISS, the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, the Commission on Human Rights in South Sudan, experts on sexual violence and representatives of South Sudanese civil society to address accountability for conflict-related sexual violence; and mandate the committee to advise on the role to be played by domestic and military courts in the prosecution of conflict-related sexual violence and on a coherent, comprehensive and gender-sensitive investigative and prosecutorial strategy;**

(f) **Strengthen national capacity for the collection and preservation of evidence, including by setting up a database and collecting forensic data to facilitate the work of the transitional justice mechanisms envisaged in chapter V of the Revitalized Agreement and of domestic courts;**

(g) Take steps immediately to implement the outstanding provisions of chapter IV of the Revitalized Agreement, including as part of a framework to address economic crimes and to improve management of the economy and the equitable distribution of resources and finances;

(h) Adopt and promote a strategy for national reconciliation and healing that can contribute to the management of plurality and ethnic diversity and the prevention of localized conflict;

(i) Ensure the timely investigation of all allegations of serious violations of international human rights and humanitarian law and of serious crimes under national law committed by the South Sudan People's Defence Forces, the National Security Service, other State security forces, NAS and other armed groups;

(j) Facilitate the realization of the right to return of refugees and internally displaced persons, allowing them to live in freedom and dignity and avoiding new situations of ethnicity-based segregation;

(k) Ensure that family members who have been separated through abduction, especially women and children taken during localized conflicts, are reunited with their families and provided with access to social integration programmes;

(l) In accordance with the Revitalized Agreement, initiate reforms to ensure that the security sector is pluralistic and ethnically inclusive;

(m) Ensure that military discipline is upheld alongside the principle of command responsibility and that personnel are vetted, taking into account past violations of international human rights and humanitarian law; ensure also that personnel have enough resources to be self-sufficient and are discouraged from engaging in predatory behaviour; and remove military personnel from close proximity to communities;

(n) Accelerate disarmament, demobilization and reintegration programmes and sensitize the population to ensure their broad acceptance;

(o) Cease and prevent the redistribution of firearms collected in the context of disarmament, demobilization and reintegration efforts;

(p) Take effective measures to prevent acts aimed at interfering with the freedom to express opinions, such as attempts to intimidate or silence civil society representatives, journalists, legal professionals, human rights defenders and members of political groups;

(q) Repeal laws that restrict or weaken the activities of civil society and non-governmental organizations, including those monitoring and reporting on government policies and human rights violations;

(r) Implement fully the three media laws – on the media authority, the right of access to information and the public broadcast company;

(s) Investigate the role played by the National Security Service in violations of fundamental rights, such as unlawful detentions, arbitrary arrests, enforced disappearances and acts of torture, including of a sexual nature, and hold those responsible to account;

(t) Investigate enforced disappearances to establish the fate and whereabouts of disappeared persons, bring perpetrators to justice and ensure justice for the victims by ensuring that those in positions of authority who tolerated or acquiesced to such enforced disappearances are held accountable.

102. The Commission recommends that the South Sudan People's Defence Forces, factions of SPLM-IG, SPLM/A-IO and non-State armed groups:

(a) Order, clearly and publicly, all troops and allied militias to prevent and end unlawful killings, arbitrary detentions, acts of torture, enforced disappearances, conflict-related sexual violence and looting;

- (b) **Immediately vacate all schools, hospitals and other civilian infrastructure;**
- (c) **Immediately release all those under 18 years of age associated with armed forces.**

103. **The Commission recommends that the African Union and IGAD:**

(a) **Promptly arrange a forum with the Government to address the impasse related to the signing of the memorandum of understanding on the establishment of the Hybrid Court for South Sudan;**

(b) **Agree on a clear timeline for the establishment of the Hybrid Court for South Sudan, the Commission for Truth, Reconciliation and Healing and the Compensation and Reparation Authority, in accordance with the Revitalized Agreement, and urgently appoint a prosecutor and senior officials for the Hybrid Court;**

(c) **Enable the African Union Liaison Office to South Sudan to assist the Government and other entities in implementing the measures envisaged in chapter V of the Revitalized Agreement;**

(d) **Ensure adequate funding for the mechanisms envisaged in chapter V of the Revitalized Agreement.**

104. **The Commission recommends that UNMISS:**

(a) **Support the technical committee set up to conduct national consultations on the establishment of the Commission for Truth, Reconciliation and Healing;**

(b) **Continue to support national justice institutions to investigate and prosecute serious crimes, ensuring that witnesses and victims receive appropriate protection and support;**

(c) **Support efforts to establish a dedicated database for the collection and preservation of evidence for transitional justice;**

(d) **Continue to support United Nations agencies and civil society organizations in documenting conflict-related sexual violence;**

(e) **Provide support to ensure that return or resettlement initiatives remain strictly based upon humanitarian principles, including the principle of “doing no harm”, and demonstrate heightened diligence in instances where displacement is linked to conflict along ethnic lines.**

105. **The Commission recommends that Member States and development partners:**

(a) **Provide the necessary political support to the Government and other entities for the full implementation of the Revitalized Agreement;**

(b) **Commit political, financial and technical assistance to support transitional justice processes in South Sudan, particularly the implementation of the provisions of chapter V of the Revitalized Agreement;**

(c) **Support the efforts and capacities of civil society and victims’ groups to ensure their effective engagement in transitional justice processes in South Sudan;**

(d) **Work collectively to address vaccine inequity.**