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Report of the Commission on Human Rights in South Sudan*

Summary

In the present report, submitted pursuant to Human Rights Council resolution 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, that reflects in greater detail the evidence that it has collected and its findings.¹

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

¹ A/HRC/40/CRP.1.

I. Introduction

1. In its resolution 31/20, the Human Rights Council established the Commission on Human Rights in South Sudan for a period of one year. The Commission submitted its first report (A/HRC/34/63) on 6 March 2017.
2. By resolution 34/25, the Council extended the mandate of the Commission for 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 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 and ethnic violence, with a view to ending impunity and providing accountability. The Council further requested the Commission 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, including the hybrid court for South Sudan, to be established in cooperation with the African Union.
4. In its resolution 37/31, the Council extended the mandate of the Commission for an additional year.
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, Dabluat, 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, Kakuma and Nairobi in Kenya, and El Daein, El Fasher, Khartoum, and Nyala in the 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. During the current mandate, 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 that it received from the Governments of Ethiopia, Kenya, the Sudan and Uganda during its missions to those States. It further 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 to collect and preserve 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 been included only where sources granted informed consent and where disclosure would not lead to the identification of sources or result in harm. The Commission thanks the victims and witnesses who shared their experiences.

III. Applicable law

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

15. South Sudan is a party to the African Charter on Human and Peoples’ Rights 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 the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa. Relevant rules of customary international human rights law are also applicable. The Commission welcomes the accession of South Sudan 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 to the Convention relating to the Status of Refugees and its 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 12 August 1949 and their Additional Protocols II and III, and by customary international humanitarian law. Despite the signing of a permanent ceasefire and peace agreement, the Commission assesses that hostilities have persisted to the extent that international humanitarian law 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 21 December 2017, progressed in its work through the first half of 2018, resulting in the first meeting since July 2016 between President Salva Kiir and former First Vice-President Riek Machar, on 20 June 2018 in Khartoum, and a permanent ceasefire through 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, guaranteed by the 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 Revitalized Agreement, the parties have been working on establishing the National Pre-Transitional Committee and the various bodies overseeing the Revitalized Agreement’s implementation. Although progress has been made on many fronts, many deadlines in the Revitalized Agreement have been missed. The parties began from a

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

20. Since the signing of the Revitalized Agreement, 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 people, it has not delivered immediate relief in terms of their humanitarian situation. Due in large part to the conflict, 60 per cent 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 Service agents because of their work.

V. Securitization of the State: arbitrary detention, enforced disappearance, torture and other 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 Sudan People's Liberation Army (SPLA) Military Intelligence between December 2013 and late 2018.²

25. Witnesses reported being held in various locations in and around Juba, including National Security Service 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 the SPLA military barracks at Bilpam, Giada, and Gorum. The Commission documented arbitrary arrests and transfers including between Malakal, Paloich, Wau, Yambio and Yei, demonstrating the widespread and systemic use of security-related detention throughout South Sudan. Indeed, in October 2018, the national South Sudan Human Rights Commission reported on arbitrary detention and torture by the National Security Service at its Luri training facility.

26. Most of the cases that the Commission documented involved adult males; however, it also documented cases of women being detained, including pregnant women. Members of the media, businesspersons, 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,

² In October 2018, the Sudan People's Liberation Army was renamed as the South Sudan People's Defence Forces.

government agencies, airports, banks, media houses, oilfields and civil society organizations.

27. The periods of detention ranged from a few hours to 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 stand-off between prisoners and guards at the National Security Service’s 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 other cruel, inhuman or degrading treatment, including being threatened, beaten with blunt objects, whipped, burned with plastics, electrocuted, or forced to watch other detainees being executed or assaulted, and 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 the use of restraints, and back injuries allegedly sustained during assault.

30. Detention facilities are overcrowded, lack sunlight and ventilation and are infested with vermin. Medical care is substandard, and inadequate food leads to malnutrition and sometimes starvation. Access to toilet facilities and potable water is limited, with poor hygiene 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 and their professional and family lives, even years after their release.

32. Many detainees have died as a result of extrajudicial execution, detention in inhuman conditions, including in metal shipping containers with no ventilation in extreme heat, or the denial of 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 Service 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 Service Act (2014) accentuates the lack of accountability of the National Security Service. 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 the custody of the National Security Service in South Sudan shortly after they had disappeared from Nairobi in late January 2017. When the Commission raised their cases with the Government of South Sudan, 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 SPLA, have continued in the country, despite the Cessation of Hostilities Agreement of December 2017, the Khartoum Declaration of June 2018, the permanent ceasefire and the Revitalized Agreement of September 2018.

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, including older women, girls and boys.

39. During the offensive in southern Unity state between April and June 2018, there was sexual violence on a massive scale as militias were told they could take women as wives in 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 to the Bentiu protection of civilians' site following the signature of the Revitalized Agreement involved a number of unidentified perpetrators. The Commission also investigated instances of sexual violence against men and boys, which remains significantly underreported due to social stigma.

41. Attacks have a gendered aspect, as young men are often specifically targeted, killed, beaten and detained under suspicion of being actual or potential members of armed groups, while women and girls are raped, beaten and sometimes also killed, and vulnerable people, especially older 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 situation is exacerbated by the protracted conflict, which has an impact on gender norms and the roles of women and men.

43. Impunity for sexual violence in South Sudan is a result of a lack of political will to hold perpetrators accountable and the absence of appropriate institutions to build accountability. The creation of a specialized sexual and gender-based violence court in Juba is therefore to be welcomed, as are 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 and 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 per cent of girls in South Sudan married by the age of 18 years. 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 realization of women's and girls' rights, including to health and quality education. The Commission encourages the Government to take active steps towards 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 the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. Substantively, the lives of South Sudanese women and girls have not improved, because of discriminatory traditional practices.

47. The United Nations and UNMISS remain committed to fighting sexual exploitation and abuse. Between early 2018 and January 2019, seven cases of sexual exploitation and abuse involving 18 alleged UNMISS perpetrators have been registered in the United Nations database on sexual exploitation and abuse. These cases were swiftly investigated, resulting in the repatriation of members of the Ghanaian Formed Police Unit who had been implicated in sexual activity with women at the UNMISS protection of civilians site in Wau. The Commission welcomed the swift action by the United Nations 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 on which the Commission focused 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 7 years of age 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 rerecruitment.

51. Children make up over 60 per cent of South Sudanese internally displaced persons 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 with respect to 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-age children not attending school. While educational opportunities have been a challenge since before the conflict, the situation has been exacerbated as schools have been closed due to the conflict, having been targeted, damaged or occupied for military purposes. Even where schools are operational, they are severely underresourced. Teachers are regularly not paid,

which contributes to absenteeism and a shortage of qualified teachers. While the education budget for 2018/19 has significantly increased, it remains far below defence and security spending.

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

IX. Redrawing of administrative boundaries

54. In view of the Revitalized 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 the political economy of South Sudan.

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 past three years, the questions of the number and boundaries of the states and when and in what form federalism or devolution should be introduced have been prominent and divisive. The creation, by decree, of the 28 states in 2015 then 32 states in 2017 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 decree creating 28 states 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 – which joined Raja county, sparsely inhabited by Fertit, to Aweil North and Aweil West counties, densely populated by Dinka – also tilted the balance of power in the Raja area towards 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, which was 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 destabilizing issues. During the negotiations, the parties failed to reach an agreement on the number of states and their boundaries, and instead created the Independent Boundaries Commission and the Technical Boundaries 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 marginalization and deep grievances.

X. Political economy of the conflict

58. The economy of South Sudan continues to be almost completely reliant on oil, with the result that control of this resource has had enormous repercussions on the sociopolitical 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 the communities within them are to receive 2 and 3 per cent, respectively, of the oil revenue, thereby creating significant incentives to ensure state boundaries are drawn to include oilfields. This is widely perceived as a motivation for the redrawing of state boundaries to ensure that more oilfields 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 Sudan People's Liberation Army in Opposition (SPLA-IO) loyal to Riek Machar 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 Thar Jath oilfield in Block 5A. Ensuring that Block 5A and other blocks 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 Service, in particular, has been expanding its involvement in the oil sector, including through its control over the State-owned Nilepet oil company. Nilepet 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 focused 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. There are also significant divisions among the Nuer communities.

64. Following the outbreak of fighting in Juba in December 2013, there were clashes in Bentiu and its surrounds in late December 2013. Since then, the state has remained unstable, with major offensives launched by SPLA and affiliated forces into areas of southern Unity held by SPLA-IO 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, under the decree to create 28 states, 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 Panyijiar counties. Although the 2015 Agreement provided for 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, 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 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 Fourth 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 Thar Jath oilfield 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 Fourth 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

the forces divided and fanned out. From Leer, some troops continued south towards Pilling and 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 older 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 7 years of age. 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 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 reveal 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 organizations 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 Revitalized Agreement in September 2018, although the Government’s explanation for this is the reintegration 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 Fourth Division, SPLA-IO (TD) and militia from Koch county engaged in killings, rape, beatings, abductions, and the 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 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 SPLA-IO out of discontent over the perceived Dinka domination of political and security institutions and abuses allegedly perpetrated by SPLA against Equatorian communities. However, in 2018, an increasing number of Equatorians defected from SPLA-IO to join other groups, including the National Salvation Front and South Sudan National Movement for Change, as they came to view SPLA-IO as behaving no better toward their communities than SPLA. The Commission documented instances of arbitrary arrests and detentions, extrajudicial killings, rape and looting by both SPLA and SPLA-IO in Central Equatoria in 2018.

77. The situation has been further complicated and destabilized 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 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 offered only primary-level schooling, as the main college was moved to Yei for security reasons. Since 2016, the College has hosted approximately 4,000 internally displaced persons 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, four of whom – two students, a watchman and an internally displaced person – were 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 internally displaced person 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. According to reports received by the Commission, 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 SPLA and SPLA-IO were responsible for killings, arbitrary arrests and detentions, rape, beatings and looting in Central Equatoria in 2018. In particular, the SPLA Presidential Guard 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, in its previous 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 Fifth Division Commander arrived in Wau. Within two weeks, and as the negotiations for the Revitalized Agreement gathered speed, SPLA launched a series of attacks in the Wau Triangle, seeking to dislodge SPLA-IO from the area.

86. Over the course of five months from mid-June 2018, there was sporadic fighting in the Mboro, Bagari and Bisselia areas between SPLA and SPLA-IO. In the course of this offensive, 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 Revitalized Agreement 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 older persons. 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 the possessions 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 also set fire to the surrounding bush areas.

89. The attacks on the civilian population resulted in significant population displacement, and many people were displaced multiple times as the places to which they had fled 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 had been 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 south-east 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 SPLA and SPLA-IO. Multiple 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 Fifth Division Commander in Wau, 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 told 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 SPLA stationed there, with civilians living in the bush or displaced to surrounding towns. 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 the 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 SPLA-IO engaged in incidents of looting and forced recruitment over the period when it had 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 and international humanitarian law. Such violations have included the deliberate targeting of the civilian population and individual civilians, including on the basis of their perceived political or ethnic affiliation, and by means of killings, abductions, rape and sexual violence, and the looting and destruction of villages. Further violations have included attacks against civilian objects and humanitarian assistance or peacekeeping personnel, arbitrary arrest and detention, looting and pillaging, and the conscription 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 the 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 (art. 11), the right to liberty and security of person (art. 12), the rights of the child (art. 17), the right to freedom from torture (art. 18), the right to a fair trial (art. 19), the right to freedom of movement and residence (art. 27) and the right to property (art. 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 the Penal Code Act, 2008, including murder (sect. 206), criminal force (sect. 224), rape (sect. 247), wrongful confinement (sect. 284), theft (sect. 293) and mischief with intent to destroy house (sect. 324), and violate fair trial rights under the Code of Criminal Procedure Act, 2008. Moreover, SPLA soldiers are subject to the provisions of the Sudan People's Liberation Army Act, 2009, in particular section 57, which establishes the offences of destroying and damaging property, plundering 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 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 SPLA, both factions of 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 and 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 the soldiers under their command. The recurrent nature of the violations and the limited examples of punishment suggest that 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 the 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 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 Revitalized Agreement. However, those committees have the mandate to make recommendations only, and the government authorities themselves have acknowledged that most of the recommendations in the 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 has 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 public on the identity of the accused, the nature of investigations or subsequent convictions, raising questions as to the credibility of the process.

110. In August 2018, President Kiir declared a general amnesty for Riek Machar and other estranged armed groups that had waged war against the Government of South Sudan, without any limitations or exceptions for allegations of crimes against humanity, war crimes or genocide. Although the Government later clarified that this amnesty did not apply

to gross violations of human rights and serious violations of international humanitarian law, the amnesty raised serious concerns as it remained incompatible with the obligations of South Sudan under international law. Amnesties do not constitute a bar from prosecution before the hybrid court for South Sudan.

Transitional justice

111. In 2018, the Revitalized Agreement reaffirmed the commitment to the transitional justice framework adopted in the 2015 Agreement. The framework reflects a holistic approach, emphasizing 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 Peace and Security Council of the African Union endorsed the hybrid court in September 2015, in line with the recommendations of the African Union Commission of Inquiry on South Sudan, little progress in setting up transitional justice institutions has been made since then.

Revitalized agreement

112. The Revitalized Agreement 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-per-cent general threshold of the 2015 Agreement. A gender perspective in the implementation of the transitional justice framework will be essential to account for the different experiences and needs of men and women as a result of the conflict. The women and girls of South Sudan have faced discrimination and disadvantage as well as economic and political marginalization, exacerbated during the conflict through unspeakable levels of violence against them, including sexual and gender-based violence. The special status of women and girls must be assured in the design and implementation process, especially with respect to reparations.

113. Concerns about new provisions of the Revitalized Agreement 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 be set up only once national legislation has been enacted. The Government should enact the legislation forthwith, ensuring that the process is credible, transparent, inclusive and consultative.

114. The African Commission on Human and Peoples' Rights indicated that it would activate its role under the Revitalized Agreement 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 2015 Agreement, 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 the completion of the memorandum of understanding to establish the court. The hybrid court will have primacy over domestic courts and will likely focus on emblematic cases and high-level perpetrators. The national justice and legal system must be strengthened in order to play its complementary role, and national prosecutorial policy must be developed. This process would bolster the confidence of the public in justice and in 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 people remained unaware about the truth-seeking process, and many were 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. The 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 emphasize 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 people 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 jeopardize the establishment of the mechanisms under chapter V of the Revitalization Agreement. Following the revitalization process, the opposition is still considering whether it should join the National Dialogue 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. The challenges for South Sudan are immense given such factors as the protracted conflict and its ethnic dimensions and deep divisions, the inability of the population to access the economy, the lack of financial capacity and capable organizational and human resources, and a dysfunctional and predatory elite system of government. With sustained political will and effective leadership, the transitional justice framework and the chapter-V mechanisms can help the South Sudanese people to deal with the past and secure the country's 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 frustration and anger and are doing nothing to reduce the chances of further violence.**

123. **The lawless activities of the National Security Service 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, on a daily basis, 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 rape, sexual violence, sexual exploitation, rape, forced marriage, forced pregnancy, forced abortion and the 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 by 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 a predominant reliance 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. That aim has been a major driver of the continuing ethnic violence, which has led to enormous human suffering and violations of human rights and international humanitarian law. The oil industry in South Sudan – including the State-owned petroleum company, Nilepet – has been militarized and securitized, with the National Security Service having expanded its involvement in oil production and management.

127. After delays in implementing the transitional justice provisions of the Agreement of 2015, the Revitalized Agreement (2018) has recommitted the parties to a transitional justice framework, which, in addition to the hybrid court, the commission for truth, reconciliation and healing and the compensation and reparation authority, includes traditional mechanisms. The Revitalized Agreement has also stipulated new time frames 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 people.

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

B. Recommendations to the Government

130. On advancing the rights of women, the Commission recommends that the Government of South Sudan:

(a) Fast-track the finalization of the national gender policy, including measures to implement the equality provisions set out in the Transitional Constitution and its Bill of Rights, which guarantees equality and equity between women and men, including a 25-per-cent quota for women in all spheres as a temporary affirmative measure to redress past imbalances;

(b) Ensure that the national justice system, including the plural legal system, is strengthened to protect victims and survivors of gender-based violence, ensuring access to justice and to an effective remedy that 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' and survivors' families, the subsequent marriage of the survivor of

sexual assault to the perpetrator, and those that result in the harshest penalties – including stoning, lashing and death – often being reserved for 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 and time taken for the disposal of cases.

131. On security and detention, the Commission recommends that the Government:

(a) Halt the use of secret detention in unofficial detention facilities and the torture and ill-treatment of detainees, and urgently address conditions in all places of detention;

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

(c) Cease 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;

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

(e) Consider carefully the draft amendment to the Penal Code Act, which incorporates international crimes into 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.

132. On the political economy, the Commission recommends that the Government:

(a) Ensure the implementation of articles 4.8.1.1 and 4.8.1.2 of the Revitalized Agreement on 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, within three months of the start of the transition period, of any petroleum revenue accounts not established under the Act;

(b) Establish an appropriate mechanism to monitor the transfer of an equitable share of the revenue to states and ensure public reporting;

(c) Ensure that it expedites the operationalization of Future Generations Fund and the Oil Revenue Stabilization Account and reviews and audits the allocations and transfers of the 2 per cent and 3 per cent of oil revenue made to oil-producing states and communities, respectively, since 2011;³

(d) Ensure that the review of the national oil company, Nilepet, and the National Petroleum and Gas Commission called for under the Revitalized Agreement is dealt with expeditiously to transform and empower them to exercise their responsibilities as stated in the amended Constitution and law.⁴

133. On transitional justice, the Commission recommends that the Government:

³ Revitalized Agreement, arts. 4.8.1.14.7 and 4.8.1.14.9.

⁴ Revitalized Agreement, art. 4.8.1.14.14.

- (a) Establish expeditiously the commission for truth, reconciliation and healing, with effective and transparent consultation of South Sudanese stakeholders;
- (b) Adopt a broad approach to reparations to include provisions of collective and symbolic forms of reparation, beyond the financial payments envisaged under the mandate of the compensation and reparation authority;
- (c) Ensure that the outcomes of all prior, genuine consultations on how to address the past in South Sudan and shape its future, including the recommendations and outcomes of the national dialogue, are given due consideration in the process of establishing the transitional justice mechanisms of chapter V of the Revitalized Agreement and drafting a permanent constitution.

C. Recommendations to other actors

134. The Commission recommends that UNMISS:

- (a) Increase, in conjunction with humanitarian actors, protection for women, girls and boys during their movements outside camps to collect water and firewood, ensuring the training of men and boys to assist with the protection of women and children and promoting the establishment of mixed-sex and -age watch groups and movement in bigger groups;
- (b) Expand the current database of incidents of sexual exploitation and abuse involving United Nations peacekeepers to include incidents involving the personnel of implementing partners.

135. The Commission recommends that humanitarian actors strengthen referral systems to support women, girls, boys and men who have been affected by gender-based violence or who require psychosocial support due to the crisis, so that they are able to access the appropriate service providers for their differing needs and within the appropriate time frame (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 kits and “mama kits” for safe delivery.

136. The Commission recommends that civil society raise awareness among families of the value of the girl child in order to change stereotypes and attitudes under which girls are considered as family property, resulting 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.

137. The Commission recommends that the parties to the Revitalized Agreement, during the pre-transitional period and beyond, fully support the necessary full implementation of all transitional justice processes.

138. The Commission recommends that the African Union engage and support the Government of South Sudan, on the basis of the communiqué of the 547th meeting of the Peace and Security Council, to complete expeditiously the necessary steps to establish the hybrid court and the other transitional justice mechanisms and processes.