

# The State of Human Rights in the Protracted Conflict in South Sudan



The Protection of Civilians (PoC) site near Bentiu in Unity State, South Sudan, 2014. UNMISS Photo/JC McIlwaine

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# Republic of South Sudan

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**Legend**

- Country capital
- State capital
- County capital
- Canal
- Major river
- Main road
- International boundary
- Undetermined boundary \*
- Administrative boundary
- Abyei region \*\*

\* Final boundary between the Republic of Sudan and the Republic of South Sudan has not yet been determined.

\*\* Final status of the Abyei area is not yet determined.

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Scale 1:5,500,000

0 50 100 150 Km

Datum: WGS 84  
Projection: Geographic

Not all contents of this product have been field verified. Caution should be exercised when making measurements. Spelling of towns and features may conflict with local or other usage.

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## **Executive Summary**

This report by the Human Rights Division (HRD) of the United Nations in South Sudan (UNMISS) takes stock of the state of human rights in South Sudan since the outbreak of hostilities in December 2013. The purpose of the report is to present an overall picture of how the conflict has impacted on human rights and to identify trends and key human rights issues that have emerged as the conflict has evolved in order to inform processes aimed at the implementation of the IGAD-facilitated Agreement on the Resolution of Conflict in South Sudan (ARCSS) that was signed by the parties in August 2015.

The report highlights the fact that as the hostilities rapidly approach the two-year mark, they have been accompanied by a disturbing trend of violations of international human rights and international humanitarian law. Following the initial outbreak of hostilities, which started in Juba on 15 December 2013, the violence became concentrated throughout most of 2014 and 2015 in the Greater Upper Nile region, which consists of Unity, Upper Nile and Jonglei states. As the conflict lingers, violence and insecurity have spread to other states, with serious escalations observed in Central and Western Equatoria that have become more pronounced in the second half of 2015. The violence has largely been perpetrated by Sudan People's Liberation Army (SPLA) and the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO), with both sides using armed groups and militias in the conduct of hostilities.

The scale, intensity and severity of human rights violations and abuses have increased with the continuation of the hostilities, particularly during spikes in fighting in the middle and latter part of 2015. These have included large scale extra-judicial killings, sexual violence, abductions and enforced disappearances, forced displacement, looting, livestock-raiding and the burning of houses. Additionally, there have been cases of indiscriminate attacks against civilians, forced recruitment (including of children), and extensive destruction of civilian property. From the middle of 2015, a new pattern emerged, particularly in the central and southern counties of Unity, with entire villages being burned down, food crops destroyed and livestock looted. There are indications that this may have been a deliberate strategy by the government or the SPLA aimed at depriving civilians of any source of livelihood with a view to forcing their displacement. Very few places in areas of conflict have been safe, as the parties have intentionally attacked traditional safe havens, such as places of worship, hospitals and, from time to time, United Nations bases. The report finds that gross violations and abuses of human rights and serious violations of international humanitarian law have occurred in all areas where fighting has taken place, attributable to all parties to the conflict.

Unity State has witnessed some of the most persistent fighting, with upsurges in October 2014, April, June and August 2015 through the present, particularly in the central and southern counties of Koch, Rubkona, Guit, Leer and Mayendit. This was marked by an increase in the scale and severity of violations, including widespread killings, sexual violence, forced disappearances, forced displacement and arson. Upper Nile State also witnessed gross human rights violations and abuses, as well as serious violations of

international humanitarian law, that have been compounded by prior inter-ethnic distrust, mostly emanating from historical disputes over land, as well as the presence of armed militias/groups. The situation has been aggravated by the shifting of allegiance by the Shilluk militia group from the SPLA to the SPLM/A-IO, which resulted in a pattern of targeting civilians on the basis of ethnicity and lack of distinction between civilians and fighters. While Jonglei State has also witnessed clashes between the main belligerents, with similar patterns of violations, including extra-judicial killing, displacement of civilians and burning of homes, the level of violence did not reach the same intensity as in the rest of the Greater Upper Nile region.

A troubling development that started towards the middle of 2015 is the spread of violence and insecurity in Greater Equatoria, with concomitant reports of serious human rights violations and abuses. The highly militarized approach by the SPLA in resolving security issues has been characterized by a similar pattern observed in the Greater Upper Nile region of extrajudicial killings, the burning of homes, looting and civilian displacement. The lack of protection for civilians from SPLA actions has led to the emergence of armed youth groups that were initially organized to defend their communities, but became more active and systematic in reaction to alleged SPLA violations.

The continued conflict has further weakened the fragile State institutions, affecting the Government's ability to protect civilians and offer basic services. The historically weak administration of justice has deteriorated, with an increase in the number of arbitrary arrests and detentions, prolonged pre-trial detentions and *incommunicado* detentions without charge. The National Security Service (NSS) has been increasingly involved in arrest and detention despite not having a constitutional mandate to do so. Additionally, the space for freedom of expression and speech has severely narrowed as security organs, including the NSS, have clamped down on the media, shutting down radio stations and newspapers, and arresting, harassing and intimidating journalists and human rights defenders.

Despite the severity of the human rights and humanitarian law violations perpetrated by both sides to the conflict, there are no tangible accountability mechanisms beyond the rhetoric of the main belligerents. Initially, the two major parties to the conflict both announced that perpetrators of serious violations of human rights and international humanitarian law committed during the conflict would be held accountable. However, by the end of 2015, almost no one had been held accountable, and neither side had taken any decisive action in this regard. Although the Government took some initial steps, establishing several committees (including a national investigation committee into human rights abuses), these have failed to produce any identifiable results to date.

Both the ARCSS and the African Union Commission of Inquiry on South Sudan have underscored the severity of the human rights situation in South Sudan and that addressing the violations is central towards sustainable peacebuilding. Moving forward there is a need for the immediate cessation of hostilities and for the next steps to focus on constitutional and

institutional reforms in parallel with establishing transitional justice and accountability mechanisms that must include comprehensive and credible investigations to establish the scope of human rights violations.

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## I. Introduction

1. Almost two years after the outbreak of violence in December 2013, the relentless fighting and its manifold consequences have continued to have a significant impact on human rights and living conditions for civilians generally. Violations and abuses of human rights, as well as violations of international humanitarian law, have been committed, possibly amounting to war crimes and crimes against humanity. Such violations included extrajudicial and targeted killings; abductions and enforced disappearances; sexual and gender-based violence, including rape; the massive displacement of civilian populations; the destruction of means of livelihood through the deliberate burning and destruction of homes and crops, as well as looting of livestock; and forced recruitment, including of children. Additionally there has been targeting of and attacks against United Nations personnel, premises and humanitarian assets, causing the death of 34 staff members, three United Nations-affiliated national staff and one national contractor since December 2013.

2. Throughout this period, the United Nations Mission in South Sudan (UNMISS) has been monitoring and reporting on the human rights situation, as mandated by the United Nations Security Council in Resolutions 2155, 2187, 2223 and 2241.<sup>1</sup>

3. This report takes stock of the human rights situation as the South Sudanese populace anxiously await the implementation of a fragile peace agreement signed in August 2015. By drawing on previous reports and more recent developments, the report both reviews and updates what has happened during the crisis to assess the trends and key human rights issues that have emerged as the conflict has evolved. Its objective is not to provide a complete record for this period of the violations that have taken such a heavy toll on civilians, but to inform the implementation of the peace agreement and the current national debate about the future of the country. The Agreement on the Resolution of Conflict in South Sudan (ARCSS) acknowledges the profound consequences of the conflict on the civilian population and recognizes that addressing the human rights challenges will play a crucial role in any sustainable peace. As South Sudan moves into this next phase of its history, a human rights perspective should and must play an integral part in the structuring of a new polity. Several assessments of human rights violations have been carried out by UNMISS and other institutions, including the African Union Commission of Inquiry on South Sudan. The findings and recommendations derived from these assessments should provide guidance to improve the human rights situation and ensure accountability for gross violations.

4. The picture has thus far been bleak. Gross violations and abuses of human rights and serious violations of international humanitarian law have been attributed to all parties to the conflict and have occurred in all areas where fighting has taken place. Entire towns, such as

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<sup>1</sup> See UNMISS, *Interim Report on Human Rights: Crisis in South Sudan*, 21 February 2014; UNMISS, *Conflict in South Sudan: A Human Rights Report*, 8 May 2014; Human Rights Council, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in South Sudan*, 19 September 2014; UNMISS, *Special Report: Attack on Bentiu, Unity State, 29 October 2014*, 19 December 2014; UNMISS, *Attack on Civilians in Bentiu and Bor, April 2014*, 9 January 2015; Human Rights Council, *Report on the Human Rights Situation in South Sudan*, 9 March 2015; UNMISS, *Flash Human Rights Report on the Escalation of Fighting in Greater Upper Nile*, 29 June 2015.

Malakal and Bentiu in Greater Upper Nile, have been destroyed, with their populations on the run or seeking shelter in sites for the internally displaced. Very few places have been safe, as the parties have intentionally attacked traditional safe havens, such as places of worship, hospitals and occasionally United Nations bases. The displacement of populations has led to the separation of families and the destruction of livelihoods. Several areas affected by the conflict have been experiencing alarming levels of food insecurity and deprivation.

5. The UNMISS Human Rights Division (HRD) has based this report principally on the work of its teams in documenting and investigating allegations of human rights violations and abuses, as well as serious violations of international humanitarian law. HRD human rights monitoring and investigation follow the methodology developed by the Office of the United Nations High Commissioner for Human Rights (OHCHR). This report is a summary of information gathered in the course of regular monitoring of the human rights situation, coming from a variety of sources, including interviews with victims, witnesses and other sources. HRD employs a 'reasonable grounds' threshold in making factual determinations on individual cases, incidents and patterns of conduct. In the course of its work, HRD has encountered significant challenges, including security risks and constraints, access limitations and logistical problems that have at times prevented full verification of all the allegations received. However, those reported in the present and previous reports illustrate the deeply disturbing state of human rights in South Sudan.

6. As previously reported, civilians have been directly targeted by all parties to the conflict, deepening ethnic rifts in communities and fracturing traditional social structures. While the initial stages of fighting largely pitted the Dinka and Nuer ethnic groups against each other, increasing numbers of armed groups and communities have become involved in the violence. Although it appeared that the scale of human rights violations and abuses had somewhat diminished over the course of 2014, such violations and abuses not only continued, but by 2015 had intensified in certain counties.

7. In fact, critical spikes in the intensity of the fighting in April 2014, October 2014 and April 2015 each saw the rate of violations reach a new level of violence and brutality. In addition, following an SPLA offensive in Unity in April 2015, this growing amplification and intensification of the conflict was felt beyond Greater Upper Nile, as ethnic tensions were seen in a pattern of increased violence within communities, such as in Lakes, Eastern and Western Equatoria states, clearly illustrating the pervasive impact of the crisis across the country. As the conflict tore at South Sudan's very socio-political fabric, the massive human rights violations and abuses that characterized the early days of the conflict in specific states began to have an increasing impact on the whole country.

8. State institutions have appeared to weaken, as Government's ability to protect its citizens and offer basic services has been compromised by the conflict. The already weak administration of justice has deteriorated even further, with some indication that arbitrary arrests and detentions are increasing, particularly by the NSS. Many people have disappeared into *incommunicado* detention, without charge. Moreover, the space for freedom of expression and speech has severely narrowed as security organs have clamped down on the



media, shutting down radio stations and newspapers, and arresting, harassing and intimidating journalists and human rights defenders

9. While the Government and SPLM/A-IO have repeatedly acknowledged the need for accountability for abuses and violations committed in association with the conflict, and although some mechanisms have been launched, no tangible results have emerged.

10. The ARCSS envisions a multi-pronged approach to justice, accountability, truth, reconciliation and healing that could provide a sound basis to ensure durable peace. Without such accountability, justice and healing processes, the prospects of an improved environment for the protection and promotion of human rights will be dim, as will those for lasting peace, stability and prosperity.

## **II. Overview of alleged abuses and violations of human rights and violations of international humanitarian law**

### **i. Patterns of violations associated with conflict**

11. The ongoing conflict continues to be the primary threat to the enjoyment of human rights in the country. Hostilities have continued, despite the signing of the Cessation of Hostilities Agreement by the SPLA and SPLM/A-IO, on 23 January 2014, and their ‘recommitment’ to this agreement on 9 May 2014<sup>2</sup> and September 2015, as part of the implementation of the ARCSS. The fighting has largely been confined to the states of Jonglei, Unity and Upper Nile comprising the Greater Upper Nile region. The fighting in late 2014 and early 2015 occurred at a relatively low level of intensity compared to the first half of 2014, but fighting again increased during the surge that began in late April 2015.

12. Gross human rights abuses and violations and serious violations of international humanitarian law have taken place in the context of the fighting throughout this period. Violence against civilians associated with the conflict has largely been perpetrated by SPLA and SPLM/A-IO forces. Other armed groups have also been reportedly involved, often affiliated with the two major parties. Direct violations against civilians have included forced recruitment, including of children; targeted killings; conflict-related sexual violence; lack of distinction between civilian and military targets; arbitrary detention and ill-treatment; disruption of education and access to services; and the burning and destruction of homes, crops and other means of livelihood, apparently with the objective of forced displacement. Many of the attacks have revealed a shocking disregard for civilian life.<sup>3</sup>

13. Unity State witnessed some of the most persistent fighting in 2014.<sup>4</sup> While Government forces controlled Rubkona and Bentiu towns for most of the period, opposition

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<sup>2</sup> Intergovernmental Authority on Development (IGAD), *Agreement to resolve the crisis in South Sudan*, 9 May 2014.

<sup>3</sup> See Human Rights Watch, *They burned it all: Destruction of Villages, Killings, and Sexual Violence in South Sudan's Unity State*, 22 July 2015.

<sup>4</sup> Small Arms Survey, 1 June 2015.

forces have been present in surrounding areas, within a radius of 40 kilometres from these towns, and in large areas of the central and southern parts of the state, including Leer and Guit counties throughout the second half of 2014, which were attacked on numerous occasions by SPLA and affiliated armed militia. The proximity of the forces to each other, often in populated areas – including where civilians had sought refuge in UN compounds – and the resulting persistent fighting created tremendous fear and anxiety among the civilian population. For example, on 15 August 2014, heavy fighting erupted following an attack by SPLM/A-IO forces against Bentiu and Rubkona, during which stray bullets injured at least one civilian sheltered in the United Nations base.

14. UNMISS HRD investigated reports of killings of civilians and other human rights violations in connection with hostilities on 29 October 2014 in Unity State and published its findings.<sup>5</sup> The findings indicate that at least eight men were extra-judicially executed by SPLM/A-IO fighters during their period of control of Bentiu, after having been taken from a church where civilians were sheltering; two women and a child were also killed by SPLM/A-IO forces on the same date. The report also highlighted that there were credible grounds to believe that several women abducted by opposition soldiers may have been subjected to sexual violence, including rape.

15. Intermittent hostilities also occurred in Upper Nile, for instance, beginning in August and through September, SPLA and opposition forces repeatedly clashed around Nassir, Nassir County, and Dolieb Hill, Panyikang County. Between 18 and 22 September, towns in Renk County, including Dug Dug, Gongbar, Gosfamy, Girbanat and Amduluz, were taken by opposition forces and then returned to Government control. Thereafter, fighting continued at Dolieb Hill and Renk through October, November, and December 2014.

16. Reports indicate that between 20 and 22 September 2014, at least 83 civilians were killed by SPLM/A-IO forces during attacks on Gongbar, Dug Dug, Girbanat, Amduluz and Gosfamy villages, Upper Nile State. Also around this time, at least 20 individuals may have been killed in nearby Davai village, where tukuls were burned. While UNMISS HRD faced challenges accessing the areas for immediate verification due to insecurity and continuous fighting, human rights officers were able to visit in mid-October 2014. They found virtually no civilians, observed an alleged mass grave and observed significant destruction of civilian property, including the majority of homes in the village.

17. In Jonglei State, in November and December 2014, fighting took place between Government and opposition forces in Fangak and Pigi counties, with the SPLA claiming to have retaken New Fangak from opposition control on 27 November - although subsequent reports indicated that New Fangak had remained in opposition control into December. Subsequent fighting in this area reportedly resulted in divided control between the SPLA and opposition within Pigi and Fangak counties. Unverified reports suggest that between approximately 4 November and 15 December 2014, the SPLA bombed the area with heavy artillery, causing several civilian casualties, as well as mass displacement to areas such as

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<sup>5</sup> See UNMISS, *Special Report: Attack on Bentiu, Unity State, 29 October 2014*, 19 December 2014.

Ayod County and Old Fangak. Much of New Fangak was burnt with many residential structures destroyed by fire.

18. At the end of April 2015, the SPLA launched a robust offensive in the southern counties of Unity that were under SPLM/A-IO control. With the support of allied militias from Mayom County, SPLA soldiers attacked villages in Koch, Rubkona and Guit counties, used a 'scorched earth' policy, burning their tukuls, killing women, men and children, and looting property, including livestock. The SPLA then continued to carry out similar acts in Leer and Mayendit counties, with the support of militia from Koch. Casualties have been especially high among the elderly, too weak to flee during the attacks. UNMISS HRD investigated reports of human rights violations and abuses stemming from the initial April 2015 attacks and published its findings in June 2015.<sup>6</sup>

19. Unlike in previous attacks, children have been targeted and killed in sometimes brutal ways. Buaw, Koch County, was one of the first villages attacked during the April-May offensive in Unity. UNMISS HRD interviewed several witnesses who reported about men, women and children burnt inside their tukuls. One woman reported seeing three women locked in a house and burnt alive because they did not want to reveal where the livestock was kept. When UNMISS visited Buaw in August, all tukuls appeared to be burnt to the ground. The internally displaced civilians who found refuge in the UNMISS protection of civilians (PoC) site in Bentiu told the story of the violence in central and southern Unity.

20. Thousands of civilians were displaced, fleeing to swampy areas where SPLA mobility was hampered by the absence of roads. In the UNMISS PoC site in Bentiu, over 28,000 arrivals were registered between 29 April and 15 June alone, comprised primarily of women and children who recounted stories of mass killings, sexual violence, looting, livestock-raiding, tukul burning and forced recruitment.

21. UNMISS HRD reported on this in June 2015<sup>7</sup>, but more accounts continued to be received afterwards, pointing to a resurgence of fighting as of 16 June, primarily by armed militias - including youths supported by SPLA - and directed at civilians. This situation increased the flow of IDPs into the PoC site in Bentiu. UNMISS witnessed the start of the resurgence of hostilities, when it observed an estimated 8,000 armed individuals walking near the UNMISS compound in Bentiu, heading south, some in uniform but many in civilian clothes. Following this resurgence in fighting, UNMISS began to interview many of the newly arrived IDPs who had escaped from their villages. The interviews corroborated earlier patterns of violations documented since the beginning of the offensive in late April, including killings, sexual violence, including rape, the burning of houses and looting. This wave of attacks appeared to aim at depriving civilians still living in the villages of any source of livelihood and thereby forcing their displacement to the PoC site or areas under SPLA/M-IO control.

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<sup>6</sup> See UNMISS, *Flash Human Rights Report on the Escalation of Fighting in Greater Upper Nile*, 29 June 2015.

<sup>7</sup> Ibid.

22. Since April 2015, humanitarian actors have had to routinely pull out of Bentiu due to hostilities, most recently in early October 2015. An unprecedented level of sexual violence has taken place, which has been widely reported in the media.<sup>8</sup> The Protection Cluster South Sudan released an update on incidents in southern and central Unity from April to September 2015 that estimated at least 1,000 civilians killed, 1,300 women and girls raped and 1,600 women and children abducted in Leer, Mayendit and Koch counties over the period.<sup>9</sup> UNMISS continued to receive reports of attacks in various counties, including Koch, Mayendit, Leer and Rubkona counties, even following the entry into force of the 29 August ceasefire.

23. Upper Nile has also experienced intense fighting since April, mirroring the attacks in Unity, with Malakal changing hands several times. Ethnic conflict between Dinka and Shilluk erupted following the gradual breakaway of Major General Johnson Olony's forces from the Government, in April and May, and the alignment of his faction with SPLM/A-IO. HRD documented the abductions of approximately 86 women and 27 men by armed actors, mostly SPLA and affiliated militias, in the three months following the killing of General Olony's deputy, on 1 April 2015. In addition, staff of humanitarian agencies and businesses were abducted and forced to provide support such as transport to the armed groups.

24. The period between April and August 2015 was volatile. Following fighting in May, the SPLA remained in control of Malakal and its immediate vicinity for most of June. On 27 June, the combined opposition forces of Olony and SPLM/A-IO attacked Malakal from the south and from the west bank of the River Nile. After several hours of heavy fighting, they retook Malakal, pushing SPLA forces north, towards Akoka. Over the following week, heavy fighting occurred near Akoka and Melut, on the route to the Paloich oil field. The SPLA managed to retain control, and the combined opposition force withdrew from the Akoka-Melut area and from Malakal. On 6 July, the SPLA regained Malakal which it controlled throughout July and August. With each successive wave of fighting, thousands of civilians were displaced and many caught in the cross-fire. Many IDPs poured into the UNMISS PoC sites in Malakal and Melut.

25. As an illustration of the nature of the violence in Upper Nile State, on 18 June 2015, four armed Dinka men in civilian clothing, who identified themselves as SPLA, attacked civilians between Tristar and the Ogot-Chinese factory, near the Malakal PoC site. They first stopped a group of 25 women and five men who were returning to the PoC site, shot and killed one Shilluk man and two Mabanese men, then released the other men, telling them they were going to kill the women. As of December 2015, the whereabouts of the women remained unknown. In another incident, the armed men abducted five women and five men. They shot two men dead, and released the rest of the group, ordering them to run back to the PoC site, and then shot at them as they were running. One of the men never arrived at the PoC site and is presumed dead.

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<sup>8</sup> Reuters interview, 'Scale of South Sudan sexual violence is unprecedented', 7 October 2015.

<sup>9</sup> Protection Cluster South Sudan, *Protection Situation Update: Southern and Central Unity*, 25 September 2015.

26. Due to insecurity in the areas where most of the fighting has taken place, limitations on access and movement imposed by the authorities and the difficult geographical terrain, UNMISS HRD was not immediately able to visit these areas to verify allegations of human rights violations. In many cases, UNMISS HRD interviewed victims and witnesses, including IDPs relocated to UNMISS PoC sites who were present during the fighting and able to corroborate some of the allegations. Information received from witnesses and other sources reflected similarities in the mode of violence would occur against civilians during this period: in many cases civilians congregated in areas they often considered safe that were controlled by Government or the opposition sympathetic to their ethnic group. When opposing belligerents would attack these areas, they would subsequently kill civilians unable to flee, commit rape and other forms of sexual violence, abduct women and destroy homes and crops.

27. The fighting in Greater Upper Nile continues to result in gross human rights violations and abuses, as well as serious violations of international humanitarian law. The use of armed militias and the systematic failure to distinguish between civilians and fighters create conditions for unprecedented levels of abuse. In Unity State especially, the upsurge in fighting that began in April has not only been marked by allegations of rampant killing, rape, abduction, looting, arson and displacement, but by a new brutality and intensity, including burning people inside their homes. Upper Nile State has likewise seen cases of killings, abduction, rape and forced displacement that have become routine.

28. While the conflict has focused most intensely in the Greater Upper Nile region, violence and insecurity have surfaced elsewhere in the country, affecting human rights. For example, on 31 May 2015, in Western Bahr el Ghazal, forces belonging to SPLM/A-IO allegedly attacked and seized control of Bazia Payam, Wau County, forcing civilians to flee. The attack occurred during the farming period, impacting food availability. On 29 June, UNMISS received reports from Wau County, of an attack on Farajallah village by fighters from the opposition. Eleven SPLA soldiers were reportedly killed in the attack, while civilian property was destroyed, causing the local population to flee into the bush for safety. In May 2015, in Unity, following the SPLA capture of Nyal Payam<sup>10</sup> Panyijar County, an ambush by SPLM/A-IO at the border with Rumbek North County, in neighbouring Lakes, left the county commissioner, a gubernatorial adviser and 30 SPLA soldiers dead, and 11 soldiers injured.

29. An outbreak of violence in Wonduruba Payam in Central Equatoria's Juba County in September 2015 resulted in the forced displacement of approximately 16,000 IDPs. The violence, which started on 10 September, flared up after a clash between the SPLA and an armed group in Katigiri and Mankero bomas. On 12 and 13 September, the SPLA reportedly started shooting at civilians in the payam, burnt homes and looted property. Five civilians were reportedly killed during these events. Residents fled to various locations in the adjacent Lainya County and to the bush, while thousands more have made their way to Juba. On 20 September, in Wonduruba, two SPLA soldiers in civilian clothes reportedly took a civilian out of his home and shot him dead. From 17-19 September UNMISS, including HRD,

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<sup>10</sup> A *payam* is an administrative subdivision of a county in South Sudan. Payams are further subdivided into a variable number of *bomas*, in which any number of villages may be situated.

conducted a mission to the payam and found it deserted but for about 10 men in the market area. HRD noted signs of looting, later confirmed by IDPs. Many IDPs reportedly had a difficult time surviving in the bush, given lack of food, water and medicine. Some IDPs reported an unspecified number having died for lack of food.

30. Following the clashes in Wonduruba violence spilled over to other nearby locations, though links between these events are difficult to establish. On 16 September 2015, in Western Equatoria, SPLA soldiers believed to have been involved in the attacks in Wonduruba, reportedly shot randomly at civilians in Mambe Payam, on the Juba-Mundri road. This caused the local youth to organize and retaliate, killing nine of the soldiers. Around the same period, SPLA soldiers, possibly from the same group, reportedly shot at civilians in Mundri West town and in Lui Payam in Mundri East, where they also allegedly looted shops. Sources indicated that, as a result of the attacks, many civilians from Mundri West town, as well as Lui and Jambo payams, went into hiding.

31. Similarly violence took place in Eastern Equatoria in previous months. In November 2014, heavy deployments of SPLA in Nimule in response to tensions between the Madi and Dinka communities resulted in harassment and intimidation of local community members. In Magwi County, clashes between the SPLA and members of the community from 20 to 22 February 2015 resulted in serious injury to 21 civilians, the burning of around 150 homes and the flight of civilians from the area.

32. Examples of the SPLA unleashing violence on civilians in areas such as Mundri West, Juba and Magwi counties, presumably in search of opposition forces, can be seen as an expansion of the zone of conflict beyond Greater Upper Nile. Such trends of violence take an immense toll on the vulnerable civilian population, leaving many individuals dead or displaced, many homes destroyed and many children afraid to go to school.

## **ii. Displacement and disruption of livelihoods**

33. The persistent fighting has destabilized large sections of the population, who are living in an atmosphere of fear and insecurity. Massive displacement has occurred, both within and outside South Sudan. In some instances communities have been forcibly displaced, possibly though not clearly as a deliberate strategy of warfare. According to recent reports by humanitarian actors in South Sudan, approximately 2.2-million individuals had been displaced by the fighting the majority of them from the conflict states.<sup>11</sup> In 2015, following the April surge in Unity, figures indicate that over 100,000 civilians were displaced in that state alone.<sup>12</sup> Of the 2.2 million, 1.6 million are displaced within South Sudan, with the remaining 600,000 staying as refugees in neighbouring countries. (*See figure 1.*) Of those in the country, over 170,000 individuals currently remain inside UNMISS PoC sites. The overwhelming majority of those displaced are not in formal or easily accessible camps and

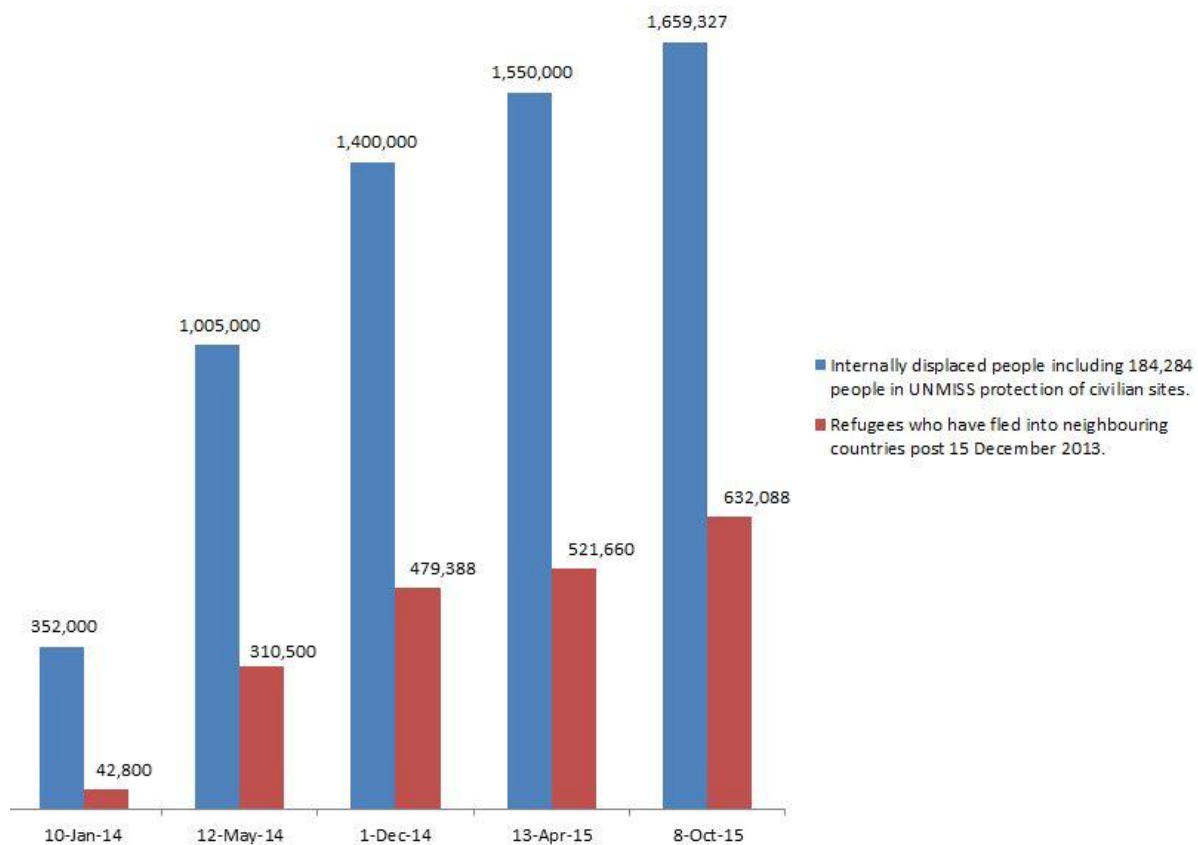
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<sup>11</sup> OCHA, *South Sudan Humanitarian Snapshot*, 10 September 2015; OCHA; Under-Secretary-General Stephen O'Brien, Briefing to the Security Council, *The Humanitarian situation in South Sudan*, 25 August 2015.

<sup>12</sup> Amnesty International, *South Sudan: Escalation of violence points to failed regional and international action*, 21 May 2015: <https://www.amnesty.org/en/countries/africa/south-sudan/>.

settlements.<sup>13</sup> Over one million individuals face a variety of situations, such as being displaced in other parts of the country, including in inaccessible areas in the bush or swampland; in urban areas, such as Juba; residing with host families; remaining constantly on the move; or trapped within the main corridor of fighting.<sup>14</sup> These individuals are endangered, face threats and are in a state of persistent insecurity, with limited – if any – access to services such as food and healthcare.<sup>15</sup>

**Figure 1.**



Source: OCHA

34. Reports received by UNMISS HRD throughout the conflict have illustrated the significant disruptions to the lives of these displaced individuals. As towns changed hands multiple times at the beginning of the conflict, residents remained in constant fear of being targeted or harassed, and were subsequently forced to flee in large numbers due to the violence. In some cases, civilians were caught in the crossfire. Houses were destroyed in large numbers. UNMISS HRD received reports of groups of civilians walking for days to reach safety, often without access to sufficient food and water. Fleeing civilians also became the direct targets of attacks in some cases, including when they fled in tandem with retreating

<sup>13</sup> International Rescue Committee, *Uprooted by Conflict: South Sudan's Displacement Crisis*, November 2014 ('IRC Report'), at p. 7.

<sup>14</sup> IRC Report at pp. 9, 12, 16.

<sup>15</sup> IRC Report at pp. 7-8.

forces or deserters. In many cases, civilians were forced to flee several times as forces advanced into areas in which they sought safety.<sup>16</sup>

35. In the face of this massive displacement and the disruption of basic services, a disturbing feature of the conflict has been the frequent disregard by the parties to the conflict for safe havens. As thousands of civilians leave their homes and communities to seek safety, the parties have attacked hospitals, religious institutions and areas where IDPs have gathered. Schools and clinics have been occupied by military forces.

36. Fighting and related insecurity, as well as geographic challenges in many of the most affected areas, such as limited road access and inaccessibility due to water levels during the lengthy rainy season, have impeded interventions and protection efforts, as well as the ability for UNMISS HRD to monitor the human rights situation. As a result, human rights officers and other protection actors have been unable to respond adequately or in a timely manner. The lack of monitoring and reporting on the situation leads to insufficient deterrence for both parties.

37. From witness accounts, as well as site observations by UNMISS HRD and other actors, it appears that since April 2015, the SPLA may have used forced displacement as a deliberate strategy in its offensive to reconquer the southern counties of Unity. By emptying the counties of their population, it could appear that the Government has been trying to deprive SPLM/A-IO of any human and material support. This could be inferred from the dynamics of the SPLA attacks, which targeted villages inhabited by civilians, setting their homes on fire and looting their property to prevent them from remaining there. Food was either stolen or burnt and cattle taken away. As a result of these attacks, civilians have been deprived of any source of livelihood, with the only option being to leave the area and seek refuge elsewhere. When visiting some of the places affected by the conflict, such as Ngop and Guit, UNMISS found completely deserted villages. Most of the IDPs interviewed arriving at the UNMISS PoC site from southern states reported that they had been obliged to leave due to insecurity or lack of food.

38. The escalation in fighting in Upper Nile following the realignment of Major-General Johnson Olony's forces from SPLA to SPLM/A-IO resulted in mass displacement throughout the state (*See figure 2*). Following the 1 April 2015 killing of General Olony's deputy, the Malakal PoC site received an initial wave of 4,550 Shilluk IDPs from Malakal town. This was followed by a second wave of predominantly Dinka IDPs arriving from Malakal town following the clashes of 21 April 2015. In July 2015, the SPLA halted river movement between Malakal and the predominantly Shilluk west bank, preventing access to life-saving humanitarian assistance, including food and medical services. While orders were given to allow UNMISS to move to the west bank, these were not fully respected. Partially as a result of the lack of humanitarian assistance, Malakal PoC site received approximately 16,000 additional IDPs from the west bank in July 2015, mostly individuals who left their villages in

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<sup>16</sup> See UNMISS, *Conflict in South Sudan: A Human Rights Report*, 8 May 2014, at paras. 95, 117, 120, 156, 177, 185, 225, 230, 260, 269.



order to access food and medical treatment. There are also reports that the SPLA had at times restricted individuals from returning to the west bank with food from the PoC site.

39. Further north near Melut, clashes between the SPLA and combined SPLM/A-IO/Olony forces on 18 and 19 May 2015 led to a significant displacement of civilians in that area. Over 20,000 civilians, predominately Dinka, sheltered in displacement sites – ‘Dithetoma camps’ – near the United Nations base left for Paloich and Renk, while 1,177 other individuals (Dinka, Shilluk, Nuer and foreign nationals) took shelter within the UNMISS PoC site in Melut. During the fighting, stray bullets and mortars hit the PoC site, killing nine IDPs, injuring several others, and destroying many tents. Because of the security situation, humanitarian staff and UNMISS civilian staff were evacuated from Melut. As of August 2015, most of the population from Melut had resettled in Paloich, Renk, and Khor Adar, unable to return home due to the poor security situation and lack of humanitarian assistance.

40. In addition to direct threats to life and physical integrity, the conflict has interfered with civilians’ enjoyment of many other human rights, including to food, education and health. As many as 1.5 million people – more than 10 per cent of the South Sudanese population – remained at emergency or crisis levels of food insecurity at the end of 2014. Severe food insecurity was reportedly affecting 4.6 million people in 2015 compared to 3.8 million at the height of the lean season in 2014. While humanitarian actors reached more than 2.3-million people in 2015, severe food insecurity will remain a threat well into 2016, especially if fighting continues.<sup>17</sup> A joint FAO/WFP/UNICEF press release dated 22 October 2015 indicated that 3.9 million people could be classified as severely food insecure, especially in parts of Unity.<sup>18</sup>

41. Furthermore, data made public by the international humanitarian community indicates that 70 per cent of schools in Jonglei, Upper Nile and Unity have been closed as a result of the conflict.<sup>19</sup> Around one third of medical facilities in these states are reportedly closed, also as a consequence of the hostilities.<sup>20</sup> South Sudan’s gross domestic product is projected to have declined by around 15 per cent in 2014, although the real costs of the conflict could be far greater and will increase as it persists.<sup>21</sup>

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<sup>17</sup> OCHA, Under-Secretary-General Stephen O’Brien, Briefing to the Security Council, *The Humanitarian situation in South Sudan*, 25 August 2015.

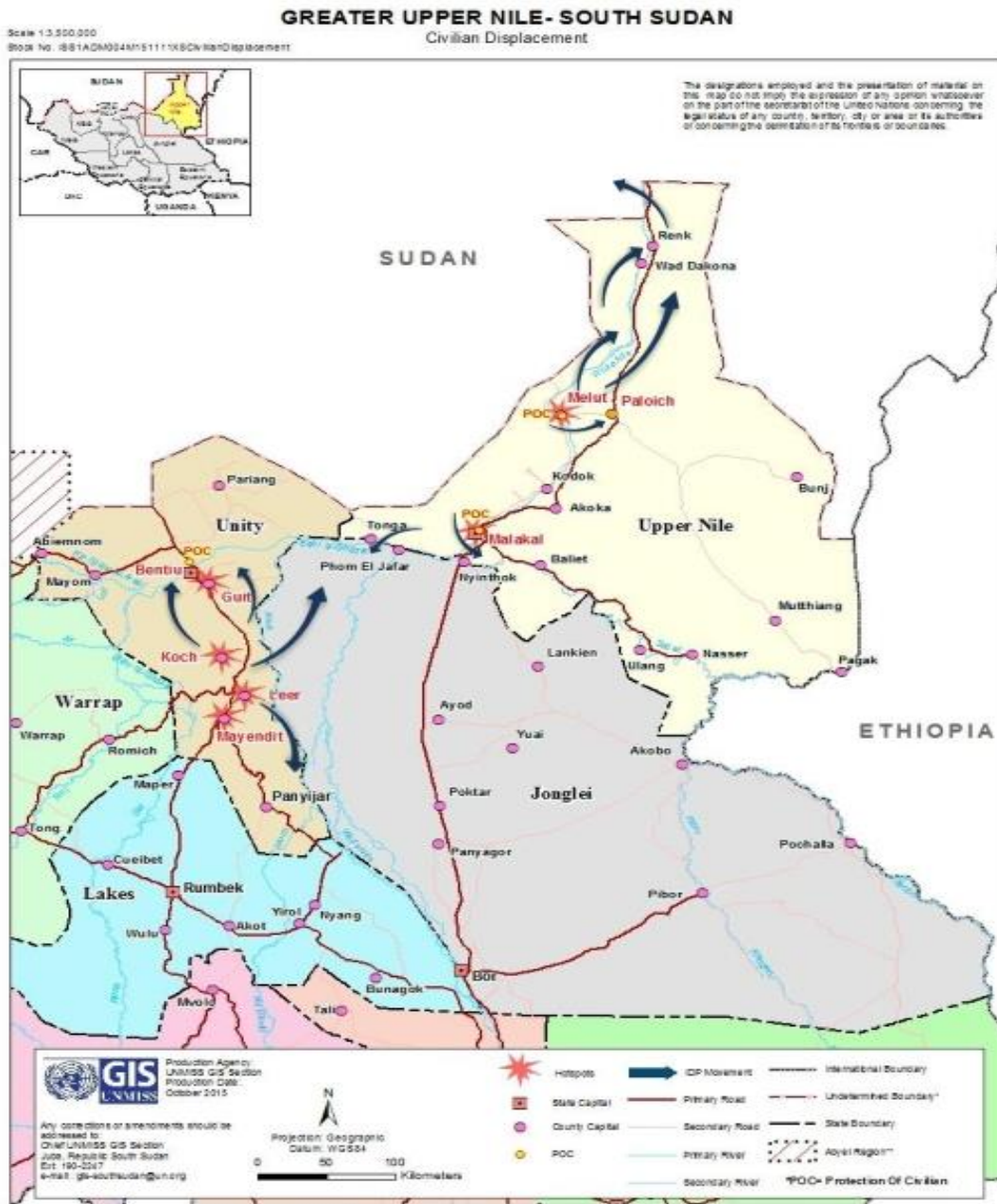
<sup>18</sup> UNICEF, ‘South Sudan, 22 October 2015: UN calls for immediate access to conflict-affected areas to prevent catastrophe’ at [http://www.unicef.org/esaro/5440\\_ss2015\\_call-for-access.html](http://www.unicef.org/esaro/5440_ss2015_call-for-access.html).

<sup>19</sup> South Sudan Humanitarian Response Plan 2015, at p. 42 (Education Cluster Strategy).

<sup>20</sup> South Sudan Humanitarian Response Plan 2015, at p. 53 (Health Cluster Strategy).

<sup>21</sup> Frontier Economics in collaboration with the Center for Conflict Resolution (CECORE) and the Centre for Peace and Development Studies (CPDS), *South Sudan: The Cost of War, An estimation of the economic and financial costs of ongoing conflict*, January 2015, at pp. 8 and 20.

Figure 2.



### iii. Threats to civilians seeking protection in UNMISS protection of civilians sites

42. Incidents of threats, intimidation and other human rights violations and abuses of people seeking protection at UNMISS PoC sites were reported throughout the period, though significant numbers of civilians are able to move into and out of the sites on a daily basis.

43. Such incidents commenced in December 2013, when civilians first began to seek protection at UNMISS bases, and have taken a variety of forms, including intimidation, killings, arbitrary detention, ill-treatment, and abduction by armed personnel and members of

the security forces. These incidents have been noted near the PoC sites and in the towns of Bor, Bentiu, Malakal, Juba and elsewhere during the first half of 2014.<sup>22</sup> The most vicious incident in 2014 was the attack on the Bor PoC site by armed youth, on 17 April, resulting in at least 47 civilian deaths. UNMISS HRD investigated the incident and published its findings.<sup>23</sup>

44. From September through the end of 2014, civilians in UNMISS PoC sites continued to face significant risks to their safety. SPLA forces maintained a regular presence outside of the Bentiu PoC site, in some cases adopting an aggressive posture toward civilians in the site, creating an atmosphere of intimidation, and restricting the freedom of movement of IDPs.<sup>24</sup>

45. SPLA presence was also associated with incidents of arbitrary detention and ill-treatment. On 11 November 2014, for example, a civilian was forcibly taken into an SPLA vehicle from outside the site. His whereabouts remained unknown as at December 2015. UNMISS received reports of other incidents in Unity, including of IDPs shot by SPLA soldiers in September 2014, while attempting to reach the Sudan. UNMISS also received information that women and children had been detained at the SPLA barracks and headquarters. On 12 September 2014, UNMISS HRD interviewed IDPs who had witnessed the arrest of their male relatives, on 4 September, by two NSS officers on the Rubkona main road. The victim was subsequently detained at SPLA Division IV headquarters.

46. There has been a marked increase in human rights violations and abuses committed primarily by the SPLA against civilians seeking protection at UNMISS PoC sites in 2015. In Unity, UNMISS was able to monitor and gather information about such violations in a perimeter approximately 10 kilometres north, east and west of the Bentiu PoC site. In January and February 2015, UNMISS and its protection partners were informed of a high number of cases of harassment of both men and women, and of sexual violence, including rape. Civilians were stopped by SPLA elements at the checkpoints surrounding the PoC site on suspicion of being SPLM/A-IO supporters. According to UNMISS and humanitarian sources, at least 28 civilians were abducted and 35 women raped by SPLA soldiers near the PoC site during these two months.

47. The pattern of human rights violations and abuses near PoC sites changed after March 2015, when SPLA soldiers formed a cordon around the Bentiu site reportedly to prevent SPLM/A-IO movement. Reports were received of SPLA harassing civilians moving in and out of the PoC site, abducting or killing them, raping some women and looting. Women have reported being threatened with weapons to hand over the goods they were carrying to sell at the PoC site. In some cases, women were obliged to carry the looted goods to the SPLA barracks. On at least three occasions, SPLA soldiers entered the PoC site, stole cattle, fired at

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<sup>22</sup> E.g., UNMISS, *Crisis in South Sudan: A Human Rights Report*, 8 May 2014

<sup>23</sup> See UNMISS, *Attacks on Civilians in Bentiu and Bor, April 2014*, 9 January 2015.

<sup>24</sup> VOA News, 'Calm amid Fear in Daily Life in S. Sudan's town of Bentiu,' available in <http://www.voanews.com/media/video/calm-amid-fear-in-daily-life-in-south-sudan-town-of-bentiu/2569197.html>, 22 December 2014.

IDPs, and engaged in abductions of numerous victims. UNMISS and its protection partners received at least 20 cases of harassment and 15 cases of IDPs robbed or forced to pay illegal taxes to SPLA soldiers. According to IDP reports to UNMISS and its protection partners, at least 39 individuals were allegedly killed by SPLA soldiers and armed individuals around the PoC site between January and October 2015.

48. Similarly, in Upper Nile, UNMISS HRD received many reports of abductions and extra-judicial killings of civilians in 2015. This often occurred when the victims were leaving the Malakal PoC site for livelihood activities. For instance, on the morning of 22 April, Shilluk militia set up checkpoints in Malakal and other locations en route to the UNMISS PoC site. Reportedly, women and children were permitted to pass, but men were forced to return to town. Witnesses reported that an unknown number of civilians were stopped and killed at that checkpoint, allegedly by Shilluk militia. On 25 May, when the SPLA regained control of Malakal, soldiers shot at Shilluk IDPs trying to reach the Malakal PoC site, thereby violating their right to life as well as the principle of distinction. UNMISS and humanitarian officers found the bodies of 14 individuals just outside of the PoC site. Inside the PoC site, a man from the Shilluk ethnic group was hit by a stray bullet and died before reaching hospital. On 1 July, three of either opposition-affiliated armed militias or Olony's forces fired into the new PoC site annex, which predominately houses Dinka IDPs. The shots killed one male IDP and wounded eight others.

49. UNMISS HRD received reports of three male IDPs abducted on 19 September 2015, near the PoC gate in Malakal. They were reportedly dragged by men in uniform and others in civilian dress and driven away. Another IDP reported that on 22 August, he had accompanied a soldier to a nearby SPLA military barracks on the promise that he would be given food, but was then accused of being a spy, detained and repeatedly beaten. While detained he allegedly witnessed the killing of at least 10 detainees. In September, SPLA soldiers have continued to block hundreds of male IDPs from entering the PoC site from Wau Shilluk, on the alleged suspicion that Olony's forces were regrouping inside the PoC site to attack SPLA positions.

50. Several incidents also occurred in Juba PoC sites in 2015, with increasing unrest in and around the sites. On 22 May 2015, a group of eight SPLA soldiers, four of whom were armed with pistols, abducted four male IDPs near the checkpoint before the PoC-1 site pedestrian gate, where the IDPs were selling plastic sheets. The soldiers allegedly tied the victims' hands, beat them with whips and the butts of AK-47 assault rifles, and put them in detention cells near the checkpoint. One of the IDPs was reportedly shot dead somewhere in the checkpoint area. His corpse was found the next day along the Juba-Yei road. UNMISS HRD observed injuries on the bodies of the survivors, allegedly inflicted by SPLA soldiers in the checkpoint detention cell. UNMISS HRD documented several incidents of assaults on IDPs in 2015, as well as extortion of money, food, mobile phones and other goods by South Sudan National Police Service (SSNPS) officers at the checkpoint near PoC-1 pedestrian gate. These incidents took place after SSNPS conducted searches of people and bags of IDPs traveling on motorbikes and on foot.

51. Civilians have also faced a variety of other protection threats inside the PoC sites, including ethnic and inter-communal violence, criminality and gender-based violence. In Juba, fighting among IDPs in PoC-1 site and PoC-3 site resulted in loss of life and dozens of injuries on 10 May 2015. As a result of the fighting, which seemed to have been stirred due to the larger nation-wide conflict, a number of IDPs from the Bul Nuer sub-clan, believed to number in the hundreds, were observed stranded outside the immediate perimeter of the PoC-3 site after being effectively driven out by members of other clans from Unity. The matter was later defused. During the same month, tensions flared in the Malakal and Bentiu PoC sites, particularly between the Shilluk and Dinka communities, reflecting the greater conflict.

52. UNMISS has continued to address cases of criminality and domestic and other gender-based violence within most of the PoC sites on a regular basis.

53. As illustrated above, IDPs must often leave the PoC sites in order to meet basic needs, such as to collect fuel and food or to grind grain. They have continued to face threats when doing so, including of sexual violence, and tensions with the neighbouring communities, with women at particular risk. UNMISS HRD/Women's Protection Advisors (WPAs) have documented many incidents of sexual violence occurring within the perimeter of UNMISS PoC sites. The mission has undertaken protective measures, such as patrols and escorts, to protect IDPs moving into and out of PoC sites.

#### **iv. Conflict-related sexual violence and other forms of sexual and gender-based violence**

54. In 2015, UNMISS HRD documented 194 incidents of conflict-related sexual violence, involving at least 280 victims – the majority women and girls – and including approximately 70 minors. The types of the most heinous acts of sexual violence documented include: gang-rape and killing; gang-rape and abduction; rape and killing; gang-rape and stripping; sexual assault and stripping; rape; sexual slavery; and forced abortion.

55. The large majority of incidents documented by UNMISS HRD occurred in Unity State. In terms of alleged responsibility, even though all parties to the conflict committed acts of conflict-related sexual violence, the majority of witnesses and survivors heard by UNMISS HRD indicated that the SPLA and its affiliated militias were responsible for the majority of incidents. Survivors' reports indicate as well that conflict related sexual violence could amount to crimes against humanity and war crimes.

56. Testimonies reflect an insight into the scale and severity of acts of conflict-related sexual violence committed against civilians. In Juba in March 2015, a survivor's testimony revealed that four Nuer women, three of whom were lactating mothers, had been abducted by a group of armed Dinka SPLA soldiers a few days after the outbreak of the conflict in Juba and taken to Bor in Jonglei, where they were kept in captivity and subjected to sexual slavery in very harsh living conditions with limited access to food and water. In February 2015, a female Nuer IDP reported how she had been forced to marry an SPLA soldier, and then subjected to sexual slavery and torture. A group of Dinka SPLA soldiers reportedly murdered

her husband and 10 other Nuer soldiers in December 2013, and then forced her and the other widows into sexual slavery. She was regularly beaten, denied meals and water and kept in isolation.

57. In Upper Nile, a woman with a disability, who had been living in Malakal town, recounted severe physical and sexual assaults which she was subjected to between May and June 2015. During that time, when the SPLA regained control of the town, the woman was repeatedly attacked by SPLA soldiers who came to her home in search of food and money. On one occasion, she was beaten until she was unconscious. Some of the soldiers, who were often drunk, repeatedly sexually assaulted her.

58. In Unity, during the first half of 2015, HRD received and documented testimonies from survivors of sexual violence, perpetrated mainly by SPLA soldiers against women traveling from opposition-held areas to the PoC site or vice versa. These incidents also affected women leaving the PoC sites to collect firewood in neighbouring areas.

59. In the second quarter of 2015, following the SPLA offensive into the southern counties of Unity, reports of cases of sexual violence against women by armed men escalated. Most of the respondents interviewed reported that their villages had been attacked by a mixture of SPLA soldiers and armed militia who, among other violations, abducted and raped girls and women on a large scale.

60. During a meeting held between UNMISS HRD and 30 women in Unity, Koch County,<sup>25</sup> all participants openly stated they had been raped. In a group interview with men from the same county, they indicated that it had become a practice for parties to the conflict and civilians during attacks ‘to abduct women and do what they want’. Pregnant women, lactating mothers and minors have not been spared. Many respondents reported seeing women being raped and then killed. Sometimes, as reported in Koch County, women and girls were burned in their tukuls after being gang-raped. One survivor reported: ‘If you look them in the face when they are doing it, they will kill you’. Other testimonies related how civilians, mainly women and girls, were victimized by all the parties to the conflict. One woman reported having been gang-raped by four SPLA soldiers and witnessed how other women and girls suffered the same ordeal when SPLM/A-IO reconquered her village.

61. Incidents of sexual violence were not confined to attacks on villages, but also extended to women who were fleeing their villages to seek refuge at the UNMISS PoC site in Bentiu. A young girl narrated how she and another girl had been raped by soldiers allegedly belonging to the SPLA and armed militia on their way to Bentiu from Koch County. She reported that ‘after raping us, they took all our clothes; we walked naked to Bentiu and only received clothes from women in Rubkona.’

62. Given the stigma and trauma associated with sexual and gender based violence, the limited services provided to survivors across the country and the limited access UNMISS HRD has to reach victims and survivors, it is likely that many violations and abuses are not

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<sup>25</sup> Details are withheld to protect the identities of the survivors.

reported. National authorities seem to have acknowledged the seriousness of the problem and have taken some steps toward eliminating sexual and gender-based violence. However, these have so far not translated into accountability for violations. The Ministry of Gender, Child and Social Welfare has adopted a Five-Year National Gender Policy Strategic Plan (2013-2018), aimed at promoting a robust legal framework and policy to eliminate sexual and gender-based violence and institutionalize appropriate response and protection mechanisms, but the outbreak of the conflict hampered its implementation.

63. In October 2014, under the auspices of UNMISS and SRSG on Sexual Violence, both the Government and the SPLM/A-IO Opposition issued a Communiqué to address Conflict-Related Sexual Violence.<sup>26</sup> The Government has, consequently and to promote the implementation of the Communiqué, appointed a high-level focal point in the Office of the President to address conflict-related sexual violence. Despite these commitments, the use of sexual violence by both parties to the conflict has not ceased. UNMISS has brought several cases of conflict-related sexual violence to the attention of relevant authorities. Even where they have acknowledged that some of their elements were involved in such abuses, they have not made substantial efforts to investigate the cases in accordance with international standards and bring the perpetrators to account. As a result, an environment of impunity prevails.

#### **v. Forced recruitment, including of children**

64. Reports of child recruitment by both Government and opposition forces have continued despite repeated commitments by both parties to end the practice.<sup>27</sup> According to the Report of the Secretary-General on Children and Armed Conflict in South Sudan (2014), there has been a marked increase in reports of child recruitment during the period of the conflict compared to the post-independence and pre-conflict periods. The report indicates that several thousand children have been associated with State and non-State armed actors.<sup>28</sup> On 29 October 2014, the global ‘Children, Not Soldiers’ campaign against child recruitment was launched by Government in partnership with the United Nations. Government signed a commitment agreement toward child-soldier-free security forces and took several steps in this regard, including the issuance of punitive orders for child recruitment.<sup>29</sup> Between January and April 2015, Government worked closely with the United Nations in clearing 26 schools of occupying troops. In 2014, SPLM/A-IO forces also signed with the United Nations a commitment not to recruit child soldiers. However, as of December 2015, 29 schools continued to be used by parties to the conflict for military purposes.

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<sup>26</sup> On 11 October, the Government signed the Join Communiqué of the Government of South Sudan and the United Nations on Addressing Conflict Related Sexual Violence. On 18 December 2014, Riek Machar, the leader of SPLM/A-IO, issued a Unilateral Communiqué on Preventing Conflict Related Sexual Violence, in Addis Ababa committing to taking appropriate measures to address sexual violence.

<sup>27</sup> *Report of the Secretary-General on children and armed conflict in South Sudan*, 11 December 2014, S/2014/884 (2014), at paras 22-24.

<sup>28</sup> *Ibid.*, at para. 22.

<sup>29</sup> Joint UNICEF/UNMISS Press Release, ‘Government of South Sudan and UN launch Children, Not Soldiers campaign,’ 29 October 2014.

65. Moreover, UNMISS has continued to receive multiple reports that child soldiers remain in the ranks of all sides of the conflict. In particular, it received several reports that children fought in Bentiu and Rubkona during the 29 October 2014 hostilities in Unity, with children as young as 14 reportedly in combat roles. Child soldiers were also reported in several instances in Upper Nile.

66. During the week of 15 February 2015, members of a Shilluk militia under the control of General Olony reportedly forcibly recruited men and boys in Wau Shilluk, a settlement on the west bank of the River Nile. Their victims included at least 36 students, most of whom were under the age of 18, taken from classrooms where they were studying for secondary school examinations. Following the intervention of child protection actors, in this instance, the children were released.

67. Other reports from Upper Nile were received, however, indicating that armed Shilluk militia had rounded up approximately 1,000 men and boys from the streets and from their homes. Witnesses report that the soldiers were interested in any male 16 years or older, but that boys as young as 11 had also been taken. Local humanitarian staff were also detained by militia soldiers, but most were released once proof of employment could be verified. These forced recruits were reportedly taken by six boats to Warjok and Ogot for military training. Other credible reports of forced recruitment activity by militias under Olony were also reported throughout the west bank, including in Makal, Fashoda and Akoka counties.

68. Corroborated reports from various reliable sources, received in July 2015, indicated that approximately 400 children wearing SPLA Division III tee-shirts and uniforms had been transported with soldiers in chartered aircraft to an unknown destination. More than 161 child soldiers wearing uniforms were also spotted in Bor, at the beginning of August 2015.

69. According to information collated by child protection actors, it is believed that at least 13,000 to 15,000 child soldiers were being utilized by both parties to the conflict as at December 2015, but mainly with opposition forces. While the SSDA/Cobra Faction of former opposition figure David Yau Yau released 1,755 boys, many have been seen in military functions in the Greater Pibor Administrative Area (GPAA). Boys have been seen manning check points and acting as bodyguards to commanders, as well as carrying out other duties. Child protection actors have been monitoring the situation.

70. Released children have been receiving psychosocial support to reintegrate better into civilian life. The severe lack of teachers in the area could provide children with an incentive to rejoin the military.

## **vi. Ethnic and community tensions and broadening violence**

71. From its earliest days, an ethnic dimension has been overlapping the political facet of the conflict in South Sudan, including through human rights violations.



72. In December 2013, in Juba, killings along ethnic lines were perpetrated within military ranks and against civilians. This pattern was replicated in the states of Jonglei, Unity and Upper Nile. The conflict continued in a similar wave of reciprocal attacks, including between the primarily Dinka and Nuer groups loyal to Government and other predominantly Nuer forces aligned with SPLM/A-IO, but also implicating other groups, including Shilluk factions, whose allegiances have varied.

73. Ethnic tensions appeared to increase in the third quarter of 2014 in particular, following the abduction, on 10 October, of three UNMISS contractors of Dinka, Shilluk and Nuer ethnicity from Malakal airport, reportedly by armed Shilluk and Dinka men. The Dinka and Shilluk contractors were released the following day, and reportedly warned that all Nuer should stay out of Malakal town. The third contractor, a Nuer, has since been missing.

74. Starting on 28 May 2015, mass clashes began between Shilluk and Dinka communities in the Malakal PoC site, seemingly linked to the escalation in fighting in Malakal town. Prior to the clashes, members of the Dinka and Shilluk communities had been residing together in the new PoC site. Following Olony's breakaway from Government in April 2015, and during the period when his forces were in control of Malakal, Dinka individuals were targeted and harassed, with physical violence directed at them in the new PoC site. Members of the Dinka community consequently began to relocate to the old PoC site for protection. During the course of clashes, several Dinka individuals were beaten and killed. A Dinka Presbyterian Minister was killed during a riot, while an elderly woman was burnt alive in her tent.

75. In Unity, tension had been rising between the Jikany Nuer from Guit and the Bul Nuer from Mayom, even before the current crisis.<sup>30</sup> However, in 2015, hatred has significantly increased towards the Bul Nuer community because of their perceived support and active participation in the SPLA military offensive in the southern counties of the state, which started in April 2015, as described above.

76. External conflict related tensions have had a clear impact on the relationship between the communities coexisting in the PoC sites. For example, on 16 March, a minor quarrel took place at a water point between two IDPs, one Bul Nuer and another Jikany Nuer. The following day, violent clashes erupted between the two clans, affecting a much broader spectrum of the PoC community, with both sides mobilizing other people to form alliances against each other.

77. Flare-ups in fighting in other parts of the country – including Western Bahr el Ghazal, Northern Bahr el Ghazal and the Greater Equatoria region – further revealed the ethnic polarization of South Sudanese society engendered by the conflict. In several instances security forces have been brought in and acted in a heavy-handed manner to quell local disputes.

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<sup>30</sup> This was especially the case following the removal of former Governor Taban Deng, a Jikany from Guit, who was replaced by Dr Joseph Manytuil, a Bul from Mayom.

78. On 21 June 2015 in Eastern Equatoria, an attack on the Budi County Commissioner in Kikilia Boma by several angry residents left two of the commissioner's bodyguards dead. The next day, in apparent retaliation, SPLA elements attacked Betelado village, torching an estimated 129 houses. This resulted in the killing of at least two residents and the subsequent displacement of approximately 1,000 civilians to the neighbouring mountains. In Western Equatoria, clashes were observed in Mundri West and Maridi counties following violent outbreaks in May, both of which have led to a significant displacement of civilians. During a field visit to Mundri West town in June, UNMISS met with the SPLA major-general commanding forces in the area. He admitted that the military had lost control during the 22 May clashes over some of the soldiers who then turned their guns against civilians following the killing of two of their comrades and the burning of three military trucks at the hands of an opposition faction on 21 May. The commanding officer insisted that those responsible were under investigation and would be held accountable, but UNMISS HRD has not received any indication that anyone has been held accountable for this incident.

## **vii. Role of ethnic militias and other armed groups**

79. The involvement of ethnic militias and other armed groups from both sides has been another characteristic of the conflict in South Sudan and has seriously aggravated its human rights impact. Throughout the reporting period, militias or other armed groups, usually not organized like regular army units, have been associated with allegations of significant violence and abuses and violations of international human rights and humanitarian law.

80. Some militia groups have been integrated into either the SPLA or SPLM/A-IO, while others have displayed a certain degree of autonomy. Opposition leader Riek Machar, for example, has publicly claimed that he was not necessarily in control of all the forces purporting to be under his command.<sup>31</sup> This raises serious questions about the extent of command and control in place for both parties to the conflict. Many incidents throughout the conflict, such as the 17 April 2015 attack on the UNMISS PoC area in Bor, also suggest that armed groups, even with no proven link to any party to the conflict, may align themselves to the perceived agenda of one party as a pretext to committing further violence. The violence has therefore gone far beyond strictly organized security forces.

81. Some of these armed groups existed prior to the conflict, including the Mabaan Defence Forces (MDF), the Pipeline Protection Force and Shilluk militia, all in Upper Nile, while some appear to be new, such as the South Sudan National Liberation Movement and the South Sudan People's Patriotic Front, both in Western Equatoria.

82. Reports indicate that MDF had been armed by SPLA Division I and was composed chiefly of members of the Dinka and Equatorian ethnic groups. From its base in Mabaan

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<sup>31</sup> Al Jazeera, 'S. Sudan's Machar Unable to Control Rebels,' *available in* <http://www.aljazeera.com/news/africa/2014/05/machar-admits-not-control-sudan-rebels-201453122165339663.html>, 1 June 2014.

County, this Government-allied group reportedly imposes itself on the population and collects taxes from civilians in areas under its control.

83. A major incident involving a militia group occurred in August 2014. Following reported clashes with Nuer SPLA soldiers, including deserters,<sup>32</sup> MDF attacked and killed six Nuer NGO staff in Upper Nile, in what were reported to be carefully planned and executed actions. In early September, media reported that two arrests had been made in connection with the attack.<sup>33</sup>

84. In South Sudan, the lines between conflict-related and inter-communal violence are often blurred. On 5 April 2015, a group formed by members of SPLM/A-IO and local militias from Unity attacked and raided cattle from five cattle camps (Mabor, Maper, Acun, Bilec and Paenhomcot), in Rumbek North, in neighbouring Lakes. Government officials believed that the attack had targeted the Pakam section of the Dinka Agar who reside in Rumbek North. Reported casualties resulting from this incident included 26 persons dead and 60 wounded among the Pakam in Rumbek North, and 132 dead among SPLM/A-IO and local militias from Unity.

85. Besides officially recognized militias, pockets of armed youth groups formed *ad hoc* often appear for short periods of time, throughout the various states. In Eastern Equatoria, this has been the case in Kapoeta East and Magwi counties, where UNMISS HRD witnessed an armed group publicly flogging a woman in Loriok, in July 2015. Such groups are often formed to combat criminality in the communities, though they lack any legal authority, and end up usurping police powers and committing abuses.

### **viii. Inter-communal violence**

86. As the spread of conflict and armed groups threatens civilians, communities have been fracturing. While inter-communal violence has long been prevalent in South Sudan, especially in relation to disputes over resources and cattle-grazing, there are indications that the scale and intensity of current inter-communal violence may have been influenced by the dynamics of the conflict. Thus, parties to the conflict are alleged to support local militias, including those formed around ethnicity, and there are limited government resources to combat such violence. Still, the State does maintain the duty to prevent and respond to such violence with due diligence.

87. Communities experiencing such violence are in dire need of government intervention to ensure security and to enforce accountability, but the conflict has rendered the Government less able to meet these basic expectations. When it has intervened, the security response has in many cases been heavy-handed and has led to human rights violations.

88. UNMISS HRD has followed up on reports of inter-communal violence in several areas, with particular regard to the Government's security response, including in numerous

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<sup>32</sup> Small Arms Survey, 'The Conflict in Upper Nile,' October 2014.

<sup>33</sup> Eye Radio, 'Maban: Suspected Killers of Aid Workers Arrested,' available in <http://eyeradio.org/maban-suspected-killers-aid-workers-arrested/>, 4 September 2014.

counties in Lakes; Budi and Torit counties in Eastern Equatoria; Kajo-Keji County in Central Equatoria; and Mundri West County in Western Equatoria.

89. In Lakes, inter-communal violence erupted in Rumbek East County following the killing of the paramount chief of the Guony clan from Cuei-Cok Payam, on 5 August 2014. Retaliatory violence ensued against the Thuyic clan in Malek-Agok Payam.<sup>34</sup> Reports were received of arbitrary killing, physical threats, sexual violence, including rape, harassment, displacement, and property destruction. In a bid to restore order and to subdue the escalating violence, State authorities heavily deployed security forces to the area. On 30 August 2014, the deputy governor indicated that he had established two special committees, composed of Government officials, to investigate and ascertain the underlying causes of and possible solutions to the conflict. It appears, however, that the work of the committees has had little impact.

90. Several youth from the Thuyic clan were arrested, detained and at least two allegedly beaten, but UNMISS HRD was denied access to monitor their detention. On 17 October, five Thuyic individuals were formally charged at the first hearing of the trial for the killing of the paramount chief. The main suspect was charged with murder; three other suspects were charged with conspiracy to commit murder; and one with harbouring an offender. The pre-trial process was initially marred with political interference, which may have affected the exercise of the detainees' rights, including to a fair trial and security of person. One individual was convicted of murder and, on 8 December 2014, was sentenced to death. On 17 June 2015, he was executed by hanging in Wau. Reports from members of the Thuyic expressed concern regarding whether due process had been observed. During appeals, the legality of the execution was confirmed by the Court of Appeal, the Supreme Court and the President of the Republic. Tensions between Gony and Thuyic reportedly flared up after the execution. Through the final months of 2014, reports of inter-communal clashes continued in Lakes, particularly in Rumbek East, including a major incident on 27 December between the Gony and Thuyic groups in which as many as 48 individuals were killed and 60 injured.

91. On 15 March 2015, fighting broke out in Marial-bek cattle camp, which is dominated by Ruop section of Dinka Agar. The fighting was a continuation of the ongoing tension in Lakes between the Pakam, Kuei and Ruop. The fighting resulted in more than 70 deaths and many people were wounded. Women and children were displaced, and tension between the warring clans has since continued. On 11 July 2015, fighting erupted in Maborkoch village, Rumbek East County, between the Panyuon section of Rumbek Centre and the Dhiei section of Rumbek East.<sup>35</sup> Seven people were allegedly killed – three from among the Panyuon and four from the Dhiei – and 12 wounded, in what was reportedly a revenge attack by the Dhiei.

92. Tensions and violence have continued throughout 2015 in Rumbek East. On 1 June, violent attacks again erupted between the Gony and Thuyic groups, killing nine people – six Gony and three Thuyic – and injuring 19. According to the authorities, the death of a Gony

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<sup>34</sup> Guony and Thuyic are sub-clans of the Dinka Agar ethnic group. The concerned payams are located within approximately 25 km of Rumbek, the capital of Lakes.

<sup>35</sup> Panyuon are Dinka Agar and a sub-section of Ruop; Dhiei are also Dinka Agar, but a sub-section of Aliamtoc.

member, on 31 May, in Aduel, prompted the attack, which led to the desertion of several villages inhabited by the Thuyic, including Warnyinyam, Majak, Pachul and Agukuel. The residents, mostly women and children, fled to Panbarkou village in Malek-Agok Payam.

93. In Eastern Equatoria, inter-communal violence continued to affect the human rights situation and, in some cases, implicated members of the security forces. Deep inter-communal divisions between the Buya and Didinga communities in Budi County, extending to a lack of acceptance by both communities of local administrators on ethnic grounds, have led to significant inter-communal tensions. In some cases, attacks by both communities, in particular involving armed youth, were reported throughout the period. This deteriorating situation was further exacerbated by weak local judicial and law enforcement institutions and a lack of effort by the local administrative structure to promote reconciliation. The two communities have also objected to the presence of SPLA barracks in Chukudum, the county seat, and elsewhere in the county. Impunity for alleged violations by the SPLA against civilians has further increased tensions.

94. In many cases, the response of security forces to incidents of inter-communal violence has been heavy-handed and led to human rights violations. For example, between August and October 2014, tensions rose in Chukudum between civilians, the county administration and SPLA. Following two apparent attacks by unknown persons against the county commissioner's car and residence, night patrols and a curfew began in Chukudum town. Human rights violations against residents were allegedly committed by the patrolling forces, including arbitrary detention, harassment, threats, beating, extortion and looting. The crisis peaked on 6 October, when an SPLA soldier was reportedly shot dead by an unidentified gunman during the night patrol. While the SPLA claimed the gunman was a civilian youth, the community contended that the soldier was killed in an exchange of friendly fire among the organized forces. The following day, SPLA soldiers descended on Chukudum town, where they allegedly killed two persons, detained others and burned at least 47 homes. Despite statements by the State Police Commissioner that investigations into the incident would be conducted and the alleged perpetrators held accountable, the police have failed to act.

95. Following another major incident in Eastern Equatoria, on 6 December 2014, in Loronyo, Torit County, during which some local youth killed around 28 individuals from neighbouring Idali in Lopa/Lafon County, police investigators were reported to have made numerous arrests. UNMISS HRD was not granted access to interview any of the detainees, and was informed in January 2015 that at least 19 suspects had escaped from police custody. Following the incident, the State Government deployed security forces to Loronyo, reportedly to prevent any escalation of tensions between the two communities. Most residents of Loronyo fled, and the forces restricted the movement of the few who remained. They also reportedly committed other human rights violations, beating and wounding civilians, vandalizing the local school, and looting of residences, businesses and livestock.

**ix. Human rights violations resulting from a lack of police and justice capacity**

96. Justice institutions in South Sudan have been weak both prior to and immediately following independence, with very little capacity to administer justice in accordance with international human rights standards. While many of the challenges to the administration of justice remain unchanged, capacity issues have been severely aggravated by the ongoing conflict which has affected all institutions.

97. The impact is evident across every element of the criminal justice system, which allows such abuses as arbitrary arrest and detention, prolonged detention, absence of a fair trial and ill-treatment, among other human rights concerns. In addition, statutory justice institutions are absent in large portions of the country, and while customary courts provide limited access to justice, their practices raise various human rights concerns, and they often operate outside their competence.

98. Since its last report, UNMISS HRD has continued its general monitoring of human rights, including that related to the administration of justice. Field missions throughout the country – for example to Gokmachar in Northern Bahr el Ghazal; to Ezo, Masia, Maridi and Nzara in Western Equatoria; Raja in Western Bahr el Ghazal; and Pibor in Jonglei – have revealed a continued lack of adherence to international human rights standards particularly with regard to arrest, detention and trial.

99. Beyond more than a handful of state capitals, HRD has throughout the period noted a protracted absence of judicial and law enforcement actors across South Sudan. Regular monitoring and liaison with judicial actors has revealed that investigative processes are slow or non-existent due to a lack of qualified police and criminal investigation officers. Access to justice is also hampered by the absence of statutory courts, judges and prosecutors. For instance, according to the head of legal administration in Western Equatoria, a lack of judges in nine of 10 counties in the state was affecting the rights of arrested persons. By August 2015, the only courts functioning in the state were the county court and high court in Yambio. In Eastern Equatoria, meanwhile, there was only one high court with three judges, while only three of the eight counties had a resident judge. This poor coverage leads to unlawful adjudication of serious cases by customary courts or lower courts, and prolonged detention. Efforts by the authorities to improve in some areas were noted, for instance in Warrap where, by late October 2014, a newly-deployed judge arrived in Twic County.

100. While many parts of Jonglei lacked statutory courts, the state capital in Bor has enjoyed an established statutory court prior to and following the crisis in December 2013. Yet, there are no resident judges competent to adjudicate criminal cases. This situation is due to the fact that during the crisis, the court premises were pillaged, looted and destroyed. This has hampered the ability of judges sent from Juba to carry out their functions. The high court in Bor is currently operating through judges whose competence is limited to hearing civil and minor criminal cases. In at least one opposition-held area in Jonglei, UNMISS HRD has been

informed that minor cases were referred to customary justice, while more severe offences were tried before a judge who reportedly visited the area periodically.

101. In October 2014, the Chief Administrator of the Greater Pibor Administrative Area (GPAA) formally requested the Ministry of Justice to deploy legal personnel to Pibor. In November 2014, the Pibor County Police Commissioner informed UNMISS that until the arrival of relevant legal personnel and the opening of courts, all detainees would remain in police custody. In May 2015, UNMISS HRD met with the new prison director in Pibor, who arrived from Juba together with a new complement of corrections officers. While this was an encouraging development, the director emphasized that the prison was being used as a multi-purpose facility to house not only those convicted or alleged to have committed crimes, but also families of the accused who lived in fear of revenge attacks. There were still no statutory courts in Pibor at the time of writing.

102. By late December 2014, in some of the states most affected by the conflict, such as Upper Nile, reports were being received of SSNPS reinvigorating law enforcement activities, with the deployment of a new police commissioner and a large number of officers to Malakal. By 2015, however, it became clear that an insufficient number of police personnel had been deployed to ensure an adequate response to anything beyond the maintenance of public order, including through joint patrols with the SPLA. Following the surge of fighting in April 2015, some SSNPS officers reportedly joined the SPLA. In neighbouring Unity, police and justice actors were similarly lacking.

103. These deficits in institutional presence have aggravated the problem of prolonged detention<sup>36</sup>, which was already endemic across South Sudan before the conflict erupted. Monitoring by UNMISS HRD throughout the period under review revealed regular instances of prolonged detention in all states. In some cases, this situation was related to the unavailability of prosecutors or judges to ensure timely initial hearing of cases, while in other instances, suspects to be released on bail remained in custody for lack of anyone to provide surety.

104. UNMISS HRD monitoring also revealed regularly occurring cases of arbitrary arrest and detention, including proxy detention and detentions for customary offences or offences which are not criminal acts. For instance, on 24 November 2014, in Juba's Gudele Police Division, UNMISS HRD observed the detention of a mother and her 15-year-old son for acts allegedly committed by a member of their family in Lakes and Jonglei. UNMISS HRD even found cases of victims of crimes held in detention. For example, in September 2014, in Western Equatoria, it monitored the case of a child rape victim who was being kept in police custody in Nzara County, charged with adultery. In cases monitored in Northern Bahr el Ghazal, indebted individuals were sentenced to detention until payment of their debt, which effectively amounts to indefinite detention and contravenes national law and international standards.

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<sup>36</sup> Prolonged detention is defined as detention beyond the constitutionally mandated initial maximum period of 24 hours before presentation to a court.

105. Lack of capacity of police, prosecutors and courts has also led to situations of mob justice. On 13 May 2015, in Central Equatoria, 70 to 80 residents of Jalimo Boma, Kajo Keji County, reportedly rounded up members of a family and ordered them to leave the village immediately, alleging that the father was practising witchcraft. Some members of that family sought protection at the police headquarters. The police stated that there was nothing they could do to investigate the allegations or arrest suspects, declaring that they were themselves afraid of the mob. There appears to have been no investigations started as of December 2015.

#### **x. Customary courts acting outside the scope of their powers**

106. Customary law is a major source of law in South Sudan and its role is recognized as such in the Transitional Constitution of the Republic of South Sudan, 2011.<sup>37</sup> Moreover, due to a combination of factors, including lack of access to statutory courts and greater familiarity and comfort with the customary process, customary courts handle a significant number of cases. This trend has appeared to increase considerably during the conflict, with growing evidence of traditional authorities taking on the role of local level criminal courts, adjudicating cases beyond their jurisdiction, violating fair trial standards and imposing illegal fines and sentences, in contravention of national laws and international human rights principles.

107. Under the Interim Constitution of the Republic of South Sudan, customary courts do not have jurisdiction over criminal cases, except those bearing customary dimensions and elements, and which are referred by a statutory court.<sup>38</sup> According to the Constitution, customary courts have a mediation function, but are not explicitly given legal authority to order measures of the type encountered in criminal cases, including confinement.<sup>39</sup> Moreover, customary courts have an obligation to ensure that individual fair trial rights are respected to the same extent as under the formal, statutory system.<sup>40</sup>

108. UNMISS HRD observed numerous cases, across the country, where constitutional limitations were not respected and customary courts acted *ultra vires*. Through October and November 2014, in Northern Bahr el Ghazal, UNMISS HRD worked with authorities at Wanyjok Prison, Aweil East County, to secure the release of 25 inmates, including three women, following a review of their files revealing that a large number of prisoners had been detained or incarcerated following orders from customary courts. UNMISS HRD also followed up on the case of 75-year-old man who had been sentenced by a customary court in Aweil West County to an indefinite prison term for failing to pay the balance of cows for a marriage dowry.

109. In August 2015, in Western Equatoria, the resident judge of the County Court in Yambio confirmed having received an appeal from Nzara County Prison regarding two

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<sup>37</sup> Art. 167, Transitional Constitution of South Sudan (2011) ('Transitional Constitution').

<sup>38</sup> Sec. 98(2), Local Government Act 2009. See also Secs. 97, 99-102, Judiciary Act.

<sup>39</sup> Sec. 98(1), Local Government Act 2009 (stating that the Customary Law Courts shall have competence to adjudicate on customary disputes).

<sup>40</sup> Art. Q(a), African Commission on Human and People's Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2003).



inmates convicted by traditional chiefs and sentenced to three years of imprisonment. While the chiefs were not legally competent to issue such a sentence, the judge stated that the court had not yet started any review process on appeals coming from counties due to an increase in theft cases before the court.

110. Customary court decisions have often disproportionately affected women and girls, since they frequently impose certain cultural norms that are based on and perpetuate harmful gender stereotypes that violate their rights. For example, in Western Equatoria, UNMISS HRD noted that a rape victim had been imprisoned from 2 to 4 September 2014 on the order of a payam court. On 30 October 2014, in Northern Bahr el Ghazal, a customary court in Aweil remanded to an indefinite prison sentence a mother whose daughter had disobeyed her father in rejecting a forced marriage. The mother was accused of hiding her daughter.

### **xi. Arbitrary arrests and detention by security forces and the National Security Service**

111. The Transitional Constitution of the Republic of South Sudan established the civilian police service as the only law enforcement authority in South Sudan.<sup>41</sup> Neither the SPLA nor NSS therefore has any authority to engage in criminal justice actions. The Transitional Constitution explicitly prohibits the SPLA from having ‘any internal law and order mandate except as may be requested by the civilian authority when necessity so requires.’<sup>42</sup> NSS is mandated by the Transitional Constitution to ‘focus on information gathering, analysis and advice to the relevant authorities.’<sup>43</sup>

112. Despite these explicit provisions, both the SPLA and NSS have continued to arrest and detain individuals, often for long periods of time, without the involvement of prosecutors or magistrates. In essence, they operate in a space above the law and with virtual impunity.

113. On 8 October 2014, the National Legislative Assembly approved a National Security Service Bill (NSS Bill) which accorded NSS broad powers of arrest, the authority to search and seize private property without a judicial warrant, and expansive powers of communication surveillance, all this with no independent oversight or due process guarantees. The NSS Bill was severely criticized by a variety of actors, both in South Sudan and internationally, and was returned by the President to the National Legislative Assembly for amendment on 16 December 2014. Government officials, including the presidential spokesperson, declared that the law had entered into effect on controversial procedural grounds. On 16 April 2015, an official of the Ministry of Justice confirmed to UNMISS HRD that the bill did appear in the registry of ‘gazetted’ legislation, but declined to share a copy of the final text. It should be noted that no official gazette exists in South Sudan, so it remains unclear whether the text is in force and its content is unknown.

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<sup>41</sup> Arts. 151(7), 155, 159-160, Transitional Constitution.

<sup>42</sup> Art. 151(7), Transitional Constitution.

<sup>43</sup> Arts. 159(e), 160(4), Transitional Constitution.

114. Granting NSS sweeping powers without minimum and commensurate protections is extremely concerning and may be a means to legitimize a longstanding and persistent pattern of illegal arrest and detention by NSS. This is all the more preoccupying as such practices have intensified since the eruption of the conflict.

115. Amongst examples of arbitrary detentions by the NSS include that of an UNMISS radio staff member who was arrested on 22 August 2014, together with a United Nations security guard, in the town of Wau, Western Bahr el Ghazal. As of December 2015, both men remained in detention in the main NSS building, near Jebel market, in Juba. Neither of them has been charged with any crime, but both have been accused of providing support to the opposition. UNMISS has not been able to obtain any information as to whether an investigation was completed or a final decision taken about their case. Another UNMISS staff member was arrested in Torit, on 28 October 2014, and has since been held in the NSS detention facility by the riverside in Juba. He was also accused of supporting the opposition, but has not been officially charged. The three individuals have not had access to legal counsel, have not appeared before a judge and have not been allowed to receive family visits, however UN security officers have been granted sporadic access. A fourth staff member was arrested by SSNPS CID officers in Juba on 15 July 2015 and currently remains in detention.

116. On 11 June 2015 in Juba, a pickup truck carrying five NSS personnel in civilian clothes pulled over at a shop where a 28-year-old Darfuri trader worked. Two of them presented themselves as working for NSS and asked the trader to go with them to the NSS headquarters in Jebel. Relatives of the trader have since tried to contact him by phone, but his mobile has been switched off. He has not been seen since then.

117. In addition, UNMISS HRD has received reports of NSS acting as an illegal tribunal, interfering on issues that are not within its competence. For instance, in November 2014, in Aweil town, Northern Bahr el Ghazal, an Eritrean man, was allegedly arrested, detained and beaten by NSS officials following a complaint lodged by his relative on a financial matter. NSS summoned him and ordered him to pay SSP 10,000 to the complainant, which he declined, stating that the case had already been decided by the county statutory court. He also pointed out that such a case did not fall under the jurisdiction of NSS. NSS then allegedly beat him and placed him in custody. After his spouse came and paid part of the amount demanded, he was released on condition that he would pay the balance. Although the victim initially considered challenging the legality of his arrest and detention in court, he did not, for fear of reprisals.

118. The SPLA has likewise been engaged in arbitrary arrest and detention. This includes detention of civilians in military facilities, which is not authorized by law. Furthermore, they place detainees outside of the formal justice system, without recourse to judicial review or legal assistance, and create conditions for other violations such as ill-treatment and torture. UNMISS HRD is rarely granted access to monitor such detentions.

119. As mentioned above<sup>44</sup>, the security response to inter-communal violence has in many cases led to arbitrary detention, particularly of civilians in military facilities, and to allegations of interference by local executive authorities with the administration of justice. In connection with inter-communal tensions and tensions between authorities and local communities, between August and October 2014, in Chukudum, Budi County, Eastern Equatoria, UNMISS HRD received allegations of arbitrary arrest and detention, including in military facilities, particularly of members of known youth groups, following two attacks by unknown individuals on the county commissioner's vehicle. It was alleged that these arrests by SLPA were based on a list compiled by the county commissioner. Several human rights violations were reported in this context, most of which were attributed to the SPLA, including the death in custody of a seminarian and headmaster of Helecit Primary School. UNMISS HRD was informed that two other youths had been arrested and allegedly tortured by the same soldiers during this period.

120. More recently, on 16 August 2015, in the Gudele West section of Juba, four pickup trucks carrying around 40 armed soldiers from Military Intelligence surrounded the residence of the then recently dismissed governor of Western Equatoria and placed him under arrest after disarming his five bodyguards. The soldiers then took him to an unknown location in Juba. When the spouse of the former governor reportedly asked the soldiers about the reason for the arrest, they replied that they had received orders from above. While the former governor was subsequently released, the reason for his arrest remains unclear.

## **xii. Ill-treatment and conditions of detention**

121. On many occasions, the right to physical integrity of suspects has been violated, as they have been subjected to varying degrees of ill-treatment by police, security and military forces.

122. For instance, in Juba, a 20-year-old Ugandan held for the alleged theft of a mobile phone reported to UNMISS HRD in October 2014 that the police had flogged him with an electric wire during his interrogation in order to extract a confession. UNMISS HRD observed scars on his back that were consistent with the allegation. On 7 October 2014, in Aweil, Northern Bahr el Ghazal, while monitoring the Machakunyuk Police Station, UNMISS HRD observed injuries on two detainees who had been arrested for theft and placed in police detention, where they were allegedly beaten with a stick to extract a confession. In Lakes, on 9 January 2015, HRD received reports of the ill-treatment in the Central Prison of a prisoner convicted for the murder of the Rumbek East paramount chief. He was reportedly put in solitary confinement and denied food, water, medical treatment and the right to family visits. Ill-treatment has been associated with the detention of civilians in military facilities, as acknowledged to UNMISS HRD by a public official in Lakes, in October 2014, in reference to conditions at Baburzeid, Yirol West County. UNMISS HRD access to military facilities is rare.

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<sup>44</sup> Paras 73 to 81.

123. Unacceptable conditions of detention remained common across South Sudan. In Western Bahr el Ghazal, in September and October 2014, poor prison conditions, insufficient medical supplies and late referrals to medical facilities contributed to the death of an undetermined number of inmates. In Northern Bahr el Ghazal, UNMISS HRD observed overcrowding, poor living conditions and challenges in access to medical care in Wanyjok Prison, Aweil East County, throughout the period under review. On 15 July 2015, in Lakes, during a cell screening at Yirol West Central Prison, HRD noticed overcrowding, with 121 inmates placed in a cell that could only accommodate 80 people. The prison director described additional challenges he faced, including lack of sanitation and water. Likewise in Juba at the Western Police Division, UNMISS HRD found 62 male detainees, including five juveniles, placed in two detention cells in overcrowded and filthy conditions. Some of the detainees raised health-related concerns with UNMISS HRD.

124. In some cases, poor detention conditions have also led to unrest. In Eastern Equatoria, in March 2015, several prisoners at Kapoeta North County Prison in Riwoto staged a riot over lack of food. UNMISS HRD confirmed with Government sources that seven inmates were killed and several injured in the ensuing confrontation with prison wardens and other forces. Several inmates took advantage of the riot to escape, although many were recaptured. The acting governor in Torit confirmed to UNMISS HRD that the contractor who was supplying food to the prisons had stopped doing so for lack of payment. UNMISS HRD has been denied access to Riwoto Prison since the incident. Prison authorities have also turned down requests from UNMISS HRD for access to survivors and witnesses subsequently transferred to Kapoeta South and Torit. With the deteriorating economic situation in South Sudan, it is likely that prison conditions will continue to worsen throughout the country.

### **xiii. Narrowing space for freedom of expression**

125. Since the beginning of the conflict in December 2013, the space for freedom of expression and dissent has narrowed considerably. The media has repeatedly faced intimidation, harassment, threats and censorship, primarily from the security forces. This climate of repression has been marked by the closure of radio stations and the seizure of newspapers that convey information deemed to be critical or unfavourable to Government. Coverage of some topics have been deemed by officials to be too sensitive for public consumption, such as security and military matters, federalism, the opposition and even the peace process. This pervasive trend of censorship and manipulation of information comes at the moment when it is crucial for the people of South Sudan to engage in free and open debate about their future.

126. Throughout the period under review, Government rhetoric has demonstrated a low tolerance for independent or critical reporting by media outlets. In March 2014, the Minister of Information was quoted as stating publicly to the media that broadcasting or publishing

interviews with opposition figures inside South Sudan was an ‘offence’.<sup>45</sup> He was quoted restating this view in September 2014, adding that journalists would be taken to court if they did not stick to the ‘ethics’ of their profession.<sup>46</sup> On 25 September 2014, media reported that a former interior minister then serving as a legislator allegedly demanded ‘responsible journalism’ and urged journalists to promote and protect the country’s integrity through good reporting. He reportedly stated that the media should be conscious of their responsibilities to national development and warned that ‘wrong reporting’ would endanger the future of their children.<sup>47</sup> Furthermore, during a press conference at the airport in Juba, on 16 August 2015, President Salva Kiir made comments that were widely interpreted as a death threat against South Sudanese journalists who were criticizing the failure to conclude a peace accord.<sup>48</sup>

127. During the period covered by this report, Government actions to restrict the right to freedom of expression also went beyond rhetoric. Emblematic of the censorship and persecution of media workers was the closure of the Juba-based Radio Bakhita, run by the Roman Catholic Church. The station was shut down by NSS agents from 16 August 2014 until 12 September 2014,<sup>49</sup> reportedly because of a broadcast on 15 August regarding clashes between the SPLA and SPLM/A-IO in Bentiu. NSS agents also allegedly arrested and detained the radio’s news editor, who was released on 19 August after national and international pressure.

128. The media quoted the director of Bakhita Radio, in September 2014, as having stated that Government had suggested that the station should only speak about spiritual matters and discontinue political programmes, while an official was quoted as stating that the radio had been closed for administrative reasons.<sup>50</sup> According to a media report, NSS personnel, as they handed back the keys of Bakhita on 11 September 2014, again allegedly warned the staff not to cover political issues considered ‘objectionable’ as related to SPLM/A-IO or critical of

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<sup>45</sup> Gurtong.net, ‘S. Sudan Official Says Broadcasting Interviews with Rebels ‘An Offence,’ available in <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/15051/Interviews-with-Rebels-An-Offense-Minister-Makuei.aspx>, 11 March 2014.

<sup>46</sup> Sudan Tribune, ‘S. Sudanese Minister Warns Media against Pro-Rebel Reporting,’ available in <http://www.sudantribune.com/spip.php?article52320>, 8 September 2014.

<sup>47</sup> Source: South Sudan Demands Responsible Reporting on Security, available in <http://allafrica.com/stories/201409260647.html>, 25 September 2014.

<sup>48</sup> President Kiir is reported to have told reporters, ‘Freedom of press does not mean that you work against your country. And if anybody among them does not know this country has killed people, we will demonstrate it one day on them.’ Radio Tamazuj, ‘Kiir threatens to kill journalists’, 17 August 2015.

<sup>49</sup> Radio Tamazuj, ‘Catholic Radio Bakhita FM Reopens after nearly 3 months,’ available in <https://radiotamazuj.org/en/article/catholic-radio-bakhita-fm-reopens-after-nearly-3-months>, 8 November 2014. (stating that the bishop gave administrative reasons as the reason for not reopening); VOA News, ‘Kiir says South Sudan’s Bakhita Radio can resume broadcasts,’ available in <http://www.voanews.com/content/south-sudan-salva-kiir-bakhita-radio-broadcast/2451802.html>, 16 September 2014.

<sup>50</sup> Radio Tamazuj, ‘Catholic Radio Bakhita FM Reopens after nearly 3 months,’ available in <https://radiotamazuj.org/en/article/catholic-radio-bakhita-fm-reopens-after-nearly-3-months>, 8 November 2014; VOA News, ‘Kiir says South Sudan’s Bakhita Radio can resume broadcasts,’ available in <http://www.voanews.com/content/south-sudan-salva-kiir-bakhita-radio-broadcast/2451802.html>, 16 September 2014.

Government.<sup>51</sup> On 8 November, Radio Bakhita resumed its broadcasting activities.

129. On 13 October 2014, a *Juba Monitor* staff member was summoned to an NSS office where he was allegedly questioned about an article he had published that day regarding SPLM/A-IO attacks on Malakal. NSS reportedly accused the *Juba Monitor* of being pro-opposition and lacking balance in its reporting. It also ordered newspaper staff not to take news from websites, including from Radio Tamazuj and *Sudan Tribune*. NSS instructed the *Juba Monitor* to stop publication and prevented release of the 15 October edition, despite the editor's objections. Regular publication of the *Juba Monitor* resumed on 16 October 2014.

130. The interruption of publication of the *Juba Monitor* was widely condemned by national and international media actors. On 20 October 2014, the presidential press secretary denied that the Government had ordered the *Juba Monitor* not to re-publish news reports by other media outlets.<sup>52</sup> In contrast to the language published in the media quoting the Minister of Information and suggesting that media outlets and journalists were violating their ethics by 'crossing the line' in reporting on the opposition and could face prosecution, the press secretary claimed that the Government had only 'advised' editors on ethical issues.<sup>53</sup> Despite the warnings, the newspaper's editor reportedly refused to comply with the restrictions, stating he would continue to re-print such articles and publish his opinion pieces.<sup>54</sup> NSS again temporarily stopped the *Juba Monitor* from printing on 31 March 2015 over objections to a story on military drills by the Ugandan forces. The paper resumed printing on 1 April, following discussions between the newspaper and NSS.

131. On several occasions, NSS interfered with the content of the *Nation Mirror* daily newspaper in Juba. On 16 December 2014, individuals identifying themselves as NSS reportedly confiscated 2,500 copies of that day's edition from a distribution centre, after having contacted a representative of the newspaper the previous day to question its content. On 9 January 2015, UNMISS received information that the *Nation Mirror* had been temporarily closed by NSS, reportedly following the publication of photographs of opposition figures. The paper resumed operations on 13 January.

132. Yet on 3 February 2015, 3,000 copies of the newspaper's edition for that day were confiscated by agents of the NSS. The Ministry of Information later confirmed that the NSS had sent a letter on 2 February ordering the editor-in-chief to stop publication of the 3 February edition, which was deemed to contain a false and misleading article on its front page on the withdrawal of SPLA forces from Renk. According to sources, the editor-in-chief attempted to continue with the printing, which prompted the NSS to confiscate that edition and order the closure of the media house the same day. The Ministry of Information

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<sup>51</sup> Radio Tamazuj, 'National Security Continue Making Threats against Radio Bakhita,' available in <https://radiotamazuj.org/en/article/national-security-continue-making-threats-against-radio-bakhita>, 12 September 2014.

<sup>52</sup> Radio Tamazuj, 'Presidency Says Juba Newspapers Free to Print Outside Reports,' available in <https://radiotamazuj.org/en/article/presidency-says-juba-newspapers-free-reprint-outside-reports>, 20 October 2014.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

acknowledged that the editor-in-chief had published a written apology, but added this apology should have been on the cover like the contested article. He further revealed that the issue of the paper's closure was in the hands of the NSS and that the authorities would be filing a court case against the *Nation Mirror* and its editor-in-chief. As of the date of writing this report, the newspaper remains closed.

133. In August 2015, NSS separately ordered the closure of the *Al Rai* and *Citizen* newspapers. *Al Rai* was reportedly closed on the grounds that one of its board members had recently joined SPLM/A-IO, which the paper vehemently denied. No reason was given for the closure of the *Citizen*, but speculation pointed possibly to its coverage of the opposition and the peace process. Both media sources have since remained non-functional, despite persistent advocacy by media organizations for the resumption of their publication.

134. Individual reporters have also been targeted and arrested. On 31 October 2014, NSS detained a journalist for photographing people queuing at a petrol station during a fuel shortage.<sup>55</sup> On 30 October, according to media reports, the editor of a major daily newspaper was summoned by the police and kept for several hours after a complaint about one of his opinion pieces.<sup>56</sup> On 31 October, another journalist was detained for five hours by NSS in relation to a column in *Al Maugif*, an Arabic-language daily newspaper, about the eviction of shopkeepers from the Juba market.<sup>57</sup>

135. Such examples have been frequent. On 9 February 2015, in Juba, security agents arrested two journalists trying to cover the elections of the South Sudan Bar Association. One day later, a free-lance journalist was arrested in Juba as he was covering a demonstration against a demolition. A regular contributor to the BBC World Service and the host of a weekly programme on the State-owned South Sudan TV station, he was released on 11 February. On 3 August, a British national serving as a program manager of Sawa Shabab radio drama for *Free Voice Radio South Sudan* was arrested by NSS for unknown reasons and subsequently released.

136. UNMISS has not been spared from harassment and intimidation. During a press conference on 16 February 2015, the information minister threatened to shut down the UNMISS station Radio Miraya after it had broadcast an interview with the late John Garang's widow, Rebecca Nyandeng, earlier that morning. The matter was eventually resolved diplomatically.

137. Another facet of the difficulties faced by the media in South Sudan had been the absence of a legislative framework. The National Legislative Assembly attempted to address this gap in 2013, passing three bills related to the media and freedom of expression – the Public Broadcasting Bill, the Media Authority Bill and the Right of Access to Information

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<sup>55</sup> Catholic Radio Network, 'Security Forces Arrest New Nation Journalist,' available in <http://catholicradionetwork.org/?q=node/15946>, 1 November 2014.

<sup>56</sup> Radio Tamazuj, 'Newspaper Editor-in-Chief Summoned by South Sudan Police,' available in <https://radiotamazuj.org/en/article/newspaper-editor-chief-summoned-south-sudan-police>, 31 October 2014.

<sup>57</sup> Radio Tamazuj, 'Newspaper Journalist Detained for 5 Hours in Juba,' available in <https://radiotamazuj.org/en/article/newspaper-journalist-detained-5-hours-juba>, 31 October 2014.

Bill (collectively referred to as the Media Bills). The Media Bills were sent to the President for his assent on 4 December 2013 and, after a long period of silence and speculation, it was announced that the President had signed them into law in September 2014. The official versions that were released, however, are dated 9 December 2013. As the laws were not made public until more than nine months after officially entering into force, this created considerable uncertainty about how to proceed with their implementation, in particular with regard to the establishment of a media oversight body that was to be formed within three months of its enactment.

138. The adoption of a legislative framework for the media constitutes a significant positive step, indicating efforts toward enhancing freedom of expression. Some elements of the Media Laws essentially conform to international standards, including adequate prohibition on hate speech; a clear and simple procedure for access to information held by public authorities; and the concept of an independent public service broadcaster.

139. However, serious concerns remain. The Media Laws do not provide for the transparency of the process of appointment and removal of regulatory authorities; guarantees to protect regulatory authorities' independence from political interference are insufficient; and the language regarding limitations on freedom of expression and the right to access information is ambiguous.

140. On 13 May 2015, the President appointed members to the media regulatory bodies through a decree. While the Ministry of Information and Broadcasting had initially requested the media community to form a nominating committee, the list prepared by the latter was rejected by the ministry and replaced with a different one. According to the professional consortium known as the Association for Media Development in South Sudan, the members who were appointed do not possess the requisite skills in the field of media practice. Besides failing to meet reasonable standards of openness and transparency, the process did not involve the participation of civil society or the media community.

### **III. Lack of accountability for human rights violations**

141. As previously reported, both parties to the conflict have repeatedly announced that perpetrators of gross violations and abuses of human rights and violations of international humanitarian law committed during the conflict would be held accountable. Government took some steps in this regard, establishing several committees, including a national Investigation Committee on Human Rights Abuses. So far, these have failed to produce any tangible results. In response to previous UNMISS human rights reports, Government and the SPLA had promised to conduct investigations into allegations, but no findings have yet been published.

142. At the national level, senior SPLA officials claim that around cases involving 120 SPLA soldiers were pending before the military justice system. This includes about 100 soldiers allegedly involved in serious crimes against civilians committed in December 2013; these soldiers allegedly absconded during a shooting incident at SPLA Headquarters in Giada



in relation to the non-payment of salaries, on 5 March 2014. The remaining cases relate to minor offences and indiscipline. The SPLA reported on 17 December 2014 that 41 soldiers had been subjected to various disciplinary measures, and one had been sentenced to death for murder, allegedly in connection with developments in December 2013 and January 2014. At the time of writing this report, UNMISS HRD was seeking to verify whether disciplinary measures had been taken, but information it has received suggested that the majority comprised dismissals for desertion. It was also informed that the alleged sentence for murder involved the ethnically-motivated killing of a soldier by a fellow soldier.

143. An investigation committee established by the Inspector-General of Police in January 2014 has reportedly completed its investigations into events surrounding the December 2013 conflict. Its findings were presented to the Investigation Committee on Human Rights Abuses following a reported Government directive that all information and findings by any government department related to the conflict should be provided to this body. While no specific findings were shared with UNMISS, HRD has been informed that this investigation was unable to link any police officer to violations committed in December 2013. According to senior SSNPS officials, police investigations have led to some arrests, but those arrested were reportedly handed over to the SPLA and subsequently escaped during the above-mentioned incident of 5 March 2014.

144. The Investigation Committee on Human Rights Abuses has reportedly completed its work. It informed UNMISS HRD that it had presented a report to the President on 2 December 2014. No further information has been shared, however, in relation to the methodology and findings of the Committee. The failure of Government to release these findings illustrates the gap between rhetoric and action in bringing perpetrators to justice.

145. On 4 February 2015, in an official statement, President Salva Kiir indicated that accountability could only occur after the conclusion of a peace agreement. On 24 February 2015, he continued the practice of granting amnesty, issuing Republican Order No. 6/2015 which offered amnesty to ‘all those waging war against the State’. The order appeared to grant ‘blanket’ amnesty, in contravention of international norms and standards prohibiting amnesties for perpetrators of international crimes or other gross violations of human rights. The offer expired on 31 March 2015, with indications that it had attracted only scant interest from opposition members.

146. At the state level, accountability measures for gross human rights abuses and violations related to the crisis have also been weak or non-existent. In Unity, UNMISS HRD held several meetings with SPLA Division IV leadership in relation to human rights violations allegedly committed by SPLA forces between August and October 2014. The SPLA leadership claimed that there may have been misinformation or an attempt by victims to portray the SPLA as a perpetrator even when they had assisted civilians. SPLA leadership enumerated instances where they had either sheltered civilians from attacks, provided safe passage to various locations, or safely returned civilians to the PoC area at UNMISS.

147. UNMISS HRD engaged with the SPLA in relation to the fighting, on 29 and 30

October 2014, in which stray bullets killed one child and injured other civilians in the PoC site in Bentiu, while three mortar shells landed in the vicinity of the UNMISS compound and one in the PoC site. The SPLA stated that an investigation would be carried out to determine whether the officer supervising the launching made a mistake when calibrating or deliberately targeted the UNMISS base. To date, UNMISS is unaware of the outcome of this investigation.

148. In early December 2014, UNMISS HRD raised the case of a male IDP taken outside the PoC site on 11 November 2014 by order of the acting governor of Unity. Despite several meetings with the SPLA and the commissioner of Koch County, from where the victim originated, his whereabouts have since remained unknown.

149. In Eastern Equatoria, state authorities promised to ensure that perpetrators of the 7 October 2014 incident in Chukudum, Budi County, during which two civilians were killed and 47 houses burned by the SPLA, are brought to justice. At the time of finalizing this report, no action had been taken and the outcome from a fact-finding committee established by state authorities to investigate the incident remained unknown.

150. In Upper Nile, following the abduction of a World Food Programme national staff member, on 16 October 2014, the SPLA informed UNMISS that they had arrested six individuals for their involvement, who had been transferred to Juba. At the time of reporting, UNMISS HRD had received no further information on the status of the investigations. On 18 August 2015, the WFP Executive Director issued a statement confirming that four WFP staff in South Sudan had “disappeared without a trace...After many months, we must sadly conclude that they are no longer alive.’

151. In Central Equatoria, Northern Bahr el Ghazal and Western Equatoria, there were isolated cases of detention and prosecution of military and police personnel responsible for human rights violations or crimes. For instance, in Central Equatoria, UNMISS HRD documented only six cases in 2014 that led to action against members of the security forces accused of human rights violations. In three of these cases, security force elements were arrested and their cases referred to court, while the remaining three cases resulted in conviction. In Northern Bahr el Ghazal, for the whole of 2014, only four cases involving members of the security forces in the killing of civilians were brought before courts. Three resulted in convictions, while one case reportedly remained pending at the time of writing. Four more cases of prosecution of human rights violations committed by security forces were documented in Western Equatoria in 2014.

152. No significant efforts have been observed to identify and prosecute non-State actors alleged to have committed human rights violations or abuses. In addition to reports on the establishment of customary courts to adjudicate civilian cases in opposition-held areas in Unity and Jonglei states, military courts have also reportedly been established in some SPLM/A-IO-held areas. Whether they operate according to international human rights is unknown.

153. There is a growing demand within the population and civil society for accountability for crimes committed since the conflict started in December 2013, based on the realization that accountability has to be embedded in any political settlement to yield viable and sustainable peace. On 3 March 2015, 76 South Sudanese and international NGOs petitioned the African Union Peace and Security Council (AUPSC) to release the report of the African Union Commission of Inquiry on South Sudan (AUCISS), established to investigate human rights violations and other abuses committed during the conflict, and stressed the importance of ensuring criminal accountability for individuals responsible for war crimes and crimes against humanity. On 24 March 2015, the United Nations Security Council issued a Presidential Statement on South Sudan emphasizing the vital importance of fighting impunity and ensuring accountability for serious violations and abuses of human rights and violations of international humanitarian law, including those that may amount to war crimes and crimes against humanity.

154. The lack of progress on accountability for violations committed during the conflict further reinforces the need for international accountability measures. The establishment of the AUCISS was an important signal and step in this regard. The Commission completed its work in September 2014 and presented its report to the AUPSC in October 2014. On 28 January 2015, the AUPSC deferred consideration of the report on the premise that its release could undermine the peace process, highlighting the regional dynamics which could hinder accountability. Finally, on 26 September 2015, the AUPSC issued a communiqué announcing the release of the report. The report found that civilians had been the targets of murder, torture, cruel, inhumane and other degrading treatment, rape and other sexual and gender-based crimes, as well as the forced conscription of children, incitement to violence and the looting and destruction of property. Among its recommendations were the strengthening of institutions, establishment of accountability mechanisms, such as a hybrid court, and the establishment of a truth and reconciliation commission.

#### **IV. Conclusion**

155. Although the scale and intensity of the conflict has somewhat subsided since the first brutal months of fighting, persistent violence in the Greater Upper Nile region and sporadic violent incidents in other parts of the country have been accompanied by continued allegations of gross human rights violations and abuses, including killings and sexual violence, in addition to new displacement of individuals and whole villages.

156. Into this poisonous mix of major conflict between the two main protagonists and their allies, inter-communal violence that once consisted largely of cattle-raiding has escalated to new and lethal levels, with the proliferation of more sophisticated weapons, and the deepening of ethnic tensions.

157. A perceptible deterioration in the exercise of freedom of expression in late 2014 and in 2015 has been marked by a series of incidents in which threats and intimidation targeted

civil society actors and journalists, with a clear intent to censor the media and control the flow of public information.

158. While the rhetoric on both sides of the conflict has paid lip-service to a commitment to hold accountable perpetrators of gross human rights violations and abuses, as well as serious violations of international humanitarian law, little in the way of concrete action can be cited to support such claims. To the contrary, various Government actors have reiterated that accountability can only follow the attainment of peace. In the interim, the hopes of survivors and relatives of victims for justice and redress fade with the passing months.

159. Both sides have also denied any child recruitment, yet repeated sightings of children in their ranks belie the disclaimers. As the previous UNMISS reports have demonstrated, women and children have continued to suffer terribly from the ongoing violence. Even families far from the scene of the fighting have paid a high price as the economic impact of the conflict touches the lives of all people in South Sudan. Indeed, access to the most basic services has grown increasingly limited as the cost of the war drains the public coffers.

160. Despite the release of the report of the AUCISS, a sustained political commitment from the African Union, South Sudan's neighbouring countries and the international community at large will be crucial to ensuring that credible accountability mechanisms are established in South Sudan along the lines established in the ARCSS. While it is encouraging that South Sudan's leaders have acknowledged the need for accountability, some resistance has been voiced to the creation of the proposed Hybrid Court for South Sudan, which could prove a serious impediment to implementation of the accountability and transitional justice mechanisms envisaged in the agreement to ensure truth, reconciliation and healing in South Sudan. The African Union and the international community must remain adamant on the need for accountability.

161. Ensuring respect for human rights can only become a reality once perpetrators believe that they will be held accountable. Nothing less will provide a future with the full measure of justice, peace, security and development that people in South Sudan aspire to and deserve. Effective accountability for the human rights violations and abuses suffered by so many offers the only path to ending the cycle of violence and impunity and toward forgiveness, national reconciliation and sustainable peace.

## **V. Recommendations**

The recommendations made by UNMISS in its previous reports remain largely unimplemented and therefore valid. UNMISS reiterates these recommendations and the following:

### **UNMISS recommends that all parties to the conflict:**

- Immediately end all fighting in South Sudan and abide by the terms of the ARCSS.

- Put an end to gross abuses and violations of human rights and serious violations of international humanitarian law, including those amounting to international crimes, including those involving extrajudicial killings, ethnically targeted violence, sexual violence, recruitment and use of children, enforced disappearances and arbitrary arrest and detention.
- Abide by communiqués issued from both sides to take appropriate measure to address sexual violence, implement the five-year national gender policy strategic plan in areas under their control and implement or adopt action plans to ensure child-soldier-free forces.
- Implement punitive measures for all commanders who continue to practice forced and child recruitment, regardless of whether their forces are fully integrated.
- Allow unhindered access for humanitarian assistance and human rights monitoring and investigation.
- Ensure that accountability measures are implemented to promote national reconciliation and healing processes. The culture of impunity that fuels atrocities like those reported above cannot be eradicated until all armed actors recognize and accept their responsibility to protect civilians.

**UNMISS recommends that the Government of the Republic of South Sudan:**

- Undertake comprehensive and credible investigations to establish the scope of violations and the responsibility of perpetrators.
- Establish a credible accountability mechanism, consistent with international standards and in accordance with those outlined in the ARCSS, to hold the perpetrators of violations individually accountable.
- Ensure that its investigation committees are independent, transparent, and credible and meet international standards. In addition, State institutions must conduct serious investigations into allegations of violations of international human rights and humanitarian law.
- Establish effective transitional justice mechanisms, including the Commission for Truth, Reconciliation and Healing and the Hybrid Court, as envisaged in the ARCSS.
- In line with the ARCSS, establish a credible legal framework in South Sudan that is compliant with international human rights law.
- Enhance the capacity of judicial institutions and law enforcement, including by reinstating their presence in conflict-affected areas.

- Reform and restructure the security apparatus, including the SPLA and SSNPS, to ensure they operate in compliance with the Transitional Constitution of South Sudan and international human rights norms and standards, and best practice. Such reforms should include a vetting process to ensure that these institutions are led and staffed by suitably qualified personnel, and exclude alleged perpetrators of serious human rights and humanitarian law violations. Special police units should be established to investigate sexual violence, in accordance with international, regional and national standards.
- Review and amend the National Security Service bill to ensure its compliance with the Transitional Constitution and applicable international, regional and national human rights norms and standards.
- Ensure the prompt and full cessation of arrests and detention by NSS, which are in contravention of the Transitional Constitution and other national laws.
- Cease actions impeding the rights to freedom of opinion and expression, including the harassment and censorship of the media and civil society, summoning and detention of journalists, and the issuing of orders to suspend publications or seize newspapers. In parallel, work towards swift implementation of the media bills. Protect human rights defenders and the media as guaranteed under the Constitution and international law, taking into account the UN Plan of Action on the Safety of Journalists and the Issue of Impunity.
- Respect the inviolability of United Nations premises and personnel. Grant United Nations human rights monitors and other competent international organizations full and unimpeded access to places where abuses and violations of human rights and violations of international humanitarian law are alleged to have occurred.
- Ensure full protection to victims and witnesses of violations and abuses.

**UNMISS recommends that Member States and regional organizations:**

- Support the implementation of the ARCSS, including the prompt establishment accountability mechanisms, and warn against the granting of amnesties for gross violations and abuses of human rights and serious violations of international humanitarian law.
- Support efforts to protect the population of South Sudan and to promptly bring to an end gross abuses and violations of human rights and serious violations of international humanitarian law.

- Promote an inclusive approach to peace negotiations, and the implementation of peace agreements, to ensure that all people in South Sudan have a voice in the future of their country. The inclusion of a wide range of stakeholders in the process would improve the sustainability of any final arrangements by ensuring the involvement of actors from civil society, faith-based groups and representatives of South Sudanese women and youth.
- Once the Transitional Government of National Unity is established, assist the Government with accountability efforts, including by strengthening rule of law institutions and assisting security-sector reform.