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Agenda item 2

**Annual report of the United Nations High Commissioner
for Human Rights and reports of the Office of the
High Commissioner and the Secretary-General****Assessment mission by the Office of the United Nations High
Commissioner for Human Rights to improve human rights,
accountability, reconciliation and capacity in South Sudan*****Report of the United Nations High Commissioner for Human Rights***Summary*

This report by the High Commissioner for Human Rights is presented pursuant to Human Rights Council resolution 29/13. It contains the principal findings of the comprehensive assessment conducted by the Office of the United Nations High Commissioner for Human Rights into allegations of violations and abuses of human rights and violations of international humanitarian law in South Sudan since the outbreak of violence in December 2013. It examines alleged violations and abuses committed by State actors and non-State armed groups during the conflict, with particular focus on the worst affected states of Unity and Upper Nile States, as well as Western and Central Equatoria where the conflict has spread. An overview of the way forward towards accountability is also provided, including ensuring the implementation of the transitional justice and accountability mechanisms in the August 2015 Agreement on the Resolution of the Conflict in South Sudan.

The report also examines the impact of technical assistance and capacity building provided to government institutions. It concludes with recommendations addressed to all parties to the conflict, the Transitional Government of National Unity, the international community, the African Union Commission, the Human Rights Council and the Security Council.

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

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 29/13 which requested the High Commissioner for Human Rights to urgently undertake a mission to engage with the Government of South Sudan, to monitor and report on the situation of human rights, and to conduct a comprehensive assessment of allegations of violations and abuses of human rights with a view to ensuring accountability and complementarity with the African Union Commission of Inquiry. Resolution 29/13 requested the High Commissioner to present a report of the assessment at its thirty-first session.¹

2. The High Commissioner deployed a team to South Sudan from October 2015 through January 2016, based in Juba. The Government established a task force to liaise with the team and respond to requests for documentation and access to persons and places.

3. As per its mandate, the assessment team examined alleged violations and abuses of human rights committed by both State actors and non-State armed groups since the outbreak of violence in Juba in December 2013, to the end of December 2015, taking into account reports issued by the High Commissioner for Human Rights, the United Nations Mission to South Sudan (UNMISS) and the African Union Commission of Inquiry.² The team particularly focused on violations and abuses that occurred in 2015.

4. Due to severe access constraints and the limited time available, the assessment focused on Unity and Upper Nile States, which have been most heavily affected by the conflict, as well as states in which the conflict spread to, namely Western and Central Equatoria. This focus was motivated by the gravity of the allegations of violations of international humanitarian and human rights law, human rights abuses, and their significance in demonstrating patterns.

5. The team faced considerable challenges in conducting its work: lack of cooperation from the Government, limited access to conflict areas and serious victim and witness protection issues.

6. The team was able to confirm that the patterns of violations and abuses of international human rights and violations of international humanitarian law identified in earlier reports by the United Nations and the African Union continued throughout 2015. In particular, the assessment revealed that sexual and gender-based violence, which had been a hallmark of the conflict-related violence in 2014, was widespread throughout 2015, particularly in Unity state, where the Government forces and affiliated militia were apparently those primarily responsible. The widespread character of the sexual violence against women and girls and its broader implications on the social fabric is of grave concern.

7. This report aims at contributing and giving impetus to the establishment of an effective and sustainable process of accountability, truth, reconciliation and provision of guarantees of non-recurrence for the thousands of victims and their families who have suffered immeasurably. Failure to address the deeply engrained disregard for human life will only lead to such violations re-occurring.

¹ For detailed findings of the assessment mission by the Office of the United Nations High Commissioner for Human Rights to South Sudan, see document A/HRC/31/CRP/6.

² UNMISS, Conflict in South Sudan: A Human Rights Report, 8 May 2014; African Union Commission of Inquiry Report, October 2014 (published October 2105). Office of the High Commissioner - UNMISS, "The State of Human Rights in the Protracted Conflict of South Sudan" (December 2015).

II. Context and recent developments

8. Since the outbreak of the crisis in December 2013, the human rights situation has dramatically deteriorated. All parties to the conflict have perpetrated gross violations and abuses of international human rights and serious violations of international humanitarian law, including attacks against civilians, rape and sexual violence, arbitrary arrest and detention, abduction and attacks on journalists, as well as United Nations personnel and peacekeeping facilities. Many civilians have been attacked and killed in their homes, as well as in places of shelter, including churches, mosques, hospitals or medical facilities, and in United Nations bases. Thousands have been killed, and over two million South Sudanese have been displaced from their homes, more than 1.5 million of them within the country, with many seeking safety in United Nations premises.

9. In May 2014, the United Nations Secretary-General advised the Security Council that there were reasonable grounds to believe that crimes against humanity have been committed in South Sudan. The Africa Union Commission of Inquiry reached the same conclusion in its report.

10. In August 2015, the parties to the conflict signed a peace agreement intended to halt the fighting, and put in place processes for establishing a transitional government of National Unity (TGNU). The agreement provided for the establishment of a hybrid tribunal, under the auspices of the African Union, with the authority to prosecute genocide, war crimes, crimes against humanity and other serious crimes. The agreement also requires that the future transitional government create, within six months, a truth and reconciliation commission to establish a record of violations of human rights perpetrated since the start of the conflict, and a compensation and reparations authority. As of February 2016, the TGNU has not been established.

III. Overview of alleged violations and abuses of human rights and violations of international humanitarian law

A. Background

11. The killings, sexual violence, displacement, destruction and looting that were the hallmarks of the conflict through 2014 continued unabated through 2015. In 2015, while all parties to the conflict continued to commit serious violations and abuses, the Government appears to be responsible for gross and systematic human rights violations. A major development was the emergence of conflict in the Equatorias, with the Government undertaking efforts to suppress armed ‘opposition.’ In addition, the country saw an increase in the State’s security apparatus intimidating media and civil society.

B. Principal findings

12. The principal findings are the result of the evaluation by the Assessment Mission of the information it collected, including UNOSAT satellite imagery. Given the scope of the allegations, their gravity, consistency, recurrence throughout the period under review, and the similarities in their modus operandi, there are reasonable grounds to believe that gross violations and abuses of international human rights, serious violations of international humanitarian law and other international crimes have been committed during 2015. If established before a court of law, these allegations may constitute, depending on the circumstances, war crimes and/or crimes against humanity.

1. Killings

13. The civilian death toll arising from the conflict appears in large part due to the direct targeting of civilians by armed actors, rather than to incidental losses arising from crossfire.

14. In late April 2015, in Unity state, the Government launched a multi-prong attack to regain control over the territories under the control of the opposition. Backed by armed youth groups mainly from the Bul Nuer and Jagei Nuer, the Government's military offensive had a devastating impact on civilians. In what can be described as a 'scorched earth' policy deliberately targeting civilians. The SPLA, backed by armed militia and county commissioners, killed civilians, including women, children and older persons, raped women and girls, looted and burnt civilian property and pillaged tens of thousands of livestock.

15. According to a recent UN report, the consequence to the violence seen in Unity state from November 2014 through November 2015 was an estimated 10,553 civilian deaths, 7,165 of which were due to violence as well as 829 deaths from drowning, 890 persons abducted and 1,243 persons missing.³

16. The village of Gandor, in Leer County, for example, was repeatedly attacked by a mix of SPLA soldiers and armed youth groups in May, August and November 2015. A witness described how, in the August attack, Government forces backed by armed youth groups shelled the entire village before the armed youth embarked on massive destruction and looting. One witness recounted seeing a pregnant woman being shot in the back as she fled the attackers.

17. At the end of October 2015, Pilling, in Leer County, was attacked by SPLA soldiers and armed youth, mostly from the neighboring county of Koch. One woman described how the attackers shot and killed her husband in her presence. According to her, the assailants later locked up her grandfather in a storage room and burned him alive. In a similar incident during an SPLA attack in the village in Maal in Mayendit County, at the end of November 2015, a woman reported that her 80-year-old father-in-law was burnt alive in a hut, while being forcibly prevented from rescuing him.

18. Several sources provided information about an incident on or around 22 October 2015, in Leer town. According to witnesses and other credible sources, approximately 60 cattle-keepers suffocated while detained in a container in the compound of the former Catholic Church in Leer town, which, at the time, was apparently used by the acting Leer County Commissioner and the SPLA. The cattle keepers, who were mostly from the surrounding villages of Leer, were requested by SPLA and local authority officials to take their cattle to Leer for protection. Witnesses reported seeing the men being rounded up and brought to the container. Others reported seeing the container being guarded by an SPLA soldier at the Catholic Church compound. According to credible information, all men, with the exception of one survivor, died within one or two days of being detained. Their bodies were later dumped in a nearby area. In November, the assessment team visited the alleged dumping ground and confirmed the presence of human remains.

19. If established, these would violate the right to life, obligation to protect the life of the individuals in detention, including to investigate the cause of their death and prosecute those found responsible. Moreover, the conditions of detention leading to the death of these individuals amount to torture and other cruel, inhuman and degrading treatment.

³ Crisis Impacts On Households in Unity State, South Sudan, 2014-2015,' The Office of the Deputy Humanitarian Coordinator in South Sudan, January 2016.

20. In Upper Nile state, a source indicated that, after an attack in July 2015 by SPLA, he returned to his village to look for civilians left behind and found in their huts the bodies of a woman and a man, both with physical disabilities and both bearing gunshot wounds. Another witness reported that on 2 September, when he saw SPLA helicopter gunships and amphibian tanks crossing the river he and several others crossed to the west bank. Upon noticing that his children were missing, he returned to the village where he saw the bodies of six women and the bodies of two boys of about seven years of age hanging from a tree.

21. The team also learned of an attack by opposition forces from the Shilluk tribe on Atar Island, Pigi County, in Jonglei State, near the border with Upper Nile, in June 2015. Shilluk commanders had accused the Dinka community of hiding fighters and munitions to attack the Shilluk positions in Pigi. During that attack numerous civilians were killed, including six young men and one woman, with their hands tied with ropes made of soft grass. Some of them had been shot, others cut to pieces with pangas (local sickles).

22. In Central Equatoria state, in September 2015, witnesses and credible sources reported the killing of civilians by SPLA soldiers when they returned to their villages in search for missing relatives or food. For example, villagers found the body of one woman who had been shot while trying to retrieve some beans from her field. On two separate occasions, SPLA shot and killed young men who had returned to their village to retrieve personal belongings, accusing them of belonging to the opposition.

23. In Western Equatoria state, the team confirmed that in May 2015 the SPLA injured and killed civilians, including children and looted and destroyed civilian property in Mundri town for three days. SPLA soldiers also surrounded the county prison and opened fire on prison officers, killing one and injuring another. Sources also reported that children and adults drowned whilst trying to escape. Their bodies were seen floating in the Yei river.⁴ Estimates of civilian deaths during these three days ranged from between 60 and 110.⁵

24. The killings violate the prohibition on the arbitrary deprivation of the right to life. In addition, during a non-international armed conflict, directing attacks against civilians not directly participating in hostilities, including in some cases burning them alive in their homes, is a violation of Additional Protocol II and Common Article 3 of the Geneva Conventions, which prohibits all violence directed against them including murder, mutilation, cruel treatment, and torture.

25. Forces affiliated with both sides have singled out civilians on the basis of ethnicity — Nuer, Dinka or Shilluk — as targets for violence or mistreatment. This discriminatory adverse treatment is a violation of international human rights law that prohibits discrimination and Common Article 3 and the fundamental guarantees set forth in Article 4 of Additional Protocol II.⁶

26. The patterns identified in Unity appear to be deliberate, ethnicity-based attacks on civilians that were either widespread or systematic. The violence that occurred was defined both by its scale and method. The violations described were not random, accidental or isolated acts of violence, but rather required a level of preparation that the assessment team believes is revealed through the patterns of violent conduct by the SPLA, affiliated militia and county commissioners. As detailed above, killings and other acts of violence against civilians constitute serious violations of international humanitarian law. In addition,

⁴ South Sudan Protection Cluster report, Protection Trends South Sudan N. 5–April-June 2015 (July 2015);

⁵ UN Doc., S/2015/655, para 25; South Sudan Protection Cluster, Protection Trends South Sudan N. 5 – April-June 2015 (July 2015).

⁶ CA3(1); AP II, Art. 4(1).

depending on the circumstances and if established before a court of law, such acts may also have violated Article 13(2) of Additional Protocol II.

27. There are also reasonable grounds to believe that civilians across the conflict-affected states were killed or harmed as reprisal for, or in response to their perceived support to the other side. These attacks, such as the beatings of Nuer civilians accused of supporting Dinka in Bentiu, and assaults against Shilluk civilians in Malakal may constitute collective punishment in contravention of Additional Protocol II, Article 4(2) (b). The assessment team identified a pattern of SPLA and opposition “tactical withdrawals” that leave local populations vulnerable, including to retribution from opposing forces. Given the considerable dangers arising from the military operations, safety measures should have been undertaken to avoid, or in any case reduce to a minimum, incidental losses.

2. Sexual and gender-based violence

28. The assessment team confirmed that sexual and gender-based violence continued in 2015, and on a widespread basis in Unity state.

29. In Unity state, the Protection Cluster in South Sudan reported over 1,300 rapes between April 2015 and September 2015.⁷ Alarming, some of the women that the assessment team spoke to reported that sexual violence and rape had become worse in Unity as the conflict progressed.

30. The team received information that the armed militias, mainly comprising of youth from Mayom or Koch counties who carry out attacks together with SPLA, do so under an agreement of “do what you can and take what you can.” In one harrowing account, a mother of four children told how as she was walking from her village to Bentiu, she was separated from her group. When she reached another village, she encountered a group of soldiers and armed men in civilian clothing who accused her of lying about where she was coming from. The men proceeded to strip her naked and five soldiers raped her at the roadside in front of her children. She was then dragged into the bush by two other soldiers who raped her there. When she eventually returned to the road side, her children, aged between two and seven, were missing. At the time of the drafting of this report her children were still missing.

31. One woman described how, during an attack on her village in Koch, in October 2015, after killing her husband, SPLA soldiers tied her to a tree and forced her to watch as her 15 year-old daughter was being raped by at least 10 soldiers. In another incident, an 18 year-old girl explained to the team how, during an attack on Gandor, in Leer County, in early October 2015, when hiding in a nearby river SPLA soldiers found her and beat and raped her twice before handing her over to two armed men in civilian clothing who also raped her. Upon her return home, she learned that her three sisters and mother had also been raped.

32. In Upper Nile, as in Unity State, sexual and gender-based violence followed armed clashes with women belonging to the ethnic groups of opposing forces or on suspicion of belonging to the opposition being targeted. In Maban County, the assessment team received allegations of the rape of four girls during clashes between SPLA and and opposition forces in Liang, Maban County. The team also received credible reports of sexual assaults of elderly women by opposition forces in Pigi County, Jonglei State, close to the border with Upper Nile.

⁷ South Sudan Protection Cluster report - Protection Situation Update: Southern and Central Unity (April – September 2015); Protection Situation Update: Southern and Central Unity (September-October 2015).

33. Between April and December 2015, protection actors documented numerous allegations of abductions, rapes, killings and disappearance of (mostly Shilluk) women from areas outside the UNMISS POC site as well as on the roads and pathways from the POC site to Malakal.⁸

34. According to credible sources, during fighting in Malakal Town on 25 May 2015, 24 women from the Shilluk community sought protection from the fighting in the SPLA base at Ayat Company. SPLA detained several of the women who were repeatedly raped.

35. Rapes also occurred when women left the UNMISS POC site to pursue various livelihood activities, such as gathering food and firewood.⁹ One woman narrated how she and other Shilluk women encountered five SPLA soldiers on their way from the UNMISS POC site in Malakal to the riverside. The soldiers called on them to stop, but they ran back towards the site. One of them returned to the UNMISS POC site only after two days and informed the witness that she had been abducted and raped by the soldiers.

36. One of the most notable impacts of the continued SGBV in and around Malakal is the fear and paralysis it has instilled in the community. It was evident during meetings with the assessment team that women are in a state of permanent insecurity, and are compelled to take great risks. One displaced woman noted: "Women are suffering a lot. When we go to town, we may fall into the hands of the soldiers, be raped and abandoned; those who try to resist would be killed." Because of this fear she no longer ventured to town to collect firewood and greens but would rather stay closer to the UNMISS POC site. She noted that SPLA soldiers generally followed women's movements with a view to sexually assaulting them.

37. The assessment team also documented reports of abductions of women in Unity, Upper Nile and Central Equatoria states.

38. In Unity state, several women reported being abducted or witnessing other women being abducted. In some reported incidents, women were taken to help carry looted items for SPLA and affiliated militias, and released after they arrived at the destination, usually Leer or Koch town.

39. Several women also spoke of being taken as "wives" by soldiers, and kept in barracks or "where the soldiers sleep." The assessment team received first-hand accounts from at least three women who were abducted, kept forcefully by soldiers and raped repeatedly. One woman explained to the assessment team how she was abducted with 27 other women from a village in Leer during an attack by SPLA in October. She reported being made to carry looted items to Koch where she and the other women were then "shared" amongst the soldiers as "wives." She was forced to live with her abductor for one week and to carry out duties such as cooking, cleaning and fetching firewood.

40. In Upper Nile, between April and December 2015, protection actors documented numerous allegations of abductions of women from areas outside the UNMISS POC site, as well as on the roads and pathways from the POC site to Malakal.¹⁰ A woman informed the assessment team that, at the end of November 2015, a close relative left the UNMISS POC site to collect firewood in the morning and did not return in the evening. The following day, the body of a woman was found in an abandoned house, in Malakal town. Neighbours in the POC site had identified the body as her missing relative who was found wearing only her underwear on a bed with her neck twisted. In Central Equatoria, on 11 October, a 21-year-old woman and her two small children were abducted in the vicinity of a village where

⁸ South Sudan Protection Trends, No. 6, July – September 2015.

⁹ Id.

¹⁰ Id.

SPLA had recently set up barracks. They had been on the way to the family farm to collect food. Witnesses told the assessment team that three women had gone missing in Mondikolo village, including a 49-year old blind woman. The witnesses assume they were abducted by SPLA, which had swept through the area; if they had been killed, their bodies would have been found, the witnesses suggested. Sources believed that several women were abducted and remained as “wives” of soldiers in the SPLA barracks.

41. Rape, including gang-rape, is a serious violation of international human rights law. Sexual violence is prohibited through the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Rape committed in connection (nexus) with an armed conflict breaches international humanitarian law and may amount to a war crime.¹¹ Additional brutality or humiliation accompanying rapes may constitute outrages upon personal dignity and cruel treatment¹²

42. Rape has been an element of an apparently intentional strategy for terrorizing and punishing the population which, if established before a court of law, and depending on the circumstances, may amount to a crime against humanity or/and war crime. Additionally, if committed on discriminatory grounds, such as based on the ethnicity of the victims, it may, if established by a court of law, constitute persecution as a crime against humanity.

3. Recruitment and use of children in hostilities

43. The assessment team received numerous testimonies of boys being abducted and taken to the SPLA barracks in Bentiu to be forcibly conscripted. During a visit to Bentiu and Leer, the team observed young boys wearing SPLA uniforms and carrying guns. Moreover, its members spoke to children in Leer town who referred to regular recruitment of boys by SPLA in the area. In Upper Nile state, according to credible sources, Major-General Olonyi’s militia, prior to his defection to the opposition, allegedly conducted forced recruitment of a significant number of children in Shilluk communities on the west bank of the Nile.¹³

44. Recruiting children who have not attained the age of fifteen years or using them to take part in hostilities is prohibited under the Additional Protocol II.¹⁴ Moreover, in accordance with the Child Act of 2008 the minimum age for conscription or recruitment into armed groups in South Sudan is 18 years and children shall not be used in any military or paramilitary activities.¹⁵

4. Destruction and looting of civilian property

45. Reports received from victims and witnesses regarding the SPLA offensive in Unity state in 2015 indicated that Government forces and their allied militias systematically burned homes and entire villages and looted property. In most instances, shelters were deliberately burned after household items, including clothes and food, had been looted. Many people who had fled their villages ahead of the attacks later returned to find their homes completely burnt or empty. In some instances, food stocks and seeds stored in huts

¹¹ AP II, Art. 4(2)(e); See also Furundžija case in 1998 and Kunarac case in 2001, the International Criminal Tribunal for the former Yugoslavia, See also Rome Statute, Art. 8(2)(e)(vi).

¹² Rome Statute, Art. 8(2)(c)(i) and Art. 8(2)(c)(ii).

¹³ UN Doc., S/2015/296, 29 April 2015, para 12; Office of the High Commissioner – UNMISS Joint Report, para 66-67.

¹⁴ AP II, Art. 4(3) (c).

¹⁵ Section 31, Child Act (2008). The exclusion of persons who have not attained 18 years of age from military activity is further codified in Article 17 of the Transitional Constitution (2011) and Section 22 of the SPLA Act (2009).

that could not be taken had been burnt. Satellite imagery allowed the team to corroborate the testimonies of the systematic destruction of towns and villages across southern and central Unity.¹⁶ Imagery obtained for Gandor, in Leer County, from May to December 2015, indicated that around 674 civilian structures - about 75 per cent of structures in the area - were destroyed.

46. The SPLA attacks were also characterized by the massive looting of livestock, particularly cattle. As a main wealth indicator for many ethnic groups in the area, cattle became a primary objective of the attackers during the military offensive. For many of the allied militias who fought alongside SPLA, this was an opportunity to increase their herds. In most cases, the looted cattle was taken to areas controlled by SPLA, particularly Koch, Mayom, Leer and Bentiu.

47. In Central Equatoria, in September 2015, witnesses reported that SPLA engaged in widespread looting of shops, offices and private homes in Wonduruba, Mankaro, Mengele and Katigiri.¹⁷ Witnesses from Mondikolo informed the assessment team they found their village razed to the ground and the local dispensary looted a few days after an attack on their village on 10 September. Witnesses from Katigiri reported that SPLA soldiers took roofs, solar panels, furniture and electrical appliances from public buildings, including the Katigiri Primary Health Care Centre and Primary School. School material and medicines had also been looted.

48. In Western Equatoria, credible information collected by the team indicated that SPLA had looted and destroyed private and public property during the escalation of violence in Mundri town, in May 2015. On 22 May, the Mundri Prison's warehouse was looted of all food, medication and weapons. On 24 May, 15 motorcycles belonging to a NGO were stolen by armed men believed to be SPLA soldiers. During the incidents in Mundri West and East, in September and October, SPLA conducted extensive looting of houses and shops. Between July and December, in Yambio, destruction of property and looting was widespread in the town. From 7 to 10 December, the Ikpiro, Hai Tarawa, Asanza 1 and Asanza 2 neighborhoods of Yambio were targeted for destruction when the Government forces clashed with an armed youth group. Humanitarian agencies reported that over 200 huts were destroyed and several hundred others looted.¹⁸

49. In accordance with human rights standards, arbitrary deprivation of property is prohibited. Under international humanitarian law, civilian objects are protected and their deliberate destruction under certain circumstances may amount to a war crime in non-international armed conflict.¹⁹ The extensive destruction of residential structures in Unity state is an example of damage that cannot plausibly be justified by military necessity. The number, extent and frequency of hut burnings across Unity State by SPLA and associated militia throughout 2015 suggest that the practice was wilful and wanton. The documented numerous accounts of cattle raids in Unity state may amount to a violation of the

¹⁶ See UNOSAT: Report on South Sudan in Support of the UN Office of the High Commissioner for Human Rights (January 2016).

¹⁷ Office of the High Commissioner for Human Rights - UNMISS, Joint Report, para 26; State Government Secretariat.

¹⁸ UNHCR, South Sudan Operational Update 1/2016.

¹⁹ See Art. 17, ICCPR, "arbitrary or unlawful interference with his privacy, family, home." Articulated in Rome Statute, Art. 8(2)(e)(xii), which reflects a point of customary international law. The jurisprudence of the International Court of Justice (ICJ, Nuclear Weapons case, Advisory Opinion, 8 July 1996) and of the ICTY (ICTY, Kupreškić case, Judgment, 14 January 2000 and Kordić and Čerkez case, Decision on the Joint Defence Motion and Judgment, 26 February 2001) provides further evidence that the prohibition on attacking civilian objects is customary in both international and non-international armed conflicts.

prohibition of arbitrary deprivation of property and the Additional Protocol II provision proscribing pillage.²⁰ The prohibition on pillage extends to property belonging to private persons, as well as to property belonging to communities or the state.²¹ The alleged “do what you can, take what you can” arrangement, by which armed youth groups in Unity derived their compensation from pillaged goods rather than from salary, constitutes a form of organized pillage.

5. Violations of freedoms of opinion and expression and of assembly

50. Violations of freedoms of opinion and expression, of peaceful assembly, and freedom from arbitrary arrest and detention have been an issue of great concern in South Sudan since independence. The Government, particularly the National Security Service (NSS), has attempted to suppress debate and opposition, resulting in fear among the population.

51. The joint report of UNMISS and OHCHR on, “The State of Human Rights in the Protracted Conflict of South Sudan,” issued on 21 January 2016, highlighted a number of cases since 2013 of intimidation, harassment, arrest and detention of individuals and groups by NSS. These cases include the closure of media outlets, confiscation of newspapers and media equipment, arrests and detention of journalists, the detention of United Nations national staff members perceived to support the opposition, and killings of journalists.

52. At least seven journalists were killed in 2015 and none of them has so far been investigated. President Kiir made a statement threatening journalists who are reporting ‘against’ their country. During a press encounter on 16 August 2015, while heading for the peace talks in Addis Ababa, he dismissed complaints about the lack of press freedom, stating that “the 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.”²² On 21 October 2015, it was reported that President Kiir had ordered Juba University to dismiss Dr. Luka Biang Deng, who quickly left the country, after organizing a debate on the Government’s proposal to create 28 states, in which panelists challenged the Government’s legal authority to do so.

53. In November 2015, a journalist stated that “[m]any media outlets are intimidated. They could be closed down for a day, a month, forever.” On 29 December 2015, journalist Joseph Afandi of the El Tabeer newspaper was held without charge at the NSS headquarters in Juba. He had been arrested by plain clothes NSS agents following the publication of an article criticizing the Government’s economic policy. According to NGO reports, he was released on 19 February without charge.²³

54. Attacks on the freedom of opinion and expression, of peaceful assembly, as well as arbitrary arrests for exercising these rights violate the State’s obligations under international human rights law as well as provisions of national law, including provisions of the Transitional Constitution.

6. Starvation of civilians

55. The numerous incidents of crop burning, cattle raiding, and looting and destruction of food storage described above had serious consequences on civilian’s access to food, and

²⁰ See Art. 17, ICCPR and AP II, Art. 4(2) (g), Art. 14.

²¹ See Commentary to Geneva Conventions IV, Art. 33, upon which AP II, Art. 4(2) (g) is based.

²² See Committee to Protect Journalists, Alerts, 17 August 2015.

²³ “Journalist released without charge,” Urgent Action, Amnesty International, 22 February 2015 (UA: 22/16 Index: AFR 65/3480/2016 South Sudan).

therefore on their health. This led to famine-like conditions in Unity state.²⁴ The so-called ‘scorched earth’ policy consisting of the practice of razing entire villages by burning down homes while pillaging and destroying resources constitutes a deliberate deprivation of objects indispensable to the survival of the civilian population. This conduct is a violation of international human rights law, namely the right to life and the right to adequate food.²⁵ It is also prohibited by Article 14 of Additional Protocol II.

IV. Looking ahead – the road towards accountability

56. States have an obligation to investigate promptly, thoroughly, independently and impartially any allegations of human rights violations or abuses, to prosecute those responsible, and to ensure that victims have an adequate and effective remedy for such violations, as well as guarantees of non-recurrence.²⁶

57. Over the course of the conflict in South Sudan, both sides have made repeated commitments to protect civilians, end the violence and punish perpetrators. On 24 January 2014, the Head of State announced the establishment of an ‘investigation committee on human rights abuses’ to investigate human rights abuses committed by both parties to the conflict.²⁷ While Government officials have repeated promises that this report would be provided to the United Nations, it has not been released.

58. Despite repeated commitments to end the violence, protect civilians and punish perpetrators, to date, there is no evidence or available public information of any genuine efforts by the Government to investigate, prosecute and punish violations and abuses, some of them amounting to international crimes.

59. On 19 August 2015, under the stewardship of the Inter-Governmental Authority on Development (IGAD), the parties to the conflict signed the Agreement on the Resolution of the Conflict in the Republic of South Sudan, establishing a Transitional Government of National Unity.²⁸ Chapter V of the agreement, on ‘Transitional Justice, Accountability, Reconciliation and Healing,’ contains provisions for the establishment of three transitional justice bodies to “independently promote the common objective of facilitating truth, reconciliation and healing, compensation and reparation.”²⁹ a Commission for Truth, Reconciliation and Healing; an independent hybrid judicial body, to be known as the Hybrid Court for South Sudan (HCSS); and the Compensation and Reparation Authority. The Agreement commits the TGNU to “fully cooperate and seek the assistance of the African Union, the United Nations and the African Commission on Human and Peoples’ Rights to design, implement and facilitate the work of the agreed transitional justice mechanisms provided for in this Agreement.”

²⁴ The Integrated Food Security Phase Classification analysis showed that in Unity state at least 30,000 people were living in extreme conditions and faced starvation and death. World Food Programme, Press Release, 22 October 2015.

²⁵ Art. 11, International Covenant on Economic, Social and Cultural Rights.; See also the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.

²⁶ The International Covenant on Civil and Political Rights.; See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

²⁷ Presidential Order 06/2014 (24 January 2014).

²⁸ Agreement on the Resolution of the Conflict in the Republic of South Sudan (19 August 2015).

²⁹ See Section 1.3 of Chapter V, Agreement on the Resolution of the Conflict in the Republic of South Sudan.

60. For a truth-seeking mechanism to be effective there must be political will to allow and actively support an inquiry into past violations and abuses; and, there must be interest and trust in the process on the part of victims and witnesses, having no fear to cooperate. Genuine and broad based consultations as well as needs assessment should be conducted to inform the efforts aimed at truth, reparations, reconciliation and guaranteeing non-recurrence.

61. The Hybrid Court for South Sudan is to be established by the African Union Commission “to investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law, committed from 15 December 2013 through the end of the Transitional Period.”³⁰

62. Once established, this Court will probably only have capacity to investigate and prosecute a limited number of those responsible, most likely the political and military leadership that orchestrated the violence. This would necessarily need to be complemented by a national judicial process so as to provide redress to all the many victims and their families. Yet, the local justice is barely functioning and does not appear to have, at this stage, the capacity to effectively, impartially and independently investigate gross and systematic human rights violations and abuses, violations of international humanitarian law and other international crimes. Nor is there a realistic role for customary processes, which particularly with regards to sexual and gender-based violence have no experience in addressing crimes on this scale.

63. In this context, it is recommended to envisage the creation within the national judiciary of a specialized judicial structure that would be responsible for the investigation, prosecution and adjudication of violations and abuses amounting to international crimes. Consideration should be given to United Nations experiences and lessons learned with similar courts to envisage the participation of international prosecutors and judges, supported by international investigators, who could serve in the national judicial system, alongside their national counterparts.³¹

64. In the meantime, it is critical to ensure that those responsible for violations and abuses of human rights or international humanitarian law outlined in this report are not part of the TGNU. Therefore, a comprehensive vetting process must be set up to ensure that all those responsible are removed from office or precluded from appointment.

V. Technical assistance

65. The United Nations and international donors have been engaged in technical assistance in South Sudan since 2005, notably regarding the reform of criminal justice institutions, with a focus on police, prosecutors, judges and prisons and training on combatting sexual and gender-based violence. International police and prison experts have been co-located and mentoring their national counterparts, however, despite the considerable human and financial investment, there was modest success in all these areas. Also, members of that same police force were implicated in the killings of civilians in December 2013.

66. In May 2014, the Security Council amended the mandate of UNMISS in view of the deteriorating situation, re-prioritizing the protection of civilians, human rights monitoring

³⁰ See Section 3.1.1 of Chapter V, Agreement on the Resolution of the Conflict in the Republic of South Sudan.

³¹ See OHCHR Rule of Law Tools for Post-Conflict States Rule-of-law tools for post-conflict States, “Maximizing the legacy of hybrid courts.”

and investigation, creating the conditions for delivery of humanitarian assistance, and supporting the implementation of the Cessation of Hostilities Agreement. In this context, capacity-building was suspended.

67. More than two years since the beginning of the conflict, there is considerable pressure from the Government for the international community to resume capacity-building. However, given the findings in this report, it is not timely to re-introduce UN assistance in the form of training and other support to government entities.

68. Supporting any capacity building activities to current government entities would implicitly condone the violations outlined in this report. Capacity building to the transitional authorities could be viable on the basis that the TGNU commits to ending the violence against the civilian population, to the removal of perpetrators from TGNU structures, including the SPLA and the security services, to preventing further violations and abuses, and demonstrates a commitment to further accountability, notably by cooperating with the Hybrid Court for South Sudan and any other accountability mechanisms.

69. If those commitments are made, the High Commissioner would encourage exploring technical support to aspects of Chapter V of the Peace Agreement, including assistance to consultations as well as a needs assessment to inform efforts aimed at truth, justice, reparations, reconciliation and guarantees of non-recurrence.

70. Such support needs to take account of the fact that there has been wide-spread displacement and destruction throughout much of the country, which has severely weakened and transformed communities and local government structures. Much of the population is deeply traumatized by the years of violence. Initiatives related to reconciliation, including awareness-raising and a national consultation process need to take this into account.

VI. Conclusions

71. **Since December 2013, gross human rights violations and abuses and serious violations of international humanitarian law have been perpetrated in South Sudan. This has included killings and other attacks against civilians, rape and other sexual violence, arbitrary arrest and detention, deprivation of liberty, abduction and violations of child rights including recruitment and use in hostilities. Throughout this conflict, the sexual and gender-based violence has been widespread. All parties to the conflict are responsible for violations of international law. In 2015, however, this report shows that state actors, bore the greatest responsibility for the violations of both international human rights law and international humanitarian law in the face of a weakened opposition force.**

72. **The government's military offensive in Unity State was carried out with the apparent purpose of spreading terror among civilians including killings, widespread sexual and gender based violence and pillaging of property. In addition to conflict-related violence, the Government increasingly suppressed freedoms of expression and other democratic rights.**

73. **The Government's failure to produce the reports of its investigations into the violations committed in 2013 and 2014, or to undertake any investigations leading to prosecutions of the alleged human rights violations and human rights abuses and violations of international humanitarian law, raises questions as to its commitment to ensuring accountability.**

74. The legacy of violence and revenge, lack of political will, the patterns of violations and abuses documented in this report, and the impunity enjoyed by perpetrators, suggest that only far reaching reforms in relation to governance, the security apparatus and the judicial system, may provide respect and protection for human rights and prevent similar violations and abuses from occurring again.

75. The lasting and only viable solution to protect and promote human rights in South Sudan is to dismantle the apparatus of violence and holding to account those responsible for the immense suffering of the population. While reconciliation processes may be an essential part of the peace efforts, the failure to ensure accountability, including the failure to expeditiously establish the Hybrid Court for South Sudan and the other measures under Chapter V of the peace agreement will undoubtedly contribute to new cycles of violence.

VII. Recommendations

76. The High Commissioner reiterates the recommendations made in previous reports to the Human Rights Council which remain largely unimplemented and remain valid.

77. Recognizing the urgent need to bring an end to the extensive human rights violations and abuses and violations of international humanitarian law in South Sudan, and to provide for justice and accountability, the High Commissioner appeals to all sides of the conflict to promptly cease hostilities and support the establishment of the Transitional Government of National Unity, in order to move towards a State based on respect for human rights and the rule of law.

78. Accordingly the High Commissioner recommends that all parties to the conflict:

(a) Immediately desist from violations of international human rights law and international humanitarian law, and abuses of human rights, in particular those amounting to crimes under international law, specifically attacks on civilians, killings, rape and sexual and gender-based violence, arbitrary detention, abductions and widespread looting.

(b) Declare and ensure that violations of international human rights law and international humanitarian law, and abuses of human rights will not be tolerated; and that those suspected of such acts will be removed from duties pending investigation, or will not be appointed.

79. The High Commissioner recommends that the Transitional Government of National Unity:

(a) Ensure that all individuals in South Sudan who suffered violations or abuses of their rights are in time afforded an effective remedy.

(b) Ensure that all individuals responsible for orchestrating the violence in South Sudan, namely the political and military leadership of the parties to the conflict, are not part of the TGNU and those alleged to commit/have committed violations and abuses are precluded from running for elections.

(c) Institute a comprehensive vetting programme compliant with due process standards as a matter of priority to remove from, and prevent the recruitment into State services (including SPLA, law enforcement and the national security services) of individuals, especially at senior levels, on whom there are reasonable

grounds to believe that they have been involved in violations of international human rights law, international humanitarian law, or abuses of human rights.

(d) Take steps to stop and prevent violations and abuses of the rights of children, including through actively preventing and combatting recruitment and use of children in hostilities by parties to the conflict.

(e) Take effective action to eliminate sexual and gender-based violence, including through implementing a gender-sensitive protection and reporting mechanism, and through providing redress, rehabilitation services and access to justice for victims.

(f) Respect and promote the role of civil society, including by ensuring that freedoms of opinion and expression and of peaceful assembly are guaranteed and ensure the protection of human rights defenders and journalists.

(g) In relation to other transitional justice measures referenced in Chapter V of the Peace Agreement, support genuine consultations, including through public education programmes so that there is informed participation by victims, civil society women's groups and all stakeholders, as well as needs assessment to inform the efforts aimed at truth, reparations, reconciliation and guaranteeing non-recurrence.

(h) In relation to criminal justice accountability measures:

(i) Extend full cooperation and support to the Hybrid Court by assisting its investigations and complying with its rulings.

(ii) Consider the establishment of a specialized judicial structure within the South Sudan courts to focus on violations and abuses amounting to international crimes, supported by specifically appointed judges, prosecutors, lawyers and law enforcement officials, with the possibility of embedding international legal actors to work with South Sudanese officials. Its jurisdiction would be complementary to that of the Hybrid Court.

80. The High Commissioner recommends that the African Union Commission:

(a) Swiftly establish the Hybrid Court for South Sudan.

(b) Establish a designated unit in the hybrid court that provides support to victims and witnesses, including of sexual violence, with special measures adopted in the case of children, and ensures their safety and security before, during and after the proceedings.

(c) Create a designated unit within the hybrid court dedicated to awareness-raising on the role, functions and processes of hybrid court, including regarding sexual violence crimes, and promote victim's full participation in the pre-trial, trial, sentencing and reparations phases.

81. The High Commissioner recommends that the Human Rights Council:

(a) Continue to monitor developments in South Sudan and to that end, consider the establishment of a dedicated mechanism on South Sudan to report on progress towards accountability and the human rights situation.

(b) Encourage relevant special procedures to visit South Sudan.

(c) Share a copy of this report with the General Assembly and the Security Council for deliberation.

82. The High Commissioner recommends that the international community consider applying a phased approach to the provision of technical assistance to State

institutions, based on progress in the establishment of the Transitional Government of National Unity and, in the meantime, consider providing some support to civil society organizations and the South Sudan National Human Rights Commission.

83. The High Commissioner recommends that the Security Council:

(a) Remain seized of the matter of criminal accountability for serious violations of international humanitarian law and gross violations and abuses of international human rights that have been perpetrated by all parties to the non-international armed conflict.

(b) Consider expanding the sanctions regime by imposing a comprehensive arms embargo on South Sudan.

(c) Failing the expeditious establishment of the Hybrid Court, consider referring the matter to the International Criminal Court.
