

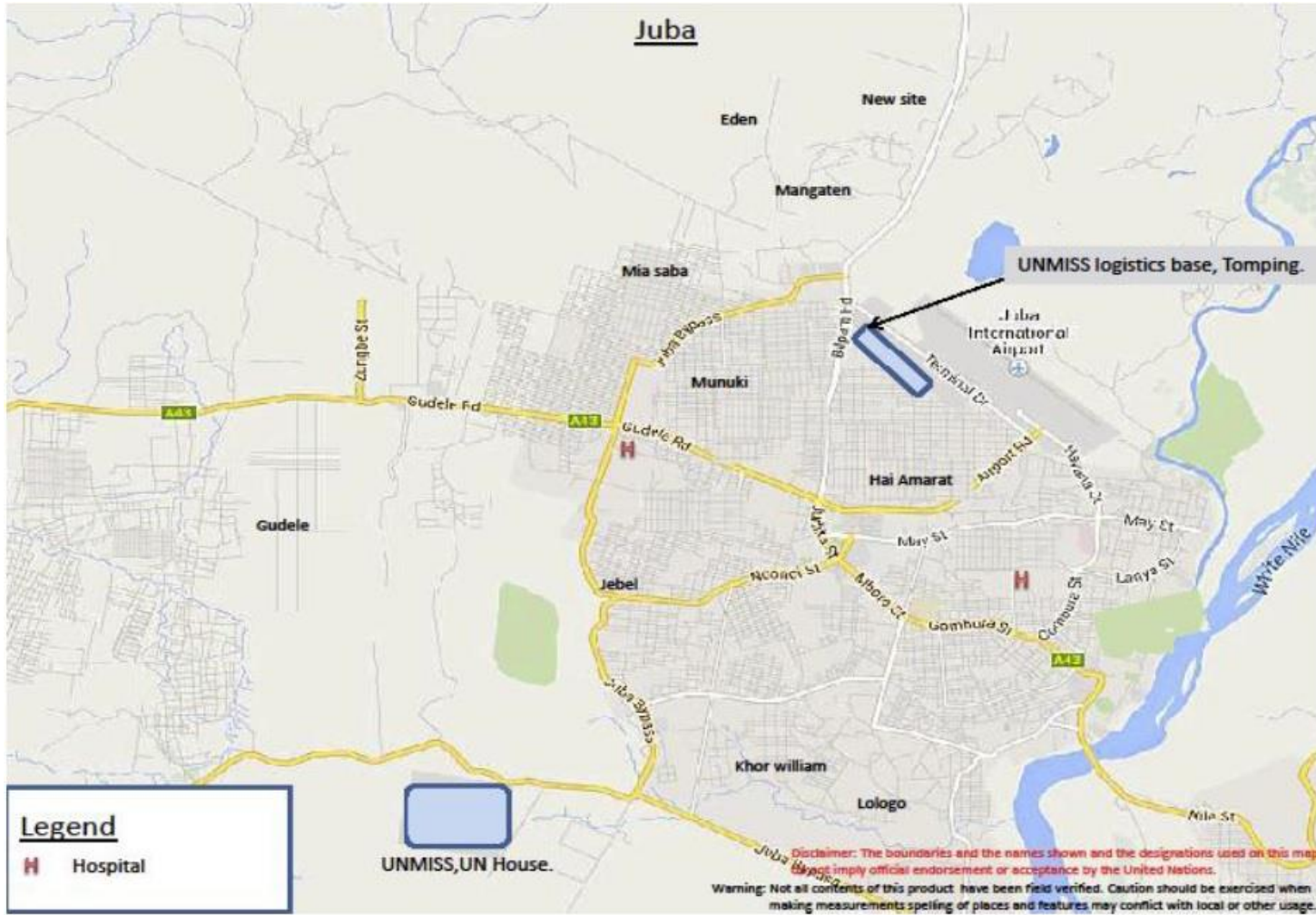
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**A REPORT ON VIOLATIONS AND ABUSES  
OF INTERNATIONAL HUMAN RIGHTS LAW  
AND VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW  
IN THE CONTEXT OF THE FIGHTING  
IN JUBA, SOUTH SUDAN, IN JULY 2016**

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January 2017





## EXECUTIVE SUMMARY

This report is jointly published by the United Nations Mission in South Sudan (UNMISS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR). It is released pursuant to UNMISS's mandate under United Nations Security Council Resolution 2252 (2015), which was extended by Resolution 2304 (2016) and requests the Mission to monitor, investigate, verify and report publicly and regularly on abuses and violations of human rights and violations of international humanitarian law, including those that may amount to war crimes or crimes against humanity. Based on investigations conducted by the UNMISS Human Rights Division (HRD) from 8 July to 15 September 2016, the report provides information about human rights violations and abuses as well as breaches of international humanitarian law committed in Juba between 8 and 12 July 2016 during and in the aftermath of the fighting between the Sudan People's Liberation Army (SPLA) and the Sudan People's Liberation Movement/Army<sup>1</sup> in Opposition (SPLM/A-IO).<sup>2</sup>

Throughout the fighting, the belligerents blatantly ignored international human rights law and humanitarian law and appeared to deliberately target civilians, including on the basis of ethnicity. Information documented and verified by HRD suggests that hundreds of people including civilians were killed and many more wounded during the fighting in various areas of Juba. While some civilians died because they got caught in the crossfire, others appeared to have been deliberately targeted by SPLA, SPLM/A-IO, their affiliated armed forces<sup>3</sup> and other armed men in civilian clothing. On 12 July, the President of South Sudan announced that more than 300 soldiers had been killed as a result of the fighting,<sup>4</sup> but information received by UNMISS suggests that the number of fatalities, including civilians, is much higher.

Moreover, UNMISS documented 217 victims of rape, including gang-rape committed by SPLA, SPLM/A-IO and other armed groups during and after the fighting between 8 and 25 July. According to victims' testimonies and witnesses' accounts, most cases of sexual violence were committed by SPLA soldiers, police officers and members of the National Security Services (NSS). They occurred mainly at the various checkpoints erected across the city during and in the aftermath of the fighting or during house-to-house searches that were organized by the South Sudanese security forces in many areas of Juba. In addition, many cases of rape including gang-rape were committed against internally displaced women and girls, especially when they would venture outside the UNMISS Protection of Civilians (PoC) sites to collect food or firewood or conduct other daily activities.

Many civilians were arbitrarily arrested by SPLA soldiers and members of the police or NSS. Some of them were later released while the whereabouts of others is unknown at the time of writing this report. Also, SPLA soldiers posted at different checkpoints across the city denied civilians access to United Nations compounds where they were heading to seek protection.

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<sup>1</sup> 'SPLM/A' is the designation used to reflect historical usage dating back to the armed struggle for independence. After the signing of the Comprehensive Peace Agreement in 2005 with the ruling party of the Sudan, the original SPLM/A launched a process of converting its political wing into a party (SPLM), while trying to depoliticize its military wing, subsequently designated as 'SPLA'. When the conflict in South Sudan erupted in December 2013, the opposition tried to assert comparative historical legitimacy by resurrecting this earlier nomenclature.

<sup>2</sup> A few incidents between the two groups were recorded from 4 to 7 July 2016, leading to heavy fighting which erupted on 8 July 2016.

<sup>3</sup> Forces affiliated to SPLA could include the Mathiang Anyor (Armed Dinka Militia youth predominantly from Aweil and Warrap), Galweng (Armed Dinka Militia youth found in Tong). Armed groups affiliated to SPLM/A-IO reportedly included various armed groups from the Equatorias, Western Bahr el Ghazal and Upper Nile.

<sup>4</sup> See President Salva Kiir's letter dated 12 July 2016 to the Chairperson of the Joint Monitoring and Evaluation Commission (JMEC), President Festus Mogae. See also the statement of the permanent representative of South Sudan to the UN during the Security Council briefing and consultation on South Sudan on 13 July 2016.

Following the fighting in July, the Government further restricted the right to freedom of expression, clamping down on journalists and media outlets. Journalists were harassed and intimidated through arrests, threats of violence, and some media houses were shut down. On 11 July, one journalist Gatluak Manguet Nhial was killed at the Terrain Hotel, reportedly by SPLA soldiers.

During and in the aftermath of the clashes, homes, shops and markets were ransacked and looted, property destroyed and tens of millions dollars' worth of humanitarian assistance pillaged, including the looting by SPLA soldiers and others of World Food Programme (WFP) warehouses, and the theft of food supplies for approximately 220,000 people.<sup>5</sup>

Thousands of civilians were forcibly displaced as a consequence of the fighting. According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), nearly 103,500 people fled to Uganda in July, followed by 49,427 in August this is more than during the first six months of 2016 (33,838) following the fighting in Juba in July.<sup>6</sup> At the end of June, before the fighting started in Juba, 27,259 people were sheltered in UNMISS PoC sites 1 and 3 adjacent to the UNMISS UN House compound in Juba.<sup>7</sup> As of 18 August 2016, an estimated 35,749 civilians were seeking protection in PoC sites 1 and 3 and 3,546 civilians in a transit site within the UNMISS Tomping base.<sup>8</sup>

The July 2016 events in Juba demonstrated the extremely fragile political and security situation in South Sudan and the complete disregard of civilians by the parties to the conflict given the serious human rights violations and abuses that were perpetrated, including the direct targeting of civilians, along ethnic lines and the extreme violence against women and children. The report makes several recommendations to the Government, in particular the need to take urgent measures to fight impunity; to establish an independent, fair and effective vetting process for members of security forces and services including SPLA, NSS and the national police; and to comply with the obligations under international human rights and humanitarian law, in particular with regard to the protection of civilians and among them women and children.

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<sup>5</sup> UNOCHA, *Humanitarian Bulletin South Sudan Issue 10, 22 July 2016*; WFP *Condemns Looting Of Food Warehouse In Juba, Still Assists Thousands Affected By Fighting*, 14 July 2016.

<sup>6</sup> South Sudan Humanitarian Bulletin Issue 13, 8 September 2016.

<sup>7</sup> See UNMISS PoC update No 133.

<sup>8</sup> See UNMISS PoC update No 135.

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## **Glossary**

ARCSS	Agreement on the Resolution of Conflict in South Sudan
AU	African Union
COI	Commission of Inquiry
CPA	Comprehensive Peace Agreement
CSO	Civil Society Organizations
HCSS	Hybrid Court of South Sudan
HRD	Human Rights Division
IDP	Internally Displaced Person
IGAD	Intergovernmental Authority on Development
ILO	International Labor Organization
JIU	Joint Integrated Unit
NGO	Non-Governmental Organization
NPSSS	National Prison Services of South Sudan
NSS	National Security Service
OHCHR	United Nations Office of the High Commissioner for Human Rights
PoC	Protection of Civilians
PSC	Peace and Security Council
SGBV	Sexual and Gender-Based Violence
SPLA	Sudan People's Liberation Army
SPLM/A-IO	Sudan People's Liberation Movement/Army in Opposition
SSDF	South Sudan Defence Forces
SSNPS	South Sudan National Police Service
SSHRC	South Sudan Human Rights Commission
TGoNU	Transitional Government of National Unity
UNHCR	United Nations High Commissioner for Refugees
UNPOL	United Nations Police
WFP	World Food Programme

## I. INTRODUCTION

1. The report was prepared pursuant to UNMISS's mandate under United Nations Security Council Resolution 2252 (2015), and as extended by Resolution 2304 (2016), "[t]o monitor, investigate, verify, and report publicly and regularly on abuses and violations of human rights and violations of international humanitarian law, including those that may amount to war crimes or crimes against humanity; [and] To monitor, investigate, verify and report specifically and publicly on violations and abuses committed against children and women, including those involving all forms of sexual and gender-based violence in armed conflict..."<sup>9</sup>

2. This report highlights serious human rights violations and abuses as well as violations of international humanitarian law committed during and in the aftermath of the fighting that erupted in Juba between 8 and 12 July 2016. It also calls for the immediate establishment of effective accountability mechanisms to effectively address impunity by bringing perpetrators to justice and ensuring access to justice for and support to victims.

## II. METHODOLOGY

3. Information presented in this report was gathered in accordance with the human rights monitoring and investigations methodology developed by the OHCHR. Incidents have been included only if the sources granted their informed consent, and upon the assessment that the disclosure of information would not pose any protection risk for the victims, witnesses or other individual. Incidents highlighted in the report are based on at least one credible source of first-hand information. Patterns of conduct documented in the report, are based on several credible reports of individual incidents which together appear consistent with and have been corroborated by the overall body of credible information collected. UNMISS analysed the information it gathered and assessed the credibility and reliability of each of the witnesses and sources.

4. Between 8 July and 10 September 2016, HRD conducted 280 face-to-face interviews with various sources, including witnesses and victims of human rights violations and abuses, 91 survivors of sexual violence. Group interviews were also conducted with residents of PoC sites in Juba. HRD also gathered information from various other sources including civil society actors (human rights defenders, journalists, religious leaders), as well as members of security forces, Government officials, and SPLM/A-IO elements. In August 2016, the UNMISS HRD visited Uganda and Kenya where its staff conducted interviews with South Sudanese who had fled Juba following the outbreak of the violence in July. HRD worked with other UNMISS components and United Nations entities to gather information for this report.

5. HRD also visited some of the areas affected by the fighting and places where human rights violations and abuses reportedly occurred, including PoC sites and police and security de-

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<sup>9</sup> *UN Security Council Resolution 2252* (2015), article 8(b)(i) and (ii), which was extended by *UN Security Council Resolution 2304* (2016), article 4. See also UN Security Council Resolutions 2155 (2014), 2187 (2014), 2206 (2015) and 2223 (2015).

tention facilities. HRD also visited hospitals and clinics where some of the victims had been brought for treatment.

6. In gathering information and undertaking investigations, HRD was constrained by several factors, particularly the continuing violence and consequent insecurity, as well as restrictions of movement imposed by the Government on UNMISS, including through the use of roadblocks and checkpoints, many of which were erected across the town and impeded access to victims, witnesses and sites of reported violations. Security constraints and restrictions of movement imposed by SPLA also hindered the ability of investigation teams to deploy quickly, to monitor freely, to access the sites of alleged violations, and to conduct interviews expeditiously and under conditions that would guarantee confidentiality. As per usual practice, the report was shared with the Government of South Sudan for factual comments on 7 December 2016, with a request for an official response to be included in the report.

7. Notwithstanding these constraints, the cases presented in this report highlight patterns of violations of international human rights and humanitarian law committed during and following the outbreak of the violence in July.

### **III. LEGAL FRAMEWORK**

8. Several legal regimes apply to the current situation in South Sudan namely international human rights law, international humanitarian law and international criminal law. The Government of South Sudan is obligated at all times to respect, protect and fulfil the human rights of all persons within its territory and subject to its jurisdiction. Human rights standards must be respected by armed groups that control territory and exercise government-like functions, when their conduct affects the human rights of persons under their control.

9. In the context of an armed conflict, the conduct of all parties is governed by the relevant provisions of international humanitarian law. Under international law, the conflict between South Sudan's Government forces and the SPLM/A-in-Opposition (SPLM/A-IO) is a non-international armed conflict in which both parties are bound by international humanitarian law. Government forces the Sudan People's Liberation Army (SPLA) and pro-government militias and the opposition forces, the SPLM/A-IO are obligated to observe Common Article 3 to the four Geneva Conventions of 1949, which sets forth minimum standards for the proper treatment of non-combatants, as well as Additional Protocol II relating to the protection of victims of non-international armed conflicts.

10. In addition, domestic laws are also applicable, including provisions of the Transitional Constitution of South Sudan and relevant national criminal laws. The SPLA is specifically bound by the rules set forth in the SPLA Act of 2009, and in the SPLA Code of Conduct.

#### ***International Humanitarian Law***

11. International humanitarian law regulates the conduct of parties to the armed conflict by protecting those who do not or no longer directly participate in hostilities and by regulating the means and methods of warfare with the aim of restricting the use of armed force "to the amount



necessary to achieve the aim of the conflict, which – independently of the causes fought for – can only be to weaken the military potential of the enemy.”<sup>10</sup>

12. Each party to a non-international armed conflict, including armed opposition groups, is responsible for ensuring the full respect of applicable international humanitarian law.

13. South Sudan is a State Party to the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. Therefore, as set forth in the common Article 3 to the Geneva Conventions of 1949, all parties to South Sudan’s non-international armed conflict are obliged to respect the minimum standards of humane treatment. Under Common Article 3, persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ are specifically protected from violence, murder, torture, mutilation, cruel treatment, outrages upon personal dignity such as humiliating and degrading treatment, hostage-taking, and extra-judicial convictions and executions. The additional Protocol II, imposes additional legal obligations, rights, and responsibilities in non-international armed conflicts when the non-required threshold for its application is reached. With respect to those armed conflicts, Additional Protocol II provides specific protections for individual civilians and the civilian population and also prohibits certain acts against those persons. The proscribed acts include the targeting, abduction, or terrorizing of civilians, forced displacement, collective punishment, pillage, and starvation. Additional Protocol II also prohibits, among other things, outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form or indecent assault, as well as the recruitment and use of child soldiers.

14. Alongside applicable treaty provisions, the parties to South Sudan’s non-international armed conflict are also bound to comply with applicable customary international humanitarian law, including with the over-arching IHL principles of distinction, proportionality, precaution, as well as the prohibition on unnecessary suffering.

### ***International Human Rights Law***

15. Regardless of whether South Sudan is at peace or in conflict, the Government bears an obligation to protect and promote human rights. Apart from its obligations under customary international human rights law, South Sudan has also assumed human rights treaty obligations. Since gaining independence, South Sudan has acceded to several international human rights treaties: Convention Against Torture (CAT), Convention Against Torture – Optional Protocol, Convention on the Elimination of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child on 30 April 2015, and has further accepted the ‘individual complaint procedure’ under CEDAW-Optional Protocol and inquiry procedure under Article 20 of CAT. In addition, South Sudan remains bound by customary international law and by the rights enshrined in the international human rights treaties ratified by its predecessor State by virtue of rule of ‘automatic succession’ to treaties<sup>11</sup>.

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<sup>10</sup> Sassòli, M., Bouvier, A., Quintin A. (eds), *How Does Law Protect in War?* (3rd edn., Geneva: ICRC, 2011), Vol. I, at 1.

<sup>11</sup> The position that, concerning international human rights treaties, a successor state is subject to automatic succession is based on the purposes and principles of the UN; the objectives and purposes of human rights and humanitarian treaties; the special character of human rights treaties; treating human rights as part of doctrine of acquired rights. This can be supported

## ***International Criminal Law***

### *War Crimes*

16. With respect to non-international armed conflict, war crimes may, for example, include certain violations of the rules governing the conduct of hostilities and the treatment of protected persons. In accordance with international jurisprudence, war crimes in non-international armed conflict may include serious violations of Common Article 3, of relevant provisions of Additional Protocol II, and of customary international law.<sup>12</sup>

### *Crimes against Humanity*

17. Pursuant notably to customary international criminal law, inhumane acts intentionally causing great suffering or serious injury to body or to mental or physical health, if committed as part of a widespread or systematic attack against a civilian population, may constitute crimes against humanity.<sup>13</sup> Crimes against humanity are generally defined as the commission of certain inhumane acts such as murder, torture, or sexual violence committed as part of a widespread or systematic attack. Not only state officials but also members of organized armed groups may commit crimes against humanity.<sup>14</sup>

## ***Domestic Law***

### *Transitional Constitution*

18. South Sudan's Transitional Constitution of 2011 stipulates that, with respect to the people of South Sudan, all organs of the Government (including the armed forces) shall respect, uphold and promote the following non-derogable rights and protections: (i) the right to life; (ii) prohibition against slavery; (iii) prohibition against torture; (iv) the right of non-discrimination on the basis of race, sex, religious creed; and (v) the right to fair trial.<sup>15</sup> The Transitional Constitution specifically prohibits any infringement of this specific set of rights during a state of emergency.<sup>16</sup>

### *Legislation and Internal Regulations*

19. South Sudan's Penal Code Act of 2008 includes standard criminal provisions prohibiting inter alia: murder; bodily injury and intimidation; kidnapping, abduction and violations of personal liberty; offences related to rape and other sexual offences; armed robbery; and damage to or destruction of property.

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by state practice as most of the successor States have indeed confirmed their wish to be bound by the multilateral treaties ratified by their predecessor State from the date of their independence.

<sup>12</sup> ICTY jurisprudence, which ruled that violations of customary humanitarian law constitutes war crimes, even though the dispositions do not contain any explicit reference to criminal liability. "Principles and rules of humanitarian law reflect "elementary considerations of humanity" widely recognized as the mandatory minimum for conduct in armed conflicts of any kind" and they entail individual criminal responsibility, regardless of whether they are committed in internal or international armed conflicts" ICTY, Tadic, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, Para.129.

<sup>13</sup>See notably Rome Statute, Art. 7.

<sup>14</sup> Situation in the Republic of Kenya, ICC-01/09, 31 March 2010, paras. 90-93.

<sup>15</sup> Bill of Rights, Part II, The Transitional Constitution of the Republic of South Sudan (2011).

<sup>16</sup> Article 188(a), The Transitional Constitution of the Republic of South Sudan (2011).

20. South Sudan's Geneva Conventions Act of 2012 stipulates that any person who, while in South Sudan, commits or otherwise aids and abets any breach of the relevant Geneva Conventions or Protocols,<sup>17</sup> is guilty of an indictable offense and subject to imprisonment.<sup>18</sup> The Child Act of 2008 specifies that the minimum age for conscription or recruitment into armed groups in South Sudan is 18 years and that children shall not be used in any military or paramilitary activities.<sup>19</sup>

21. The Government armed forces are also subject to the provisions of the SPLA Act and the SPLA's Rules & Regulations, both issued in 2009. Under the SPLA Act, personnel that commit the offence of mistreating a detainee under their charge will be tried by a competent court martial and be subject to imprisonment.<sup>20</sup> The Rules & Regulations further proscribes the following actions, categorized as "Major Disciplinary Offences:" (i) assaulting or insulting prisoners of war; (ii) verbal or physical conduct that denigrates, humiliates or shows hostility against others based on race, gender, religion, or social origin; (iii) unlawful detention of individuals; (iv) committing or attempting to commit any act that is cruel, indecent, and unnatural.<sup>21</sup>

22. On 14 August 2013, the SPLA issued a General Punitive Order underscoring the prohibition on the recruitment and use of child soldiers and mandating administrative action upon evidence of any violation of this rule.<sup>22</sup> On 26 May 2015, the Government of South Sudan issued a Ministerial Order reminding all members of the SPLA to refrain from deliberate attacks against civilians, rape and sexual violence, and the use of child soldiers.<sup>23</sup>

#### *Negotiated Agreements*

23. The January 2014 Cessation of Hostilities agreement<sup>24</sup> enumerated a list of prohibited actions, and the principal parties subsequently reaffirmed their commitment to refrain from these acts in the August 2015 peace agreement.<sup>25</sup> The prohibitions agreed to by the parties include inter alia: (i) acts of sexual and gender-based violence;<sup>26</sup> (ii) attacks or acts of violence, hostility of intimidation against the civilian population;<sup>27</sup> (iii) actions that impede humanitarian access or the protection and free movement of civilians;<sup>28</sup> (iv) recruitment or use of child soldiers by armed forces or militias;<sup>29</sup> (v) mobilization, redeployment, or movement of forces inconsistent with the signed agreements.<sup>30</sup>

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<sup>17</sup> Geneva Convention of 1949, I-IV; Additional Protocols of 1977, I & II.

<sup>18</sup> Sections 6-8, Geneva Conventions Act (2012).

<sup>19</sup> 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).

<sup>20</sup> Section 77, SPLA Act (2009).

<sup>21</sup> Section 30, SPLA's Rules and Regulations (2009).

<sup>22</sup> Punitive Order: Child Protection and the Release and Reintegration of Children Associated with the SPLA, Office of the Chief of General Staff, SPLA.

<sup>23</sup> Ministerial Order No. 02/2015.

<sup>24</sup> The Agreement on Cessation of Hostilities Between the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO) was signed on 23 January 2014 under the auspices of IGAD by Hon. Nhial Deng Nhial (GRSS) and Gen. Taban Deng Gai (SPLM/A-IO).

<sup>25</sup> The Agreement on the Resolution of the Conflict in the Republic of South Sudan, 17 August 2015.

<sup>26</sup> Art. 1.7.2, Peace Agreement (2015); Art. 3.2, CoH Agreement (2014).

<sup>27</sup> Art. 1.7.5, Peace Agreement (2015); Art. 3, CoH Agreement (2014).

<sup>28</sup> Art. 1.7.1, Peace Agreement (2015); Art. 4, CoH Agreement (2014).

<sup>29</sup> Art. 1.7.3, Peace Agreement (2015); Art. 3.4, CoH Agreement (2014).

<sup>30</sup> Art. 1.7.4, Peace Agreement (2015); Art. 1.2, CoH Agreement (2014).

#### IV. POLITICAL AND SECURITY CONTEXT

24. In April 2016, Riek Machar, leader of SPLM/A-IO, returned to Juba, where he was inaugurated as First Vice President of the country, in accordance with the Agreement on the Resolution of the Conflict in the Republic of South Sudan (“Peace Agreement”). Although a Transitional Government of National Unity (TGoNU) was established following his return, several contentious issues remained unresolved that were bound to undermine the peace process. These included the restructuring of the security services, the demilitarization of Juba and the unilateral decision by President Salva Kiir to increase the number of states from 10 to 28 by Establishment Order No. 36/2015 issued in October 2015. Many observers warned that the presidential decision could deepen the division of the country along ethnic lines.

25. Despite the return of Riek Machar and heightened hopes for a political solution, tensions between SPLA and SPLM/A-IO remained high. A palpable climate of distrust prevailed between the two parties including within the TGoNU. Security incidents and minor clashes were often reported between their relevant security forces. For instance, UNMISS was informed that on 2 July, in Juba, some Government security forces shot at bodyguards protecting Riek Machar and that an officer of the SPLM/A-IO was killed in a separate shooting incident. On the same day, a heavy exchange of gunfire occurred near the UN House compound in Juba.

26. During the days that followed this incident, tensions continued to rise in the capital. The situation further degenerated on the evening of 7 July, when intense gunfire was reportedly exchanged between members of the two parties at a checkpoint in the Gudele area of the city. According to information gathered by UNMISS, three SPLA soldiers were allegedly killed and one SPLM/A-IO officer sustained injuries in the incident. On the same evening, the UNESCO Country Representative was shot at by an unidentified gunman and sustained wounds but he managed to drive away and gain entry to a nearby diplomatic residence. Immediately after, SPLA soldiers surrounded the embassy residence and prevented United Nations emergency services from entering to provide him medical treatment. After extensive negotiations with UNMISS leadership, the SPLA eventually permitted his evacuation to the UNMISS hospital in Tamping.

27. On the afternoon of 8 July, President Salva Kiir, First Vice President Riek Machar and Second Vice President James Wani Igga held a press conference at the presidential palace to give a briefing on the security situation and reassurances of their commitment to abide by the terms of the Peace Agreement. They further stated that the TGoNU was united and firm in pursuing peace and security in South Sudan. However, at approximately 5:30 p.m., a fight erupted outside the presidential palace between the guards of the President and those of the First Vice President. The initial altercation was soon followed by gunfire and use of heavy artillery. The violence immediately escalated and spread to other parts of Juba. The SPLA subsequently attacked SPLM/A-IO cantonment sites in the Jebel and Gudele areas near the UNMISS UN House base, using helicopter gunships. Heavy artillery, mortar and gunfire were heard across Juba, but mainly in areas surrounding the UN House base in the Jebel Kujur area. In a statement broadcasted on national television in the evening of 8 July, President Salva Kiir made the following announcement: “...What is happening outside is something that we cannot explain to you... Three of us were sitting inside the meeting, discussing the situation of yesterday what happened in Gudele and then talking

about what we can do in the implementation of the agreement and to build confidence among the forces and the civil population...<sup>31</sup>

28. On 9 July, which marked the fifth anniversary of South Sudan's independence, fighting was muted, with only sporadic gunfire in the capital. President Kiir issued a "republican decree" establishing a 'Joint Investigation Committee', to be chaired by Minister of Interior Alfred Lado Gore, with a mandate to probe the incidents of 7 and 8 July 2016 and to report back with findings and recommendations.

29. However, heavy fighting resumed in the morning of 10 July, with gunfire heard across the city including in and around the UNMISS PoC sites adjacent to the UNMISS UN House compound in Jebel Kujur. UNMISS premises, personnel and assets were caught in the crossfire. While some shootings appeared to be indiscriminate, it was evident that others were deliberate and targeted. For instance, both UNMISS compounds at UN House and Tomping were attacked and hit with several rounds of ammunitions. Bullets and artillery impact could be seen on accommodations, offices and cars in both compounds. In addition to a number of combatants hiding within the PoC sites among the IDPs, UNMISS observed that some SPLM/A-IO combatants entered PoC sites 1 and 3 during the fighting in Juba, at least on 10 July, violating the civilian character of the sites. Following the July violence, there was an increased risk of militarization of the PoC sites as it appears that some of the former SPLM/A-IO combatants and senior political members may have sought shelter within the PoC sites.

30. In order to maintain the civilian character of the PoC sites, UNMISS has strengthened and implemented a number of measures. A robust access control through screening and searching of persons entering the PoC was enacted. In addition to conducting regular weapons search operations in the PoC sites, a weapons free zone was established outside the perimeter of UN compounds and POC sites including their surrounding areas. The weapons free zone was and is monitored by regular patrols comprised of mission force and police components. UNMISS, particularly UNPOL community policing units are closely working with a network of community leaders, watchdogs working groups and humanitarian actors operating in the PoC sites to identify any hidden weapons, and other internal and external security threats against PoC sites population. The Mission was and is also working with community leaders in POC sites in messaging against any military activities in the sites.

31. By 10 July, approximately 7,000 civilians mostly women and children, had arrived at the UNMISS UN House and Tomping bases, fleeing the fighting in various areas of Juba and OCHA reported that approximately 42,000 civilians had been displaced as a result of the widespread violence.<sup>32</sup> The constant influx of civilians seeking protection at UNMISS, OCHA and other compounds was indicative of the magnitude of the violence, that was subsequently corroborated by numerous allegations of violations of international human rights and humanitarian laws, as highlighted in this report. In the evening of 10 July, two Chinese peacekeepers were killed and four

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<sup>31</sup> President Salva Kiir declared in statement broadcasted on 8 July by the South Sudan Broadcasting Corporation (SSBC).

<sup>32</sup> IDPs found shelter in 12 temporary collective protection sites. The majority of them left these sites in the aftermath of the conflict.

others injured when their UN armoured personnel carrier (APC) was hit by a rocket-propelled grenade (RPG).<sup>33</sup>

32. On 11 July, the SPLA regained control of most of Juba, including strategic locations near former SPLM/A-IO cantonment site in Jebel area. The situation appeared to have stabilized, with reports of sporadic gunfire at night as SPLM/A-IO forces retreated from Juba. President Kiir announced a unilateral ceasefire, which was later endorsed by First Vice President Machar, who asked “all the troops to respect the ceasefire and remain where they were.”<sup>34</sup> UNMISS and other members of the international community welcomed the ceasefire and urged all parties to adhere to it. However, many serious human rights violations including killings and rape allegedly by SPLA soldiers continued to take place after the announcement of the ceasefire. The SPLM/A-IO cantonment sites on the west side of Jebel Mountain were reportedly abandoned. On 12 July, President Kiir’s spokesperson stated that the President was willing to engage in dialogue with the opposition to restore peace. Between the evening of 11 and the morning of 12 July, celebratory gunfire by SPLA soldiers and their allies was heard across the city.

33. Over the subsequent two weeks, the SPLA carried out intensive military operations south of Juba in the Equatorias to flush out remaining SPLM/A-IO elements. Riek Machar also fled Juba, and was rumoured to be with his forces, but his exact whereabouts were not known. On 23 July, following Machar’s extended absence from Juba, a faction of SPLM/A-IO designated Taban Deng (former chief negotiator for the SPLM/A-IO) to replace Riek Machar as its head. On 25 July, President Kiir appointed Taban Deng as his First Vice President to replace Riek Machar. This decision reportedly caused a major rift within the opposition. On 28 July, Lam Akol Ajawin the representative to the Joint Monitoring and Evaluation Commission (JMEC)<sup>35</sup> for the ‘other political parties’ not aligned with the Government, resigned from his post as Minister of Agriculture. On 31 July, in Khartoum, the high-level JMEC Partners Group meeting condemned the violence in Juba and operations targeting the opposition and called for investigations and accountability for ceasefire violations. The JMEC Partners Group also called on the Government of South Sudan to accept assistance to create a security environment in Juba that would facilitate the implementation of the Peace Agreement. In a public statement issued on 1 August, Lam Akol Ajawin explained that his resignation from the TGoNU, JMEC and as chair of his political party was due to the “death of the Peace Agreement” and the lack of political space. He further stated that “the only sensible way to oppose this regime so as to restore genuine peace to our war-torn country is to organize outside of Juba.”<sup>36</sup>

34. In his speech to inaugurate the Transitional National Legislative Assembly (TNLA) on 15 August, President Kiir reiterated his commitment to peace and declared ‘zero tolerance’ toward incidents of sexual violence. He also announced a number of measures, including the setting up

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<sup>33</sup> On 12 July, President Kiir sent a letter to the Special Representative of the Secretary-General (SRSG) in South Sudan, in which he promised to investigate the incident that resulted in the death of UNMISS peacekeepers and injured four others.

<sup>34</sup> Riek Machar on *Eye Radio*, 8 July 2016.

<sup>35</sup> JMEC is responsible for monitoring and overseeing the implementation of ARCSS and the mandate and tasks of TGoNU, including adherence by the Parties to the agreed timelines and implementation schedule.

<sup>36</sup> ‘South Sudan minister resigns, calls for Kiir to go,’ Aljazeera, 2 August 2016 <<http://www.aljazeera.com/news/2016/08/south-sudan-minister-resigns-calls-kiir-160802040649322.html>> last accessed 12 October 2016.

of investigation commissions to address allegations of serious human rights violations committed during the July fighting in Juba.

## **V. OVERVIEW OF ALLEGED VIOLATIONS AND ABUSES OF HUMAN RIGHTS AND VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED DURING THE FIGHTING BETWEEN 8 AND 12 JULY 2016 AND IN ITS IMMEDIATE AFTERMATH**

### **1. Violations of the right to life and to physical integrity**

35. Incidents documented by UNMISS HRD indicate that hundreds of civilians and soldiers were killed during the clashes which took place in Juba from 8 to 12 July and in the immediate aftermath of the fighting. In a letter dated 12 July addressed to the JMEC Chair, President Kiir stated that more than 300 soldiers had been killed during the clashes<sup>37</sup> but authorities did not mention that civilians were killed. The exact number of civilians who were killed during the fighting and in its aftermath cannot be confirmed for various reasons: some were hastily buried by their family members, and some bodies were removed from the streets by humanitarian organizations and buried, while the Government prevented access to some of the heaviest-hit areas of Juba several days following the violence.

36. On 10 July, HRD received information from reliable local sources that the Juba Teaching Hospital mortuary facility had no further capacity to receive corpses. Witnesses stated that more than 50 corpses brought to the mortuary on the same day could no longer be admitted to the facility and were therefore lying in the vicinity of the building, while the two mortuary rooms were already full with 40 corpses.<sup>38</sup> On 15 and 16 July, dead bodies could still be seen lying in the streets and some humanitarian organizations reported that they were overwhelmed with requests to collect dead bodies in various locations throughout Juba. One humanitarian organization told UNMISS that on 16 July in the afternoon, they counted up to 80 dead bodies while visiting two locations in Juba.

37. Many densely populated areas in Juba had suffered from the relentless attacks, with many civilians caught in the cross-fire. A male youth who survived an attack that took place at a market where he was working recounted to HRD that armed men, wearing what he believed to be the uniform of the SPLM/A-IO, were intercepted by SPLA soldiers as they had approached the market in the afternoon of 8 July. During the confrontation, the youth was wounded in the crossfire. He told HRD that while he slipped in and out of consciousness, he recognized many people he knew who had been killed or injured, including three young men who were working in a nearby shop. He then lost consciousness and woke up the following morning. He then learned he had been rescued by a group of uniformed men who had taken him to the gate of a medical facility. He added that he could not remember what had happened to the rest of the people at the market.

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<sup>37</sup> Letter from President Kiir to JMEC Chair, 12 July 2016.

<sup>38</sup> UNMISS was informed by medical workers that the each facility had a normal full capacity to accommodate a maximum of 20 bodies.

38. Two other witnesses recounted that on 9 July, two civilian men were summarily executed by SPLA soldiers while they were trying to access the UNMISS Topping compound. They explained that themselves were able to reach the UNMISS base, where they received medical treatment. On 11 July, a group of Internally Displaced Persons (IDPs) were allegedly fired upon by SPLA soldiers while leaving the Topping compound. Only the intervention of UNMISS peacekeepers enabled them to return to a safer area at the compound, where some received treatment for gunshot injuries.

39. Fighting had taken place in close proximity to United Nations premises, and HRD received reports of killings in and around the UNMISS PoC sites adjacent to the UN House compound. The majority of the IDPs in the PoC 1 and PoC 3 sites who were killed, were caught in crossfire and shelling, either during the fighting or while they were trying to flee around the sites. Witnesses also indicated that SPLA soldiers reportedly shot directly at or indiscriminately in very close proximity to the PoC sites, with mortar rounds landing in densely populated areas.

40. In total, 53 people were reported killed, inside the PoC 1 and PoC 3 sites including 11 women and 17 children. At least 18 bodies were buried within the PoC 3 site during the fighting. In addition, 234 were reported injured, including 49 women and 50 children. From 8 to 11 July, health facilities at the UN House treated at least 141 persons injured during the fighting.

41. HRD was informed by witnesses that two Darfuris and a South Sudanese civilian were killed in the Gudele area of Juba on 10 July. One of the witnesses who temporarily resided in the area reported that the men were killed by anti-tank artillery fire that landed on two houses in their residential compound. On the same day, another residence in the same area was reportedly hit by mortars, injuring a woman and two girls aged 6 and 16 respectively. When other residents in the house attempted to take the injured persons to the hospital, they were reportedly stopped by the SPLA and sent back home. The family made another attempt to reach the hospital at night, but the six year old girl died from her injuries by the time they arrived at the hospital.

42. Also, on 10 July, at approximately 6:45 p.m., an UNMISS APC stationed at PoC site 1 was hit by an RPG which exploded inside the vehicle causing serious injuries to the six occupants, who were all peacekeepers from China. One of the peacekeepers died from his wounds on 10 July at night and another in the morning of 11 July. They could not be transported to the Level II hospital in the UN base in Topping due to SPLA obstruction.

43. Numerous other testimonies gathered by HRD suggest that SPLA soldiers deliberately targeted civilians from the Nuer community while conducting house-to-house and hotel-to-hotel searches in at least six neighbourhoods of Juba, namely, Munuki, San Kizito, Gudele 1 and 2, Jebel and Bilpam. According to witnesses, SPLA soldiers often asked questions in local Dinka and/or Mundari languages, to find out the ethnicity of the person. Nuer men and women appeared to have been particularly targeted. Nuers with tribal marks on their forehead were particularly exposed as they could easily be identified.<sup>39</sup> In two separate incidents that occurred on 11 July, SPLA soldiers reportedly conducted house-to-house searches in the Munuki area and arrested a

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<sup>39</sup> Facial scarification is practiced among many ethnic groups in South Sudan including the Nuer and the Dinka. Various marks across the faces of tribesmen identify them to the tribe. The most common tribe mark for the Nuer among males consists of six parallel horizontal lines, which are cut across the forehead, often with a dip in the lines above the nose.



number of civilians. In one incident, four Nuer men were arrested, taken in front of a hotel and shot by SPLA soldiers. One man died on the spot while the others were seriously wounded. In the other incident in Munuki, SPLA soldiers allegedly arrested eight Nuer men and took them to two nearby hotels where they killed seven and wounded one.

44. A Nuer man who was able to cross three check points with his car because he had a Dinka name and spoke the Dinka language told HRD that on 10 July, he had witnessed the killing of a Nuer man by SPLA soldiers at a checkpoint. The soldiers reportedly shot him in the head twice after identifying him as a Nuer. The witness added that the soldiers later realized that he too could be a Nuer and asked him to stay close to them. He reported that those who had Dinka names or could speak the language were allowed to go, while the others were separated and subjected to further interrogation. The woman and the three children who were travelling with him were all ordered to go. While he was waiting for orders from the soldiers, a soldier ordered him to go. As he started moving away, a soldier opened fire, and shot him in the stomach and another man in the back. Both were later taken by a group of SPLA military intelligence personnel, who were driving to Gudele. They were then taken to a hospital for treatment.

45. On the evening of 11 July, John Gatluak Manguet, a journalist of Nuer ethnicity, was shot dead by SPLA soldiers at the Terrain Hotel approximately two kilometres from the UNMISS UN House compound - where he was staying. Witnesses told HRD that when the SPLA soldiers entered the Terrain Hotel compound, they were able to identify the journalist as Nuer because of the tribal marks on his forehead. The soldiers verbally abused him before killing him. Various testimonies indicate that a large group of SPLA soldiers<sup>40</sup> forced their way into the Terrain Hotel compound in the afternoon of 11 July. They immediately started looting and abusing the residents and staff of the hotel. In one incident, the SPLA soldiers reportedly fired at the solid iron door of the safe-room, where some of the residents were hiding. When the soldiers broke into the safe-room, they beat up and abused all people therein and also raped and gang raped some of the women<sup>41</sup>. One of the victims, a woman who was hiding in a bathroom with 10 other residents, could hear the soldiers ordering people from other rooms to go out one by one, and yelling that they would kill all of them. When the soldiers realized that some people were in the bathroom, they ordered them to open the door. As the door lock was blocked due to the bullets shot into it, the soldiers shot at the door, injuring one of the hotel residents. When the bathroom door was opened, the SPLA soldiers ordered the occupants to hand over all their belongings. They also randomly shot and yelled to frighten their victims. They reportedly shouted in English “*Open the doors, we want dollars, cars, mobiles or we kill you*” and “*UN mess our country.*” It is worth noting that Terrain Hotel was known to host international contractors, journalists and aid workers. Testimonies gathered by HRD from the victims at the hotel suggest that UNMISS and some embassies were contacted for help by the victims using their mobile phones and social media, but no rescue operation was launched. Several hours later NSS officers rescued the victims. In addition, it appeared that orders to UNMISS Force to intervene at the Terrain Hotel to rescue the victims were not followed. The United Nations Secretary-General appointed an independent special investigation into the violence in Juba in July 2016 and the response of UNMISS, including the

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<sup>40</sup> According to various sources, including eyewitnesses interviewed by HRD, there were around 80 to 100 SPLA soldiers.

<sup>41</sup> See paragraphs 34 and 35.

Terrain incident.<sup>42</sup> The special investigation team released its report on 1 November 2016<sup>43</sup> including recommendations of the UN's response to such situations.

46. On 17 July, two boys were allegedly shot dead by SPLA soldiers while they were crossing from PoC site 3 to PoC site 1. Witnesses stated that their bodies were lying by the roadside for at least two days, near an SPLA checkpoint. Community leaders reported that by 16 July, any attempt to cross between the two PoC sites had become dangerous as tension was at its highest in the area.

47. Various sources, including a witness, informed UNMISS that a 25-year-old refugee from Ethiopia was killed by SPLA soldiers on 21 July. The victim was allegedly stopped by soldiers while he was returning to the refugee settlement. The SPLA soldiers reportedly ordered him to sit and stand up several times before one of them shot him in his left thigh. The victim reportedly bled to death. A formal complaint about this incident was reportedly made by some refugees to the South Sudan National Police Service (SSNPS) but, as at the end of September, UNMISS was not aware of any formal investigation into this case.

## **2. Conflict-related sexual violence**

48. During the July 2016 fighting, women and girls suffered physical assaults and sexual violence including rape, gang-rape and sexual assaults.

49. UNMISS documented 217 victims of sexual violence that included rape and gang-rape that were committed in various areas across Juba between 8 and 25 July, including at SPLA checkpoints. In most of these cases, victims and witnesses reported that the alleged perpetrators were SPLA soldiers, police officers and NSS members. Witnesses and victims interviewed by UNMISS reported that the victims were also often robbed, beaten up, harassed and verbally abused by SPLA soldiers and other security officers at these check-points and at other locations in the city.

50. Most of the incidents of sexual violence that took place at the checkpoints close to the PoC sites occurred when IDP women and girls from the PoC sites (mostly from the Nuer community) were returning from collecting firewood or from the market. According to information gathered by HRD, SPLA soldiers would reportedly separate the women and girls they judged more attractive to them, to be raped or gang-raped, while the remaining women were forced to wait, sometimes held at gunpoint. On another occasion, women and girls were ordered to cook for the soldiers at checkpoints when their friends or family members were raped. According to survivors and witnesses, those who resisted rape were verbally abused, severely beaten and/or threatened with death. Other survivors narrated that women leaving the PoC sites moved in groups of five, 10, 15 or more as a protective measure. However, this did not prevent them from being raped by SPLA soldiers and other uniformed personnel at various places, including at SPLA checkpoints.

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<sup>42</sup> The UN Secretary-General appointed Major General Patrick Cammaert of The Netherlands to lead an investigation into July 2016 violence in South Sudan and the response of UNMISS. See UN Doc SG/A/1677-AFR/3433-PKO/601, 23 August 2016.

<sup>43</sup> Executive Summary of the Independent Special Investigation into the violence which occurred in Juba in 2016 and UNMISS response

51. According to information gathered from interviews conducted with victims and witnesses, at least seven women, including international humanitarian workers, were raped or gang-raped by SPLA soldiers at the Terrain Hotel on the above-mentioned attack of 11 July. Victims and witnesses told HRD that the victims were given “the choice” of either being raped or killed, while being held at gunpoint. Some of the victims interviewed reported that they were gang-raped by more than four armed men. One survivor reported that she was raped by 15 men. Testimonies gathered suggest that some of the attackers were as young as 15 years old.

52. In one incident, the soldiers took out 10 people one by one. They ordered one of the women to go into a separate room, where she was assaulted, hit on her genitalia, bitten on her face and neck, and repeatedly raped. The witness reported that one of the soldiers who raped her was very young and was wearing an army uniform with a red Tiger Brigade insignia<sup>44</sup> on the shoulders. The last soldier who raped her sprayed insect repellent on her face while singing. The victim also observed the physical abuse and rape of other women by SPLA soldiers. Another female victim testified that she was also seriously physically assaulted by different SPLA soldiers before being repeatedly raped in different locations of the house. While trying to make her way out of the building, the woman also witnessed the rape of other female residents, who were forcibly pulled into different rooms. Another victim testified that she was also raped by a very young soldier who was under pressure from other soldiers to do so. A male resident at the Hotel recounted that he witnessed the rape of some women while he was hiding under a bed. Many other witnesses stated they could hear women in the building screaming while being raped. All interviewed by UNMISS confirmed the high degree of violence and brutality, especially towards the female residents and staff. The alleged perpetrators spoke English, Juba Arabic, Kuku and Dinka languages.

53. Incidents of sexual violence were also reported in other areas across Juba. In the early days of the crisis, elements of the national police and Mundari youth reportedly affiliated with the SPLM/A-IO were allegedly also involved in incidents of sexual violence in the Tomping and Gudele neighbourhoods. Witnesses reported that at least three women and six girls aged between 15 and 17 years old were raped on 10 July by armed Mundari youth believed to be cattle-keepers. The perpetrators reportedly, stole personal items from their victims before running away.

54. Violence against women and girls continued to occur after 12 July, even after the ceasefire was announced. During interviews with various witnesses, UNMISS received information confirming that on 13 July, two minor girls, together with undetermined number of women, were gang-raped at a checkpoint erected by SPLA soldiers less than two kilometres away from the UN House, on the Yei Road at a place called “Jebel Junction.”

55. Victims and witnesses reported that 35 women and girls were raped or gang-raped in two separate incidents on 17 and 18 July. One incident involving 28 women, including 12 girls, took place at an SPLA checkpoint set up less than two kilometres away from UN House on the Yei Road at the Jebel Junction. In the second incident, seven women were reportedly raped on the

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<sup>44</sup> In South Sudan, soldiers wearing red tiger insignia on their shoulder belong to the “Tiger Division,” which is part of the presidential guard brigade. The “blue camouflage” uniforms are for SSNPS; while “dark green” uniforms are used by both SPLA as well as SPLM/A-IO troops.

road between the PoC 1 and PoC 3 sites. In another incident on 17 July, a 24-year-old woman who had gone to the funeral of a relative who had been killed during the fighting was raped by an SPLA soldier. According to witnesses, 10 SPLA soldiers reportedly entered the compound in Jebel, where the mourners were sleeping, dragged the victim out of the compound and handed her over to an SPLA soldier who subsequently raped her.

56. Other eyewitnesses reported more incidents in which women and girls were victims of rape and other forms of sexual violence between 21 and 23 July in Juba. HRD was informed by various witnesses that a pregnant woman was gang-raped and severely beaten by SPLA soldiers in a Juba neighbourhood.

57. In general, survivors of sexual violence suffer from the absence of medical and psychological facilities in most parts of the county, including in Juba. Moreover, the lack of information and fear of stigmatization from the community prevent them from reporting and seeking appropriate treatment. Lack of accountability for perpetrators of sexual violence, combined with a lack of trust in the criminal justice system, the absence of protection and safety mechanisms and lack of access to justice, also prevent survivors from coming forward to lodge formal complaints with the police.

58. Following reports of sexual violence and rape, UNMISS instituted measures to protect women, including mobile patrols by UN peacekeepers particularly in hot-spots where women and girls are most at risk.

59. UNMISS also urged the SPLA Chief of General Staff to institute preventive measures to ensure the safety of women and girls, and to investigate and hold perpetrators in the armed forces to account. UNMISS also continues to work with community leaders and protection partners to coordinate efforts to ensure the safety of displaced women and girls both inside and outside the PoC sites, including by reinforcing uniformed escorts of women and girls who venture outside the PoC sites.

60. However, in August and September 2016, UNMISS continued to receive credible reports of sexual violence and harassment of women and girls by SPLA soldiers, police and NSS occurring in the proximity of the PoC sites. The reports indicate that UNMISS patrols need to be further enhanced, in terms of duration and impact, notwithstanding the prohibition on the use of armoured vehicles for patrols which the South Sudanese authorities have imposed on UNMISS, in addition to other access and movement restrictions.

### **3. Violations of the rights of the child**

61. During the July 2016 violence and in the aftermath of the fighting, serious violations of the rights of children were committed by both parties to the conflict. Children were killed, wounded, raped or gang-raped, or forced to flee and live as refugees or IDPs, sometimes separated from their families. The fighting also impacted children's access to education and to medical facilities.

62. According to the United Nations Country Task Force on Monitoring and Reporting (CTFMR),<sup>45</sup> between 8 and 11 July, six children (two boys, one girl and three whose gender could not be determined because their corpses were already in an advanced stage of decomposition) were killed and 13 others injured. While some of children were apparently caught in cross-fire, others seemed to have been deliberately targeted. CTFMR reported that, between 8 and 11 July, at least 13 girls were allegedly raped by SPLA soldiers and other uniformed personnel, including the police.

63. Children are still associated with armed groups and forces in South Sudan. HRD observed the use of child soldiers during the July 2016 fighting. Children were seen on the streets of Juba in military vehicles, and at some checkpoints. Some of them were armed and wearing SPLA uniforms. As previously noted, victims and witnesses from the attack on the Terrain Hotel reported that children were among the attackers, including some as young as 15 years old. According to UNICEF, more than 650 children have been recruited into armed groups in South Sudan since the beginning of 2016, and an estimated 16,000 children have been recruited by armed groups and armed forces since the crisis in South Sudan began in December 2013.<sup>46</sup>

64. Children constitute the majority of those who were forced to flee their homes and seek shelter in PoC sites and in neighbouring countries following the July fighting. Some were separated from their families. In August 2016, UNICEF announced that more than 50 per cent of 240 children identified as missing, separated, or unaccompanied since the start of the Juba crisis had been reunited with their families.<sup>47</sup>

65. As a consequence of the July 2016 violence, all schools in Juba were closed for several weeks, and by the end of September, some were yet to reopen. The two schools set up in PoC 1 and 3 were occupied by an influx of displaced people from the July violence. According to UNICEF, this situation is seriously hampering education activities for over 7,000 children enrolled at these schools.<sup>48</sup>

#### **4. Arbitrary arrest and enforced disappearance of civilians**

66. UNMISS gathered information suggesting that dozens of people were arrested in the context of the July 2016 fighting, and noted that some of the arrests were politically motivated while other targeted members of some ethnic groups, mainly the Nuers. For instance, at least 21 men, most of them Nuer, were arrested between 8 and 12 July in Juba by SPLA soldiers, police or members of NSS without arrest warrants. Their whereabouts and fate remained unknown at the time of finalising this report.

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<sup>45</sup> In 2005, under Resolution 1612, the Security Council established a monitoring and reporting mechanism for grave violations against children in armed conflict. The purpose of this mechanism is to provide for the systematic gathering of accurate, timely and objective information on grave violations committed against children in armed conflict. Such information is used to foster accountability and compliance of parties to a conflict with international child protection standards.

<sup>46</sup> UNICEF, Hundreds of children recruited by armed groups in South Sudan, as violations against women and children increase, 19 August 2016.

<sup>47</sup> UNICEF South Sudan Juba Humanitarian Situation Update #14 - 19 August 2016.

<sup>48</sup> UNICEF South Sudan Humanitarian Situation Report #90, 15 - 28 July 2016.

67. On 8 July, SPLA soldiers reportedly arrested a man in the Jebel area of Juba. According to his family, he was arrested on his way to the PoC site and his whereabouts remained unknown. Also on 8 July, a Nuer family reported to UNMISS that two of their relatives had gone missing. They suspected that they had been arrested by SPLA soldiers the same day. HRD was also informed that on the same day, a civilian man who was trying to access the UNMISS PoC sites was taken away by SPLA soldiers. On 20 July, SPLA soldiers reportedly arrested two Nuer men who were going to the UNMISS PoC sites near the UN House.

68. A woman also told HRD that she was arrested at her shop by a group of SPLA soldiers who reportedly accused her of selling tea to people of Nuer ethnicity. She was allegedly held for one night at an NSS detention facility in Juba where she was reportedly ill-treated. While she was release, she continued to fear for her safety.

## **5. Forced displacement of civilians**

69. The fighting that took place in Juba in July 2016 forced people to flee their homes and seek safety elsewhere. According to humanitarian actors, in the first days of the fighting, approximately 40,000 people, mainly women and children, sought physical safety and protection in churches, schools and United Nations and NGO compounds across Juba.<sup>49</sup> The forced displacement of people has impacted negatively on the enjoyment of the rights to food, education and health care. The food-security situation remains precarious, with humanitarian actors have warned that any further deterioration could have severe repercussions including famine in weeks and months to come.

70. By 14 July, nearly all of the urban/collective centres where civilians had sought refuge had been emptied, with significant numbers of people heading toward the Ugandan border. The Nimule border crossing, which had been closed after the fighting broke out, reopened on 16 July. Thousands of residents from Juba then surged across the border. Between 7 and 21 July, an estimated 26,500 South Sudanese crossed into Uganda, around 90 per cent of them being children and women, including 8,337 crossing on 21 July alone.<sup>50</sup>

71. Many displaced people reported that their neighbourhoods were being deserted and that they were fearful of being isolated and were increasingly vulnerable. By 29 July, UN OCHA reported that 12,588 people remained displaced due to insecurity in Juba. Of these, 11,338 people were sheltering in the UNMISS Topping compound and the PoC sites adjacent to UN House. These numbers are in addition to the 28,000 people who were already living in the PoC sites in Juba prior to the outbreak of fighting in July.

72. In mid-September, UNHCR announced that the number of South Sudanese refugees in neighbouring countries had passed the one million mark, including more than 185,000 people who had fled since violence erupted in Juba on 8 July, and that there were more than 1.61 million IDPs within South Sudan.<sup>51</sup> At the end of September, all IDPs who were staying within the UN compound in Topping since 8 July were relocated to PoC sites 1 and 3.

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<sup>49</sup> Protection Situation Update, *Outbreak of Conflict in Juba (08 July – 21 July 2016)*.

<sup>50</sup> UNOCHA, *South Sudan: "Civilians continue to suffer immensely," says Humanitarian Coordinator*, 26 July 2016.

<sup>51</sup> UNHCR, *The number of South Sudanese refugees reaches one million mark*, 16 September 2016.

73. Despite many efforts by humanitarian organizations, including United Nations agencies, South Sudanese refugees and IDPs are still living in dire conditions, due to many reasons, including logistical challenges and access restrictions imposed by the Government of South Sudan on humanitarian organizations, as well as ongoing insecurity in the country. In addition, IDPs including those staying in the PoC sites continue to be victims of human rights violations, including of rape, gang-rape and other forms of sexual violence when they venture outside the sites.

## **6. Infringement on the right to freedom of movement**

74. At the beginning of the crisis, UNMISS observed that freedom of movement was severely restricted in Juba, not only for civilians, but also for humanitarian workers. Checkpoints were erected across the city, mostly by the SPLA, who in some instances prevented civilians from moving to safer areas. In a press statement released on 11 July, UNMISS voiced its concerns about reports that armed forces had prevented civilians from seeking protection. On 12 July, UNMISS requested the Government to open up corridors to allow United Nations and humanitarian actors to provide vital supplies and other assistance to civilians, as well as access to medical evacuations.

75. In addition to reports that the authorities obstructed civilian movements within Juba, witnesses and victims reported that civilians were prevented from leaving the country. Often, no reasons were given for these decisions. Since the fighting began on 8 July, UNMISS received information about NSS agents or immigration officials preventing South Sudanese civilians from boarding flights at the Juba International Airport, while some had their travel documents and passports confiscated by the security services. Witnesses and victims also reported that some of the people prevented from travelling were allegedly targeted based on their ethnicity and/or political affiliation, with most of them being Nuer and real or perceived members of SPLM/A-IO. Women and children were reportedly allowed to travel more freely.

76. On 12 July, at Juba International Airport, the NSS confiscated the passports of three Nuer men as they were about to depart for Uganda. The NSS officers reportedly interrogated the three men and verbally abused them. The passports were returned to them on 15 July after they allegedly paid a bribe to the NSS officials. In a similar incident, witnesses reported that on 15 July, three SPLM/A-IO officials travelling to Nairobi were allegedly prevented from departing and briefly detained at Juba International Airport. Their luggage and passports were also confiscated and had not been returned as of 30 September 2016.

77. On 15 July, an employee of an airline company operating out of Juba International Airport was arrested by NSS agents, who accused him of facilitating the exit of an SPLM/A-IO member from the country. The individual reportedly remained in detention until he was released at the end of July without charge.

78. UNMISS also documented reports that between 14 and 27 July, some SPLM/A-IO members were placed under house arrest at the Crown Hotel in Juba. They were reportedly released after Taban Deng was sworn in as first Vice President of South Sudan on 27 July and following his intervention. One of the men had been prevented by NSS and the SPLA Military Intelligence

from travelling abroad for medical treatment, on 19 July. He was permitted to travel abroad following his release.

## **7. Violations of the right to freedom of expression and opinion**

79. Media freedom and democratic space were already restricted before the July 2016 fighting but the situation worsened afterwards, with the repression of journalists and the closure of media houses. Any dissenting voices were not tolerated and media houses were threatened with closure, and some journalists were temporarily arrested for publishing articles deemed critical of Government or publishing information related to the July violence. According to information received from the Union of Journalists of South Sudan (UJOSS), five journalists and media workers were either arrested or threatened in July for reporting stories linked to the fighting in Juba and subsequent developments.

80. A journalist whose radio programme had expressed concerns about delays in the implementation of the peace process reportedly received death threats and had to leave the country in mid-July. A few days before 8 July, he had received information that the NSS had reportedly received orders to arrest him at his house and execute him. He went into hiding before fleeing the country.<sup>52</sup>

81. After 8 July, more restrictive measures were imposed by the Government, limiting the scope of the enjoyment of the right to freedom of expression and freedom of press. On 16 July, the editor-in-chief of the *Juba Monitor* newspaper, Alfred Taban, was arrested by NSS. His arrest followed the publication of an article he had written on 15 July that was deemed to be critical of the Government. The *Juba Monitor* media house that published the article was ordered by the authorities to close down on 16 July and the shut-down lasted two days. Taban was charged with offences under Articles 75 and 76 of the *South Sudan Penal Code (2008)*, for “Publishing or Communicating False Statements Prejudicial to Southern Sudan” and “Undermining Authority of or Insulting the President.” The offence under Article 75 is punishable by up to 20 years imprisonment. Taban was released on bail on 29 July.

82. On 23 July, Michael Christopher, a journalist who worked for the Arabic-language daily *Al-Watan*, was reportedly arrested and detained by the NSS following the publication of a news article in which he mistakenly reported that a first contingent of the Regional Protection Force, proposed by the United Nations Security Council, was due to arrive in South Sudan. *Al-Watan* was closed down by the authorities the same day, but later reopened. Michael Christopher was released on 26 July. The newspaper’s board of directors dismissed him from his position on the grounds of inaccurate and unprofessional reporting. On 17 July, a journalist was taken to the Ministry of Information, where he was accused of supporting the opposition, and the Ministry threatened to close the newspaper for which he was working. On 27 July, the editor-in-chief of *The Dawn* daily newspaper was arrested and held at an NSS detention facility without charges. He was released a few days later.

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<sup>52</sup> Details of the case are withheld for security reasons.



83. UNMISS HRD was informed by various sources, including journalists and media operators, that the Government had deployed NSS personnel to printing press facilities in order to ensure that articles critical of the government are not published. The Association for Media Development in South Sudan indicated in a public release in August that the NSS removed more than six articles in the *Nation Mirror* and the *Juba Monitor* newspapers from publication.<sup>53</sup>

## **8. Pillaging, looting, and destruction of property**

84. The fighting in Juba was also characterized by widespread looting and destruction of civilian property. Humanitarian warehouses, including those of the WFP and FAO, were looted by SPLA soldiers and other uniformed forces, including SPLM/A-IO and members of the NSS. Civilians, including some IDPs, were also involved in some of the lootings that occurred in Juba during and in the aftermath of the fighting.

85. Information received by UNMISS indicates that most of the shops and markets around the Jebel and Gudele areas were looted by both SPLA soldiers and armed men in civilian clothes. According to witnesses and victims, in other areas, houses of people who fled for their safety were ransacked and looted by SPLA soldiers and unidentified armed men. Eyewitnesses recounted that on 9 July, they saw SPLA soldiers breaking into homes and shops in the Tomping area of Juba, looting property belonging to civilians, including foreign businessmen and loading the looted goods onto two SPLA vehicles.

86. On 10 July, the South Sudan Red Cross warehouse – clearly marked with the Red Cross logo was bombed, seriously damaged and looted.<sup>54</sup> The same day, a part of the Gudele market in Juba was destroyed when SPLA allegedly launched mortar rounds that hit fuel and generators situated in and around the market area, causing an explosion. Mortar shelling and shooting also resulted in the displacement of over 10,000 civilians, many of whom were women and children, from the Gudele, Gure, Hai Zande and Hai Seminary areas. They fled their homes and were stranded in remote areas and in the bush.

87. On the evening of 11 July, UNMISS visited the areas around Lou Clinic in Gudele and saw SPLA soldiers looting shops and taking the looted goods away in their vehicles. UNMISS later learned that the shopkeepers had left before the soldiers broke into the shops. Soldiers were also seen shooting into the air, apparently to scare people away.

88. On 13 July, a WFP warehouse in the Jebel area of Juba was looted of over 40,000 metric tons of commodities that could have fed 260,000 people for a month. The looting was reportedly carried out by uniformed personnel, including SPLA soldiers. Civilians were seen looting the place in the following days. Apart from food, other stolen items included heavy-duty generators and vehicles.

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<sup>53</sup> See Association for Media Development in South Sudan, press release, 22 August 2016.

<sup>54</sup> See Joint statement by the South Sudan Red Cross (SSRC), the International Committee of the Red Cross and the International Federation of the Red Cross and Red Crescent Societies on the Movement's response following the upsurge in the conflict, 15 July 2016.

89. Some witnesses, including some traders, indicated that on the morning of 25 July, hundreds of SPLA soldiers were deployed around the Customs Market in Juba, cutting off the road and denying access to vehicles, including a Red Cross ambulance. A witness stated that while he had given money to an SPLA officer to protect his shop, the latter was looted and destroyed. An UNMISS team subsequently toured the market and confirmed that more than 50 businesses, including supermarkets and restaurants, had been looted and destroyed.

90. During the July 2016 fighting, the UN House compound was also severely hit with cross-fire from guns and artillery. UNMISS assessed both minor and severe damages to staff accommodations, including bullet holes from various calibres of weapons as well as from rocket-propelled grenades. Such bullet holes, abrasions and damage were observed on at least 132 accommodation buildings, offices and vehicles. Buildings showed multiple forms of damage, such as broken windows and holes in roofs, doors, panels, walls and ceilings, as well as damage to equipment such as air conditioning units.

## **VI. RESPONSE OF THE GOVERNMENT**

91. Both the SPLA and the SPLM/A-IO have repeatedly announced through the media that perpetrators of gross violations and abuses of human rights and breaches of international humanitarian law would be held accountable for their crimes.

92. On 8 July, President Kiir announced that he had formed a Joint Committee, to be led by the Minister of Internal Affairs, to investigate the shooting in Juba that resulted in the spread of clashes across the city that same day. On 22 July, the Government announced in a public statement that a General Court Martial would start “trying SPLA soldiers accused of committing crimes against civilians and their comrades in arms.”

93. However, on 13 July, President Kiir signed a presidential order granting amnesty “to members of the Sudan People’s Liberation Movement in Opposition (SPLM/A-IO) Forces who had taken up arms against the Transitional Government of National Unity (TGoNU) from the 8<sup>th</sup> to 10<sup>th</sup> of July, 2016.”<sup>55</sup> The United Nations is opposed to blanket amnesties for crimes under international law and other serious human rights violations, including genocide, war crimes and crimes against humanity.<sup>56</sup> It is important that the Government of South Sudan take these considerations into account. As the history of South Sudan has repeatedly demonstrated, true reconciliation and lasting peace are impossible without justice for the victims and accountability for those who have ordered, condoned or committed serious crimes.

94. On 15 August, during his address to the Transitional National Legislative Assembly (TNLA), President Kiir announced that the Government had begun an investigation into allegations of sexual violence committed during the July conflict, with a view to prosecuting those found to have been involved. He added that all incidents involving military personnel would be investigated and those found responsible prosecuted and court-martialled to the fullest extent of

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<sup>55</sup> Republican Order No. 18/2016, RSS/RO/J/18/2016, 13 July 2016.

<sup>56</sup> See Office of the United Nations High Commissioner for Human Rights, *Rule of Law Tools for Post-conflict States*, New York and Geneva, 2009.

the law. The President also announced that he would appoint a commission of inquiry to investigate the circumstances, causes and culprits responsible for the theft of food stocks and medical equipment in the aftermath of the July events. Finally, President Kiir announced that he would establish a commission of inquiry to be led by a former judge to investigate the events that led to the outbreak of violence in July and that he would invite the UN and the Inter-Governmental Authority on Development (IGAD) to appoint a representative to the commission. At the time of finalizing this report, the United Nations had not received any formal communication regarding this request. On August 15, President Kiir issued an order creating a six-member committee, chaired by the Deputy Minister of Justice, Martison Oturomoi, to investigate the incident at the Terrain Hotel and submit its findings to the President within 21 days. On 25 October, the committee submitted its report to the President of the Republic.

95. UNMISS has been closely following up on the implementation of these initiatives. It is not clear if the Government will establish several commissions working separately or under the same umbrella, nor is it clear when these commissions will officially start their work. In the past, the Government of South Sudan has created similar commissions in the aftermath of serious human rights violations and abuses without significant results.

96. On 5 August, an UNMISS team monitored the proceedings at the General Court Martial sitting at the SPLA military facility in Giada, Juba. Five judges formed a panel to try 19 SPLA soldiers who were charged with loitering, theft, loss of guns, random shooting and murder committed in different parts of Juba between 7 and 11 July. Subsequently, three additional SPLA soldiers were apprehended and charged with loitering, theft, random shooting and loss of guns. UNMISS noted that the judges, prosecutors and defense attorneys were serving SPLA soldiers and that the accused persons were represented by lawyers from the SPLA Military Justice Department. On 16 August, 21 soldiers were sentenced to various terms of imprisonment while one was found guilty of murder and sentenced to death by firing squad, pending appeal and approval from the President and Commander-in-Chief. On 23 September, during a General Parade by the SPLA in Juba, the SPLA Spokesperson informed the media that 77 SPLA soldiers had been prosecuted and sentenced by the General Court Martial. UNMISS verified this information and found that the 22 soldiers already sentenced in August by the same court were part of the number. The remaining were soldiers accused of administrative misconduct as well as crimes committed before, during and after the July fighting in Juba.

97. The number and level of cases so far tried by the Court Martial does not reflect the widespread nature of the crimes and violations committed by the SPLA soldiers during the July 2016 conflict. The defense lawyers were not given adequate time and facility by the General Court Martial to prepare their defence. The trial was hastily concluded within a short period of seven days, which is not an adequate amount of time to prepare a defense of a murder case, involving the complex subject of command responsibility and possibility of the application of the death penalty. In addition, Section 37 (4) of the *SPLA Act 2009* enjoins SPLA to defer all trials of offences committed by SPLA soldiers against civilians to be tried by Civil Courts.<sup>57</sup>

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<sup>57</sup> The provision reads as follow: “Whenever a military personnel commits an offence against a civilian or civilian property, the civil court shall assume jurisdiction over such an offence.”

## **VII. CONCLUSION**

98. During the fighting that erupted in Juba between 8 and 12 July 2016, and in its aftermath, both the SPLA and the SPLM/A-IO, as well as their respective affiliated armed groups committed serious human rights violations and abuses, and violations of international humanitarian law, some possibly amounting to war crimes, in addition to other crimes under international human rights law and international humanitarian law. From the first day of the fighting on 8 July, members of the international community, including the United Nations and the African Union called for the cessation of hostilities and for accountability for crimes committed by the warring parties. In a press statement issued on 4 August 2016, the United Nations High Commissioner for Human Rights condemned the lack of effective responses to end impunity for human rights violations as well as violations and abuses of international humanitarian law. Political leaders, military commanders, civilians in positions of authority and fighters who have ordered, condoned or failed to take action to prevent or who are found to have committed such crimes must be held accountable. The TGoNU must take concrete steps to break the cycle of violence and impunity and hold those responsible for serious human rights violations and other crimes accountable. It should seek assistance from the members of the international community, including the United Nations.

99. The issue of impunity for serious crimes is a longstanding and widespread problem in South Sudan, which has contributed to the repeated cycles of violence in the country. The Republic of South Sudan has the obligation to investigate, and where appropriate, to prosecute and punish all individuals suspected of serious violations of human rights or violations of international humanitarian law. South Sudan has faced serious challenges in addressing impunity and strengthening the justice sector, including through the independent investigation and prosecution of alleged perpetrators, especially those suspected of having command responsibility, and to ensure that all victims have access to an effective remedy, including just, fair and gender-sensitive reparations.

## **VIII. RECOMMENDATIONS**

### **1. To the Transitional Government of National Unity**

- Ensure that the Commission of Inquiry into serious human rights violations committed in the context of the July fighting in Juba that was announced by the Government is independent, credible, transparent and gender-sensitive, and that its findings are made public as promised by the President. These findings should serve as a basis for holding people accountable for human rights violations and breaches of international humanitarian law committed in connection with the fighting and, where necessary, institute criminal proceedings against those suspected of committing or condoning these crimes, including cases of pillaging, sexual violence, extrajudicial killings, enforced disappearances, recruitment and use of child soldiers and arbitrary arrest and detention.
- Ensure that all the victims of human rights violations and abuses, as well as violations of international humanitarian law, have access to an effective remedy, just and fair reparation, including compensation and rehabilitation.

- Ensure that the General Court Martial hands over to civilian courts the cases of soldiers accused of committing crimes against civilians and attacks on civilian infrastructure.
- Immediately halt all executions of the death sentences pronounced by the General Court Martial against a number of soldiers during trials organized in August and September 2016 as there were concerns related to the right to fair trial, including the right to an effective legal defense especially in cases involving the application of the death penalty.
- Establish an independent, fair and effective vetting process for members of the SPLA, SSNPS and NSS to ensure that those individuals who are suspected of being responsible for serious human rights violations or breaches of international humanitarian law, including senior SPLA commanders, are suspended from their duties pending independent and impartial investigations.
- Take concrete actions to fully support the prompt establishment and operationalization of the Hybrid Court for South Sudan by the African Union.
- Take effective measures to investigate and document all allegations of cases of sexual violence, including rape and gang-rape by SPLA, NSS and SSNPS, as well as their allied forces, which took place in Juba in connection with the July 2016; bring perpetrators to justice and ensure access to justice for survivors taking into consideration their safety and security; Ensure that women and girls, survivors of rape, gang rape and other forms of sexual violence, have access to medical, psychosocial, legal and social services.
- Take immediate action to ensure the safety of journalists and other, civil society actors, including human rights defenders and political opponents; refrain from harassing, threatening and attacking them; ensure that all threats or attacks against them are promptly investigated with a view to bringing those responsible to justice in trials that meet international standards of fair trial.
- Publicly confirm the detention and disclose the whereabouts of individuals who disappeared after their arrest by SPLA, SSNPS or NSS in connection with the July fighting in Juba; ensure that these individuals are either released or immediately charged with a recognizable criminal offence and are brought to trial in proceedings that meet international fair trial standards. Ensure that these individuals are allowed visits from family members, medical personnel and legal counsel.
- Bring an end to secret or *incommunicado* detentions by disclosing the whereabouts of anyone detained and ensuring that all places of detention are made public, and that the office of the prosecutor, lawyers, family members, UNMISS, human rights defenders and delegates of the International Committee of the Red Cross have access to people in detention without fear of any form of obstruction.
- Ensure that individuals, including senior SPLA commanders, reasonably suspected of recruiting and using child soldiers are brought to justice in accordance with international fair trial standards.
- Ensure that there is no amnesty for serious crimes under international law and other serious human rights violations and abuses committed during and in the aftermath of the July fighting in Juba.

- Respect freedom of movement of the population and ensure respect of the inviolability of United Nations premises and personnel by SPLA, SSNPS, NSS and other affiliated armed forces. Refrain from preventing the United Nations and other international organizations from accessing places where violations of human rights and abuses and violations of international humanitarian law may have occurred.
- Discharge its primary responsibility to protect all its population irrespective of ethnic or political affiliation or any other grounds, by guaranteeing security and safety to all its citizens and prosecuting those suspected to have committed serious crimes in accordance with international standards.

## **2. To all parties to the conflict**

- Comply with their obligations under international human rights and humanitarian law, in particular, regarding the protection of civilians, including IDPs currently living in various camps or PoC sites across the country.
- Allow unhindered access for humanitarian assistance and human rights monitoring and investigations in all parts of the country.
- Refrain from mounting military and other attacks that place civilians at risk, especially in densely populated neighbourhoods or in close proximity to other civilian installations.
- Remove any individuals, including senior commanders, implicated in serious violations of international human rights law or breaches of international humanitarian law from their ranks.
- End the recruitment and use of children (under the age of 18) and release all children from their ranks, cooperating fully with UNICEF, UNMISS and international and local actors involved in the demobilization and reintegration of child soldiers.
- Cooperate fully with national and international investigations related to grave human rights violations and abuses committed in South Sudan, including the recruitment and use of child soldiers.

## **3. To members of the international community, particularly UNMISS, IGAD and the African Union**

- Continue to contribute to the promotion of an environment conducive for transitional justice and provide expertise in promoting reconciliation in South Sudan. Ensure that the fight against impunity for serious human rights violations and breaches of international humanitarian law is at the heart of any discussion, dialogue or agreement aiming at resolving the ongoing crisis.
- Contribute to the enhancement of accountability for serious human rights violations and abuses as well as breaches of international humanitarian law in South Sudan by ensuring that the African Union expedite the establishment of the Hybrid Court of South Sudan to investigate, prosecute and try individuals, including senior SPLA and SPLA/IO commanders bearing responsibility for serious violations of human rights and international humanitarian law.

- UNMISS should continue ensuring protection of civilians according to its mandate by putting in place effective mechanisms. UNMISS should ensure that integrated foot and mobile patrols involving peacekeepers, UN Police and other relevant components continue to take place in Juba, including in and around the PoC sites, to prevent and respond swiftly to any attacks against civilians.

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