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# South Sudan: Country Report

The situation in South Sudan

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7 January 2013



## South Sudan Country Report

*Commissioned by the Office of the United Nations High Commissioner for Refugees (UNHCR), Division of International Protection. Any views expressed in this paper are those of the authors and not necessarily those of UNHCR.*

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## Explanatory Note

This report presents country of origin information (COI) on South Sudan up to 7<sup>th</sup> January 2013 on issues identified by UNHCR to be of relevance in refugee status determination for South Sudanese nationals. The COI presented is illustrative, but not exhaustive of the information available in the public domain, nor is it determinative of any individual human rights or asylum claim. All sources are publicly available and a direct hyperlink has been provided. A list of sources and databases consulted is also provided, to enable users to conduct further research and to conduct source assessments. Research focused on sources published in 2012 and all sources were accessed between December 2012 and 7<sup>th</sup> January 2013.

This document is intended to be used as a tool to help to identify relevant COI and the COI referred to in this report can be considered by decision makers in assessing asylum applications and appeals. However, this document should not be submitted in full or in isolation as evidence to refugee decision making authorities. Whilst every attempt has been made to ensure accuracy, the authors accept no responsibility for any errors included in this report.

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## Sources and databases consulted

Not all of the sources listed here have been consulted for each issue addressed in the report. Additional sources to those individually listed were consulted via database searches. This non-exhaustive list is intended to assist in further case-specific research.

To find out more about an organisation, view the 'About Us' tab of a source's website.

### Databases

[Child Rights International Network](#)

[European Country of Origin Information Network \(ECOI\)](#)

[Relief Web](#)

[UNHCR Refworld](#)

### Sources

[Amnesty International](#)

[Article 19](#)

[CHR Michelsen Institute](#)

[CIA World Factbook](#)

[Committee to Protect Journalists](#)

[Enough Project](#)

[Gurtong](#)

[Human Rights Watch](#)

[Human Security Baseline Assessment for Sudan and South Sudan \(Small Arms Survey\)](#)

[Internal Displacement Monitoring Centre](#)

[International Committee of the Red Cross \(ICRC\), South Sudan](#)

[International Crisis Group](#)

[International Federation for Human Rights](#)

[International Gay and Lesbian Human Rights Commission](#)

[International Lesbian, Gay, Bisexual and Trans and Intersex Association](#)

[International Organization for Migration](#)

[Integrated Regional Information Networks \(IRIN\)](#)

[Invisible Children and Resolve LRA Crisis Tracker](#)

[Medecins Sans Frontieres/Doctors Without Borders](#)

[Minority Rights Group](#)

[Open Society Institute](#)

[Pink News](#)

[Radio Miraya](#)

[Refugees International](#)

[Reporters Without Borders](#)

[Save the Children](#)

[Small Arms Survey \(Human Security Baseline Assessment for Sudan and South Sudan\)](#)

[Sudan Tribune](#)

[United Nations Children's Fund \(UNICEF\)](#)

[United Nations Mission in South Sudan \(UNMISS\)](#)

[United Nations Office for the Coordination of Humanitarian Affairs, South Sudan \(UNOCHA\)](#)

[World Bank](#)

[World Health Organisation](#)

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## List of Acronyms

ACHPR- African Charter on Human and Peoples' Rights  
AU- African Union  
CIA-Central Intelligence Agency  
CPA-Comprehensive Peace Agreement  
DDR- Demobilisation, Disarmament and Reintegration  
FIDH- International Federation for Human Rights  
GBV- Gender-based Violence  
GDP- Gross Domestic Product  
GOS- Government of Sudan  
GOSS- Government of South Sudan  
GRSS- Government of the Republic of South Sudan  
HRW- Human Rights Watch  
ICCPR- International Covenant on Civil and Political Rights  
ICESCR- International Covenant on Economic Social and Cultural Rights  
ICRC- International Committee of the Red Cross  
IDP- Internally Displaced Person  
IOM- International Organization for Migration  
IRIN- Integrated Regional Information Networks  
JEM- Justice and Equality Movement  
LGBTI- Lesbian, Gay, Bisexual, Trans and Intersex  
LRA- Lord's Resistance Army  
MOU- Memorandum of Understanding  
MP- Member of Parliament  
MSF- Médecins Sans Frontières  
NCP- National Congress Party  
NGO- Non-Governmental Organisation  
NLA- National Legislative Assembly  
NSS- National Security Service  
OHCHR- Office of the High Commissioner for Human Rights  
PHCU- Primary Health Care Unit  
PTSD – Post-Traumatic Stress Disorder  
RMG- Rebel Militia Group  
ROSS- Republic of South Sudan  
SAF- Sudanese Armed Forces  
SGBV- Sexual and Gender Based Violence  
SPLA- Sudan People's Liberation Army  
SPLM- Sudan People's Liberation Movement  
SPLM-DC- Sudan People's Liberation Movement for Democratic Change  
SPLM-N- Sudan People's Liberation Movement- North  
SPSS/SSPS- South Sudan Police Service  
SRF- Sudan Revolutionary Forces  
SSBC- South Sudan Broadcasting Corporation  
SSCSA- South Sudan Civil Society Alliance  
SSDF- South Sudan Democratic Forum  
SSDM/A- South Sudan Democratic Movement/ Army  
SSHRC- South Sudan Human Rights Commission  
SSHRSA - South Sudan Human Rights Society for Advocacy  
SSLM/A- South Sudan Liberation Movement/ Army  
SSLS- South Sudan Law Society  
SSP- South Sudan Pound

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SSRRC- Southern Sudan Relief and Rehabilitation Commission  
TCSS- Transitional Constitution of South Sudan  
UN- United Nations  
UNDP- United Nations Development Programme  
UNESCO- United Nations Educational, Scientific and Cultural Organization  
UNFPA- United Nations Population Fund  
UNHCR- United Nations High Commissioner for Refugees  
UNICEF-United Nations Children Fund  
UNISFA- United Nations Interim Security Force for Abyei  
UNMISS-United Nations Mission in South Sudan  
UNOCHA- United Nations Office for the Coordination of Humanitarian Affairs  
WHO- World Health Organisation

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## 1. Background Information

### 1.1 Geographical Information<sup>1</sup>



The estimated population of The Republic of South Sudan (hereafter ‘South Sudan’) according to the National Bureau of Statistics is 8.26 Million.<sup>2</sup> The South Sudan Human Rights Commission notes that these figures are based on the disputed 2008 Population Census records of the former United Sudan.<sup>3</sup> There are 10 states in South Sudan: Central Equatoria, Eastern Equatoria, Jonglei, Lakes, Northern Bahr el Ghazal, Unity, Upper Nile, Warrap, Western Bahr el Ghazal and Western Equatoria. UNOCHA provides reference maps which show national, regional and district administrative boundaries, towns, rivers and of South Sudan.<sup>4</sup>

<sup>1</sup> Map taken from: United Nations, [Map of South Sudan](#), October 2011

<sup>2</sup> The Republic of South Sudan, National Bureau of Statistics, [Fast Facts](#), undated current webpage (accessed 11 February 2013).

<sup>3</sup> SSHRC, [2011 Annual Report](#), January-December 2011, *Part one: Introduction*

<sup>4</sup> UNOCHA, [South Sudan Administrative Maps](#), undated current webpage (accessed 9 January 2013)

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## 1.2 General overview of the number of ethnic and linguistic groups

According to Refugees International reporting in May 2012, South Sudan is home to over 60 ethnic groups.<sup>5</sup> The Minority Rights Group noted in June 2011 that there are 56 ethnic groups and almost 600 sub-groups in South Sudan.<sup>6</sup>

The CIA World Factbook lists the following ethnic groups in South Sudan: “Dinka, Kakwa, Bari, Azande, Shilluk, Kuku, Murle, Mandari, Didinga, Ndogo, Bviri, Lndi, Anuak, Bongo, Lango, Dungotona, Acholi”.<sup>7</sup>

UNMISS reports that indigenous people of South Sudan can be broadly categorized into the Nilotic, Nilo-Hamitic and the South-Western Sudanic groups:

**Nilotic group:** Includes the Dinka (largest, with estimated population of over 1 million), Nuer, Shilluk, Murle, Kachiopo, Jie, Anyuak, Acholi, Maban, Kuma, Lou (Jur), Bango, Bai, Ndogo, Gulu, Endri, Forgee, Chod (Jur), Khara, Ngorgule, Forugi, Siri, Zandi, Benga, Agar, Pakam, Gok, Ciec, Aliap, Hopi, Guere, Atuot, Apaak, Lango, Pari, Otuho and Ajaa.

**Nilo-Hamitic group:** Includes the Bari, Mundari, Kakwa, Pojulu, Nyangwara, Kuku, Latuko, Lokoya, Toposa, Buya, Lopit, Kuku, Kakwa, Nyabgwara, Tennen, Lopit and Didinga.

**South-Western Sudanic group:** Includes Kresh, Balanda, Banda, Ndogo, Zande, Madi, Olubo, Murus, Mundu, Baka, Avukaya and Makaraka.<sup>8</sup>

According to the CIA World Factbook, the following languages are spoken in South Sudan: “English (official), Arabic (includes Juba and Sudanese variants) (official), regional languages include Dinka, Nuer, Bari, Zande, Shilluk”.<sup>9</sup> Jessica Hjarrand, education specialist at UNESCO reports that there are in the region of 66 languages spoken in South Sudan.<sup>10</sup> The 2009 Ethnologue publication ‘Languages of the World’ does not have a separate listing for South Sudan, but provides the following map of languages spoken in Sudan<sup>11</sup>:

<sup>5</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>6</sup> Minority Rights Group, [Southern Sudan: The Role of Minority Rights in Building a New Nation](#), 15 June 2011

<sup>7</sup> CIA World Factbook, [South Sudan profile: People and Society](#), updated on 15 November 2012

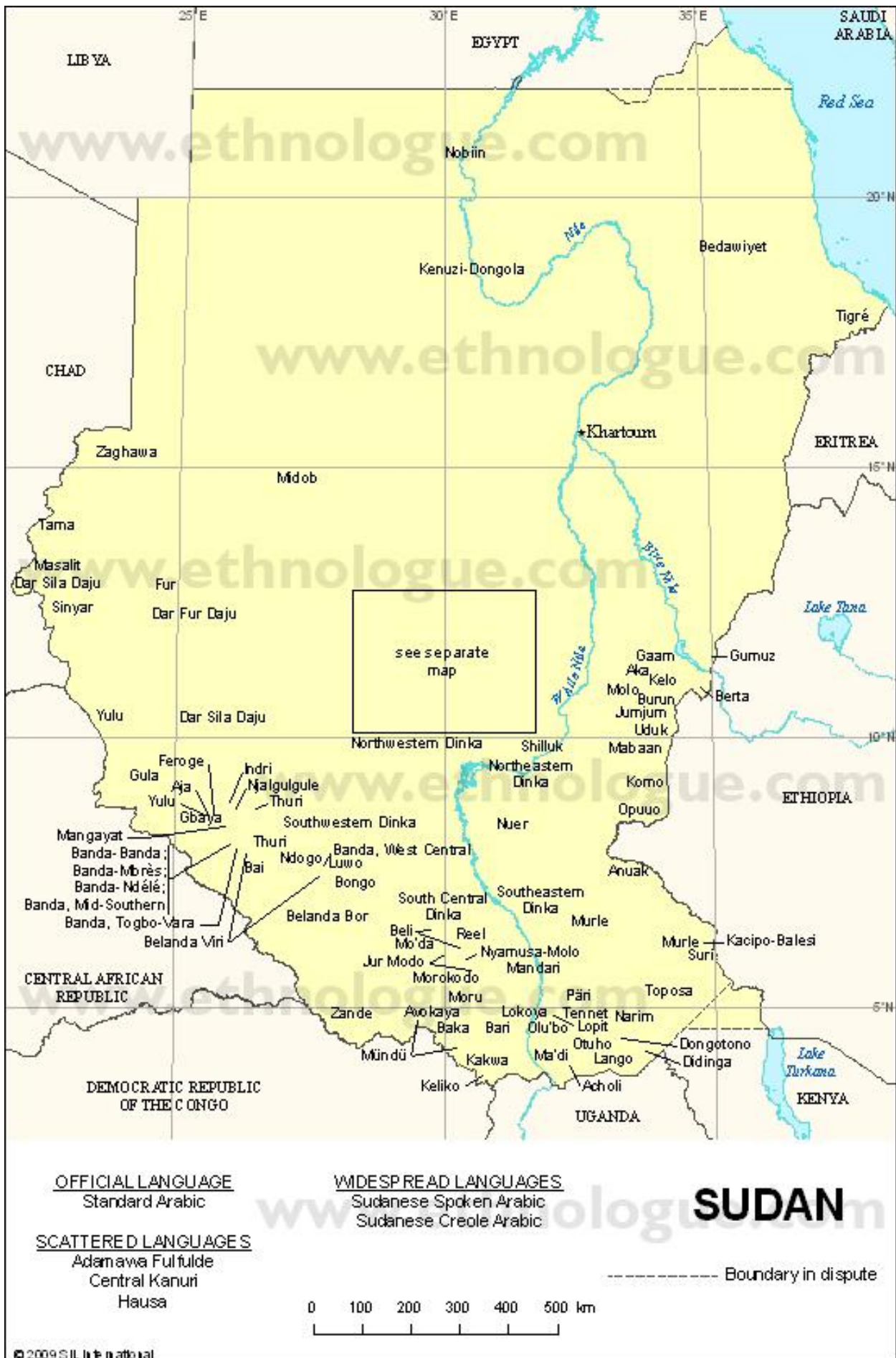
<sup>8</sup> UNMISS, [South Sudan Country Profile](#), undated current webpage, accessed 7 January 2013

<sup>9</sup> CIA World Factbook, [South Sudan profile: People and Society](#), updated on 15 November 2012

<sup>10</sup> IRIN, [South Sudan struggles to meet demand for education](#), 4 September 2012

<sup>11</sup> Lewis, M. Paul (ed.), 2009. Ethnologue: Languages of the World, Sixteenth edition. Dallas, Tex.: SIL International. Online version, [Languages of Sudan](#)

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### 1.3 January 2011 Referendum and independence of South Sudan

Following almost two decades of civil war between the North and the South of Sudan, the Comprehensive Peace Agreement (CPA) was signed in 2005 which provided that “the people of South Sudan have the right to self-determination”.<sup>12</sup> This right was enshrined in the interim constitutions for Sudan and the territory of Southern Sudan that followed the peace agreement.<sup>13</sup> The UNDP explains that under the terms of the peace agreement, the SPLM leader John Garang became the First Vice-President of the Republic of Sudan, and President of the Government of South Sudan.<sup>14</sup> However, almost three weeks after being sworn into office in July 2005, John Garang died in an airplane crash and was succeeded by Salva Kiir Mayardit.<sup>15</sup>

Following the five and a half year interim period as an autonomous region, a referendum was held in January 2011 in which 98.8% of Southern Sudanese voted in favour of secession from Sudan.<sup>16</sup> South Sudan became independent on 9 July 2011. With regards to the voting process, the U.S. State Department notes that:

Both international and domestic observers characterized the process as generally peaceful and fair, despite some irregularities. The Carter Center reported to the South Sudan Referendum Commission that incidents of assisted voting for illiterate and poorly educated voters occurred in all 10 states and could have undermined the secrecy of ballots, although in most cases it did not influence the will of voters. Security officials reportedly were present in some referendum centers, which could have intimidated some voters. The absence of large-scale voter education and civic education contributed to voters' limited understanding of the process and inhibited their ability to make informed decisions about the impact of continued unity as opposed to secession.<sup>17</sup>

The Open Society Institute reports that it was intended that the Abyei area on the border of Sudan and South Sudan would have its own referendum on whether it would join Sudan or South Sudan, but this did not take place because the parties were unable to agree on the criteria for determining who should vote in such a referendum.<sup>18</sup> The African Union Peace and Security Council has proposed to hold the referendum in October 2013.<sup>19</sup> For further information see section [2.1.1.1 Disputed state of Abyei](#).

### 1.4 Political landscape after independence, including:

#### 1.4.1 Transitional Constitution adopted in July 2011

The 2011 Transitional Constitution of the Republic of South Sudan<sup>20</sup> came into force on the day of independence of South Sudan (9 July 2011), replacing the 2005 Interim Constitution of Southern Sudan. It will “remain in force until the adoption of a permanent constitution”.<sup>21</sup> The Constitution establishes a presidential system of government headed by a president who is Head of State, Head of Government, and

<sup>12</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012

<sup>13</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 9

<sup>14</sup> UNDP, [South Sudan](#), undated current webpage (accessed 14 December 2012)

<sup>15</sup> *ibid*

<sup>16</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Introduction

<sup>17</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government

<sup>18</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012

<sup>19</sup> Radio Miraya, [Abyei to hold referendum. AU](#), 15 December 2012

<sup>20</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011

<sup>21</sup> Laws of South Sudan, [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011, Part Sixteen, Chapter I, Article 201 (2)

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the Commander-in-Chief of the armed forces.<sup>22</sup> As the International Federation for Human Rights (FIDH) explains, it is intended that the Transitional Constitution will be revised to become permanent.<sup>23</sup> As set out in Article 202, the President of the Republic established a National Constitutional Review Commission:

On 9 January 2012, the President signed decree N° 03/2012 to appoint full-time and part-time members of the Commission. The Commission is chaired by Professor Akolda Ma'an Tier and is composed of 45 members, 25 from the ruling party SPLM and only 1 from the civil society, Dong Samuel Luak. At a press conference, Civil Society Alliance members complained that their voices were excluded from the consultation process, prior to the president's decree, and declared that President Kiir had acted contrary to the Transitional Constitution. South Sudan women activists also complained that women's rights associations were not consulted, and that the number of women on the Commission only constitutes 22%, instead of the 25% mandated in the affirmative action plan.<sup>24</sup>

The Commission has one year to prepare a draft permanent Constitution text and present it to the President.<sup>25</sup>

According to Freedom House, the Transitional Constitution gives broad powers to the executive, the president cannot be impeached and has the authority to fire state governors and dissolve the parliament and state assemblies.<sup>26</sup> It further notes that some opposition politicians boycotted the constitutional consultation process, claiming it was insufficiently inclusive and dominated by SPLM loyalists.<sup>27</sup> Human Rights Watch notes that the Transitional Constitution "expanded presidential powers and created a new and enlarged bicameral legislative body, which incorporated South Sudanese who left legislative positions in Sudan's former Government of National Unity. It also provided for the transformation of the Sudan People's Liberation Army (SPLA) into the South Sudan Armed Forces".<sup>28</sup>

Part II of the Transitional Constitution constitutes the Bill of Rights. Article 9(2) stipulates that "the rights and freedoms of individuals and groups enshrined in this Bill shall be respected, upheld and promoted by all organs and agencies of Government and by all persons".<sup>29</sup>

### 1.4.2 Political parties

The CIA World Factbook lists the following political parties and leaders in South Sudan:

- Sudan People's Liberation Movement or SPLM [Salva KIIR Mayardit];
- National Congress Party or NCP;
- Sudan People's Liberation Movement for Democratic Change or SPLM-DC [Sisto OLUR Erista].<sup>30</sup>

Freedom House reports that a new Southern parliament was convened in August 2011 and that the SPLM holds 90 percent of the 332 seats in the lower house, the National Legislative Assembly (NLA).<sup>31</sup> The CIA World Factbook explains that bicameral National Legislature consists of the National Legislative Assembly (332 seats) and the Council of States (50 seats) in which members serve four-year terms.<sup>32</sup> Following the

<sup>22</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part II – Legal and Institutional Human Rights Framework

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

<sup>25</sup> *ibid*

<sup>26</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>27</sup> *ibid*

<sup>28</sup> Human Rights Watch, [World Report 2012 - South Sudan](#), 22 January 2012

<sup>29</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011

<sup>30</sup> CIA World Factbook, [South Sudan profile: Government](#), updated on 15 November 2012

<sup>31</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>32</sup> CIA World Factbook, [South Sudan profile: Government](#), updated on 15 November 2012

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April 2010 elections, the SPLM held 251 seats, the SPLM-DC held 6 seats, the NCP held 3, independents held 6 and the remaining 66 were unknown.<sup>33</sup>

According to a research paper from the organisation Stiftung Wissenschaft und Politik, there are no rival centres of power in President Kiir's regime and "if more factions were to follow the SPLM-DC in splitting from the SPLM, or new opposition parties were to emerge, these would in all likelihood recruit from a particular ethnic or clan base. There is no sign of emerging opposition parties based on political programmes".<sup>34</sup>

According to the U.S. State Department during 2011, "The SPLM enjoyed a near-monopoly of power and has been the most broadly recognized and supported political entity since the signing of the CPA in 2005."<sup>35</sup> Freedom House notes that:

In addition to members of the old Southern legislature, the chamber includes 96 former members of the National Assembly in Khartoum and 66 additional members appointed by political parties. The upper chamber, the Council of States, consists of 20 former members of Sudan's Council of States, plus 30 members appointed by President Salva Kiir. The SPLM was given all but five posts in a 29-member cabinet, also appointed in August. South Sudan has a decentralized system, with significant powers devolved to the 10 state assemblies. Nine of the 10 state governors are members of the SPLM.<sup>36</sup>

The U.S. State Department further notes that SPLM membership conferred political and financial advantages and that during 2011 "Many opposition members were dismissed from civil service employment at central and state levels during the year. Opposition parties lacked large constituencies, were not represented in many states, and had limited financial resources and poor infrastructure. Only a few had regular party conventions or established communication networks".<sup>37</sup>

Freedom House further explains that "Five opposition parties are represented in the NLA, but they lack both the resources to operate effectively and the necessary experience to formulate policy and set party platforms. The SPLM is intolerant of opposition. In July 2011, two leading members of the largest opposition party, SPLM-Democratic Change, said they were arrested and tortured by SPLM security agents".<sup>38</sup> See section [3.3.2 Treatment of individuals who are critical of the government](#) for further information.

The SPLM is also reported by FIDH to be seen to have too much influence in the Constitutional Review Commission.<sup>39</sup>

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<sup>33</sup> CIA World Factbook, [South Sudan profile: Government](#), updated on 15 November 2012

<sup>34</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *The Emerging Regime: One-party state, military junta or clientelist network?*

<sup>35</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government*

<sup>36</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>37</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government*

<sup>38</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>39</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, *Conclusion - Transitional period: Time to Learn from the Past*

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## 1.5 Political developments since independence

### 1.5.1 Creation of major laws and regulations

According to the UN High Commissioner for Human Rights, “South Sudan has taken important but incomplete steps to establish a legal framework for the promotion and protection of human rights. Notably, the National Legislative Assembly passed the Human Rights Commission legislation in 2006, and the Government has engaged in broad consultations on the draft legislation on political parties and electoral matters”.<sup>40</sup>

As FIDH explains, “Around 50 laws were adopted between 2006 and 2012. Many of them have aspects related to human rights protection, such as: the Child Act (2008); the Penal Code Act (2008); the Code of Criminal Procedure Act (2008); the Civil Procedure Act (2007); the Anti-corruption Act (2009); the National Elections Act (2008); the SPLA Act (2009); the Police Service Act (2009); the Prison Service Act (2011); the South Sudan Human Rights Commission Act (2009)”.<sup>41</sup> The Nationality Act of 2011 and the Passports and Immigration Act were enacted in July 2012.<sup>42</sup> The Gurtong Trust Peace and Media project, an independent, not-for-profit, community-based project, provides a list of the laws of South Sudan to date.<sup>43</sup>

FIDH identifies the need for new legislation, particularly those guaranteeing freedoms of association, movement, and expression, including freedom of speech and of information.<sup>44</sup> It also considers that South Sudan legislation must recognise the legality of human rights defending and protect the work of human rights defenders and that there is a need for a National Security Act, “as members of Intelligence Services remain active (without clear knowledge of their size) and SPLA continue to arrest and detain individuals without any legal framework to allow for effective oversight”.<sup>45</sup> This is echoed by the UN High Commissioner for Human Rights who reports that “Important pieces of legislation remain to be enacted, however, including on the media, national civil society and the national intelligence services”.<sup>46</sup>

Amnesty International similarly reports that “gaps in national legislation such as the absence of an adequate legal framework to regulate the National Security Service (NSS), including by limiting or defining its powers of arrest and detention, calls into question the lawfulness of any intervention by the NSS that has repercussions on individuals’ rights”.<sup>47</sup>

FIDH further reports that some laws already in place should be revised to either incorporate or amend certain provisions with a view to better protect human rights, for example that genocide, war crimes and

<sup>40</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 33

<sup>41</sup> UN Human Rights Council, Written statement\* submitted by Amnesty International, a non-governmental organization in special consultative status, [South Sudan: Strengthen human rights and accountability mechanisms](#), 21 September 2012, *Legal framework for human rights*

<sup>41</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part II – Legal and Institutional Human Rights Framework

<sup>42</sup> [The Nationality Act, 2011 \[South Sudan\]](#), 7 July 2011, [Passports and Immigration Act, 2011 \[South Sudan\]](#), 7 July 2011

<sup>43</sup> Gurtong, [The Laws of the Republic of South Sudan to date](#), undated current webpage (accessed 9 January 2013)

<sup>44</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part II – Legal and Institutional Human Rights Framework

<sup>45</sup> *ibid*

<sup>45</sup> *ibid*

<sup>46</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 33

<sup>47</sup> UN Human Rights Council, Written statement\* submitted by Amnesty International, a non-governmental organization in special consultative status, [South Sudan: Strengthen human rights and accountability mechanisms](#), 21 September 2012, *Legal framework for human rights*

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crimes against humanity should be incorporated into the Penal Code.<sup>48</sup> It also notes that according to experts, the Criminal Procedure Act is badly structured and imprecise, which will give rise to interpretation that infringes upon the right to security, due process and a fair trial.<sup>49</sup>

The South Sudan Human Rights Commission (SSHRC) describes that it is:

An independent National Human Rights Institution established in 2006 in accordance with Article 149 (1) of the Interim Constitution of Southern Sudan 2005, amended Article 145 (1) of the Transitional Constitution of the Republic of South Sudan (TCRSS) 2011. The Commission consists of five members lead by a Chairperson, a Deputy Chairperson and three Commissioners, appointed by the President and approved by the National Legislative Assembly.<sup>50</sup>

With regards to the SSHRC, the UN High Commissioner for Human Rights notes that it “has both oversight and promotion functions. Oversight powers include investigating, monitoring and reporting human rights violations. Its promotion functions cover human rights education, training and awareness-raising” but that due to austerity measures, it is only currently operational in three States and lacks the capacity and resources necessary to carry out its statutory and oversight functions.<sup>51</sup> The SSHRC noted that its 2011 annual report “is not exhaustive owing to the fact that the SSHRC could not access, monitor or investigate allegations reported to it from the states of South Sudan. This has largely been due to lack of resources, logistics and staffing to quickly and timely respond to issues of human rights violations”.<sup>52</sup>

### 1.5.2 Status of Ratification of Human Rights Treaties

Amnesty International reports that over one year since independence, South Sudan has yet to become party to key international human rights treaties.<sup>53</sup> Human Rights Watch further notes that “South Sudan has yet to ratify international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples’ Rights (ACHPR)”.<sup>54</sup> UNMISS reports that South Sudan has announced its intention to ratify key international human rights treaties and is in the process of developing legislation to do so.<sup>55</sup>

FIDH cites the Deputy Minister of Justice as stating that the reason for not yet acceding to any international human rights treaties is due to the absence of a law on procedures to accede/ratify international conventions and due to the need for capacity building, including information dissemination and the training of the appropriate ministries on the content of these instruments.<sup>56</sup> With regards to international instruments that South Sudan has ratified, Amnesty International reports that:

<sup>48</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part II – Legal and Institutional Human Rights Framework

<sup>49</sup> *ibid*

<sup>50</sup> SSHRC, [2011 Annual Report](#), January-December 2011, Part One: Introduction

<sup>51</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 57

<sup>52</sup> SSHRC, [2011 Annual Report](#), January-December 2011, Foreword

<sup>53</sup> UN Human Rights Council, Written statement\* submitted by Amnesty International, a non-governmental organization in special consultative status, [South Sudan: Strengthen human rights and accountability mechanisms](#), 21 September 2012, *Legal framework for human rights*

<sup>54</sup> Human Rights Watch, [South Sudan: Step Up Urgent Human Rights Reforms](#), 5 July 2012

<sup>55</sup> UN Mission to South Sudan (UNMISS), [Incidents of Inter-Communal Violence in Jonglei State](#), June 2012

<sup>56</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part II – Legal and Institutional Human Rights Framework

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- In November 2011, South Sudan notified the UN Secretary-General of its succession to the Mine Ban Treaty.
- In June 2012 the President signed into force a Refugee Provisional Order that includes international standards on refugee rights.
- South Sudan acceded to the 1949 Geneva Conventions and their Additional Protocols in July 2012.<sup>57</sup>

### 1.5.3 Reports of corruption within the government

The August 2012 report of the UN High Commissioner for Human Rights describes corruption as “rampant” and that very few accountability mechanisms exist to deter misuse or mismanagement of public resources.<sup>58</sup> IRIN similarly reports that “Corruption is rampant in a country which for a while enjoyed billions of petrodollars but is still setting up financial management systems”.<sup>59</sup> According to Freedom House:

Corruption is a serious problem and a major source of public frustration. Government appointments are typically handed out to SPLM loyalists or potential spoilers with little regard to merit, and corrupt officials take advantage of inadequate budget monitoring to divert public funds. In September 2011, the head of the newly formed UN Mission in South Sudan (UNMISS) called on the international community to help trace and repatriate funds she said had been deposited abroad by corrupt GOSS officials. Kiir responded with a five-point plan to tackle the problem. The interim constitution gives authority to the country's Anti-Corruption Commission to launch prosecutions.<sup>60</sup>

The 2011 U.S. State Department report notes with regards to official corruption that:

The transitional constitution provides criminal penalties for acts of corruption; however, the government did not effectively implement the law, and officials continued to engage in corrupt practices with impunity. Although President Kiir publicly criticized corruption, it was a problem in all branches of government and was compounded by poor record keeping, lax accounting procedures, and the pending status of corrective legislation within the country.<sup>61</sup>

The Enough Project reports that “in June 2012 President Salva Kiir sent a controversial letter to 75 current and former government officials announcing that an estimated \$4 billion had been stolen from government coffers and offering amnesty to any officials who return the money”.<sup>62</sup>

A research paper from Stiftung Wissenschaft und Politik reports that “accusations that ministers fill posts with members of their own clan are also widespread. Corruption is an integral component of this patronage system, but even in the most spectacular cases no high-ranking politician has yet been prosecuted, indicating that the government tolerates such practices for the sake of stability”.<sup>63</sup>

Data from Transparency International's Corruption Perceptions Index and Bribe Payers Index is not yet available on South Sudan.<sup>64</sup>

<sup>57</sup> UN Human Rights Council, Written statement\* submitted by Amnesty International, a non-governmental organization in special consultative status, [South Sudan: Strengthen human rights and accountability mechanisms](#), 21 September 2012

<sup>58</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph, 10

<sup>59</sup> IRIN, [South Sudan one year on from independence](#), 9 July 2012

<sup>60</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>61</sup> U.S. State Department, [Country Reports on Human Rights Practices](#), 24 May 2012, Section 4. *Official Corruption and Government Transparency*

<sup>62</sup> Enough Project, [South Sudan's Independence: Taking Stock One Year Later](#), 10 July 2012

<sup>63</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *The Emerging Regime: One-party state, military junta or clientelist network?*

<sup>64</sup> For updates see Transparency International, [South Sudan profile](#), undated current webpage

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### 1.5.4 Dominance of certain ethnic groups within the government and security forces

The 2011 Transitional Constitution of the Republic of South Sudan sets out with regards to ethnic representation in government that:

PART THREE FUNDAMENTAL OBJECTIVES AND GUIDING PRINCIPLES

[...] Political Objectives

[...](4) The composition of governments shall take into account ethnic, regional and social diversity in order to promote national unity and command national unity and command national loyalty.<sup>65</sup>

The 2011 U.S. State Department report notes that “The government made efforts to obtain representation from all ethnic groups; however, no formal mechanism to achieve such balance had been established by year’s end”.<sup>66</sup>

Freedom House reports that “Accusations persist that members of the country's largest ethnic group, the Dinka, dominate the leadership of the SPLM to the detriment of other groups, such as the Nuer. South Sudan's new cabinet line-up reflected an attempt to address these concerns, with portfolios spread more equitably among the main regions and ethnic groups”.<sup>67</sup> A research paper from the Stiftung Wissenschaft und Politik reports that “rivalries within the ruling elite and between opposition and central government often run along ethnic and tribal lines. These are complex and dynamic in nature, because the competing units are not the ethnic groups as such (Dinka, Nuer, Murle etc.) but clans and networks representing sub-groups, such as the Bul Nuer, Ruweng Dinka and western Jikany Nuer in Unity, or clans within these sub-groups”.<sup>68</sup>

Stiftung Wissenschaft und Politik further reports that although the SPLM has always been regarded as Dinka-dominated, it actually represents no clearly defined social forces or ethnic groups, nor does it possess any proper political programme to speak of, now that its main goal of self-determination has been achieved.<sup>69</sup> It further reports that:

Vice-President Machar represents the most important counterweight to [President] Kiir within the political leadership. Whereas other ethnic groups have always regarded the government, party and army of South Sudan as Dinka-dominated, Machar is the most influential representative of the second-largest ethnic group, the Nuer, specifically of the Adok Nuer who compete with other Nuer groups and the Ruweng Dinka for control of the oil-rich border state of Unity.<sup>70</sup>

The same source notes that whilst the military elite is deeply divided, former fighters dominate the political arena in military terms as eight of the ten state governors elected in April 2010 have a military background.<sup>71</sup> According to the Small Arms Survey, during 2011 70% of the officers in the command structure of the SPSS were from the Dinka ethnic group, and that as of December 2011, “this trend was maintained in the states; nine of the ten commissioners of police (all major generals) were Dinka”.<sup>72</sup> It further reports that the Lou Nuer and Murle are economically and politically marginalized:

The Lou Nuer and Murle are almost never involved in official state and local affairs beyond payam-level administrators and commissioners. They do not interact with the members of parliament (MPs) representing their areas. MPs, who have access to constituency development funds, rarely interact with the two

<sup>65</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011

<sup>66</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 3, *Participation of Women and Minorities*

<sup>67</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>68</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *The Emerging Regime: One-party state, military junta or clientelist network?*

<sup>69</sup> *ibid*

<sup>70</sup> *ibid*

<sup>71</sup> *ibid*, *The Military elite*

<sup>72</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), June 2012

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communities. Despite high-level representation in the national government, Lou Nuer youths express the same frustrations as their Murle counterparts— that government is inaccessible and does not address their basic needs.<sup>73</sup>

Amnesty International, reporting on the armed insurgency in the Greater Upper Nile region which covers Unity, Jonglei and Upper Nile State, notes that the violent divisions and tensions between the armed groups “reflect more local grievances; particularly the perceived political disenfranchisement of Lou Nuer, Murle and Shilluk communities - some of whose leaders included long-time SPLA loyalists - by the SPLM, who are often accused of being Dinka-dominated”.<sup>74</sup> The Minority Rights Groups reports on the deep rooted drivers of inter-ethnic conflicts that:

First, smaller ethnic groups outside the main Dinka/Nuer nexus at the heart of government in the country feel divorced from decision-making. Second, the total absence of state presence in rural regions – in terms of providing much-needed basic services, promoting economic development and playing a peacekeeping role – has fed grievances among smaller groups who feel excluded from power and the economic benefits that are assumed to flow from it. The Sudan People’s Liberation Army (SPLA), South Sudan’s military force, has even stated that it fears to intervene in these conflicts because it is likely to be accused of favouring one particular ethnic group, again reflecting the perception that institutions are not representative of the diversity of South Sudan.<sup>75</sup>

For further information, see [2.3 Inter-communal violence](#) and [2.4.5 Government response to violence in Jonglei State, specifically Pibor County](#).

## 1.6 Overview of current socio-economic issues

MSF reports that “South Sudan has some of the world’s worst health and development indicators, with a life expectancy of 42 years, 51 percent of the population living on less than US\$1.25 per day, and a GDP per capita of US\$1,546”.<sup>76</sup> The World Bank provides the following economic overview for South Sudan:

As a new nation without a history of formal institutions, rules or administration accepted as legitimate by its society, South Sudan must build its institutions from scratch. Core administrative structures and mechanisms of political representation are only beginning to emerge, and the government still struggles to provide basic services to the population. Outside a few oil enclaves, South Sudan remains a relatively undeveloped, subsistence economy.

South Sudan has vast and largely untapped natural resources and opportunities abound for visible improvements in the quality of peoples’ lives, but there are many challenges also. Geographically large (about the size of France), South Sudan is sparsely populated with more than 200 ethnic groups with little sense of shared nationhood. South Sudan is the most oil dependent country in the world, with oil exports accounting for almost the totality of exports, and for around 80% of gross domestic product (GDP), directly and indirectly. GDP per capita of South Sudan in 2010 was equivalent to USD\$1,546, while the preliminary estimates for 2011 indicate a GDP per capita of US\$1,804 which is much higher than its East African neighbors, mainly due to oil production.

Gross National Income (GNI) per capita was much lower at USD \$984, reflecting the large income outflows to oil companies. On current reserve estimates, production is expected to reduce steadily in future years and to become negligible by 2035. Prior to the oil shutdown in January, 98% of fiscal revenue came from oil. The budget for 2012 was SSP 9bn (around \$3bn), supplemented by \$1bn of development assistance, and another US\$ 300 million of humanitarian assistance. Outside the oil sector, livelihoods are concentrated in low-productivity, unpaid agriculture and pastoralists work, which accounts for around 15% of GDP. Eighty-five

<sup>73</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012, *Competition over resources and economic interests*

<sup>74</sup> Amnesty International, [South Sudan: Overshadowed Conflict: Arms supplies fuel violations in Mayom County, Unity State](#), 28 June 2012, 2. *Greater Upper Nile’s Volatile Region*

<sup>75</sup> Minority Rights Group, [State of the World’s Minorities and Indigenous Peoples 2012](#), 28 June 2012, *South Sudan*

<sup>76</sup> MSF, [South Sudan’s Hidden Crisis](#), 26 November 2012, *The Health Impact of the violence and displacement*

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percent of the working population is engaged in non-wage work, chiefly in agriculture (78%). The South Sudanese economy has been plagued with high inflation in the 12 months following independence, but price increases subsided in the last few months of 2011, after peaks above 80% during the year. Over the past year, inflation has been driven mostly by increases in food prices. Limited local food production and a high reliance on imported foods, in combination with depreciation of the South Sudanese Pound and the border closure in the North, have driven price increases in the past year. All economic issues are now focused on the decision by the Government of South Sudan (GoSS), on January 20, 2012, to shut down all its oil fields as part of its dispute with Sudan over a range of post-secession issues. The GoSS has adopted 'austerity measures' in response, involving cut of around 30%, mainly to government consumption, transfers to the states, development budget and 50% cut to housing allowance but without touching the wages and salaries. An agreement reached in Addis Ababa on September 27, 2012 between Juba and Khartoum on the mechanism to market oil has raised the hope that the oil production may resume early 2013.<sup>77</sup>

Further reporting on the oil shutdown in January 2012, FIDH explains that South Sudan acquired about three-quarters of Sudan's oil output when it broke away, but still needs use of the pipeline that run through its northern neighbour in order to export crude oil, and that these transit fees are now crucial for Sudan's economy since it lost the oil fields.<sup>78</sup> The Congressional Research Service reports that South Sudan stopped oil production in January 2012 because of unresolved disputes with Sudan over export arrangements and revenues from the previously shared reserves.<sup>79</sup> UNOCHA notes the halt in oil production had serious implications given the importance of oil sector in both states' economies.<sup>80</sup> UNOCHA further reports that the deadlock over oil production contributed to an increase in inflation and currency instability; and by the end of March 2012 there was an 85 per cent difference between the official and the black market US dollar exchange rates.<sup>81</sup> The August 2012 report of the UN High Commissioner for Human Rights reports that "More than 80 per cent of the State's 2 billion dollar annual budget (now reduced owing to austerity measures following the suspension of oil exports, which accounted for 98 per cent of the country's revenue) goes to the payment of salaries for security forces and the civil service, leading to an economy based solely on public sector wages".<sup>82</sup> A February 2012 research paper from Stiftung Wissenschaft und Politik notes that:

Prevailing economic and social conditions make it difficult for the new state to mobilise resources for state-building and development. The overwhelming majority of the population remains stuck in subsistence farming, since access to markets is difficult and production too low to generate any significant surplus. Among livestock-herding communities, which are estimated to account for 50 to 60 percent of the South Sudanese population, commercial considerations are only very slowly taking root. The traditional understanding of cattle as primarily representing a source of social status and economic security is still predominant. The South Sudanese economy is only superficially integrated into markets and monetized exchange. Accordingly, there is limited potential for the state to raise taxes on markets and transactions.<sup>83</sup>

The Congressional Research Service reports that Sudan and South Sudan reached a preliminary agreement in August 2012 on financial arrangements which included southern oil exports, and that the 27 September 2012 agreements on agreement on security and economic cooperation may enable oil production and exports to resume by mid-2013.<sup>84</sup>

<sup>77</sup> World Bank, [South Sudan Overview](#), last updated September 2012, *Economic overview*

<sup>78</sup> International Federation for Human Rights (FIDH) [South Sudan: First anniversary of Independence: Time to Act for Peace and Human Rights Protection](#), 6 July 2012, *The oil issue*

<sup>79</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Overview*

<sup>80</sup> UNOCHA, [Sudan Humanitarian Update: 4<sup>th</sup> Quarter 2011](#), 31 December 2011

<sup>81</sup> *ibid*

<sup>82</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, *paragraph 11*

<sup>83</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *The predicament of state weakness*

<sup>84</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Overview*

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## 2. Security Situation

### 2.1 Relations with Sudan since secession and situations left unresolved between Sudan and South Sudan by the 2005 Comprehensive Peace Agreement

The Congressional Research Service reports that despite their formal separation, Sudan and South Sudan remain both linked and divided by a number of shared interests and outstanding disputes:

The CPA did not define the relationship between north and south in the event of a southern vote for separation, and arrangements on multiple issues were left unresolved when Sudan split. Among the disputed issues are those related to their shared border, citizenship, and financial arrangements, including those pertaining to revenues from the sale of South Sudanese oil that transits Sudan for export. Other arrangements called for in the CPA, such as resolution of the final status of the contested border region of Abyei and the implementation of “popular consultation processes” for the people of Southern Kordofan (see below), have yet to be fully implemented.<sup>85</sup>

The November 2012 report of the UN Secretary-General similarly identifies that following the secession of South Sudan from the Sudan on 9 July 2011, a number of key issues between the two countries remained unresolved, including:

- economic arrangements with regard to debt, oil exploitation and the use of existing oil infrastructure
- the status of nationals of one country in the other, border security,
- the settlement of remaining border disputes and the determination of the final status of Abyei.<sup>86</sup>

The border between Sudan and South Sudan is 1,800km long.<sup>87</sup> Amnesty International reports that there are three areas or “transitional areas” where key provisions of the CPA have not been implemented; Abyei, South Kordofan and Blue Nile.<sup>88</sup> The Congressional Research Service reports with regards to these disputes along the North-South border that:

Sudan and South Sudan have generally agreed to use the administrative dividing line between north and south that the British used until Sudan’s independence in 1956 as their common border. That borderline has yet to be demarcated, however, and approximately 20% remains disputed. The borderlands were the front lines of the civil war, and negotiations to conclusively define the precise location of the border have been complicated by grievances and distrust among the communities who live along it, and by the concentration of oil reserves in these areas. The African Union has proposed that the Sudans maintain a “soft border” that would allow social and economic interaction and promote peaceful coexistence among border communities. In three border regions, Abyei and the states of Southern Kordofan and Blue Nile, heavy military deployments and unresolved political issues—fueled by local disputes over governance, land, and natural resources—reignited simmering conflicts toward the end of the CPA period. Southern Kordofan and Blue Nile remain in open conflict. As a result, Sudan closed the north-south border in 2011, halting the movement of civilians and all cross-border trade, and instituting harsh penalties, including capital punishment, for violations. The parties agreed in the September 2012 accord to re-open the border.<sup>89</sup>

The UN Secretary-General notes that in order to reach a settlement on the outstanding issues, the two states requested the African Union High-level Implementation Panel to facilitate negotiations on those issues, however, “while negotiations continued, the relations between the two countries deteriorated”.<sup>90</sup> It further notes that the Panel brokered a memorandum of understanding on non-aggression and

<sup>85</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Outstanding issues and disputes*

<sup>86</sup> United Nations, [Report of the Secretary-General on the Sudan and South Sudan](#), 26 November 2012, *paragraph 2*

<sup>87</sup> IRIN, [Sudan-South Sudan: Heqliq and the border](#), 13 April 2012

<sup>88</sup> Amnesty International, [Destruction and desolation in Abyei](#), 20 December 2011, *Sudan-South Sudan: Ongoing conflicts in the “transitional areas”*

<sup>89</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Disputes along the North-South Border*

<sup>90</sup> United Nations, [Report of the Secretary-General on the Sudan and South Sudan](#), 26 November 2012, *paragraph 2*

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cooperation dated 10 February 2012 and several other agreements in March 2012, which were to be endorsed and signed in April 2012.<sup>91</sup> However, on 10 April cross-border conflict began when the SPLA took Heglig (see below). This prompted the Peace and Security Council of the African Union to intervene and adopt a road map in its communiqué of 24 April, which was endorsed by the Security Council in its 2 May resolution 2046 (2012).<sup>92</sup> This set out that the following actions be taken within three months:

- (a) With regard to security issues, the Sudan and South Sudan should:
  - (i) Immediately cease all hostilities, including aerial bombardments;
  - (ii) Unconditionally withdraw all their armed forces to their side of the border;
  - (iii) Activate the Joint Border Verification and Monitoring Mechanism and the Safe Demilitarized Border Zone, in accordance with the administrative and security map presented to the parties by the Panel in November 2011;
  - (iv) Cease the harbouring of, or provision of support to, rebel groups against the other State;
  - (v) Activate the ad hoc committee, under the Joint Political and Security Mechanism, to receive and investigate complaints and allegations made by one party against the other;
  - (vi) Immediately cease hostile propaganda and inflammatory statements in the media, in addition to any attacks against property of and religious and cultural symbols belonging to the nationals of the other State;
  - (vii) Implement pending aspects of the Agreement between the Government of the Sudan and the Sudan People's Liberation Movement on Temporary Arrangements for the Administration and Security of the Abyei Area of 20 June 2011;
- (b) The Sudan and South Sudan should resume negotiations to reach agreement on:
  - (i) Oil and associated payments;
  - (ii) Status of nationals of one country resident in the other;
  - (iii) Status of the disputed and claimed border areas;
  - (iv) Demarcation of the border;
  - (v) Final status of the Abyei Area;
- (c) With regard to the conflict in Southern Kordofan and Blue Nile States, the Government of the Sudan and SPLM/North should:
  - (i) Reach a negotiated settlement on the basis of the Framework Agreement between the Government of the Sudan and the Sudan People's Liberation Movement (North) on Political and Security Arrangements in Blue Nile and Southern Kordofan States;
  - (ii) Accept the tripartite proposal submitted by the African Union, the United Nations and the League of Arab States to permit humanitarian access to the affected population in the two areas.<sup>93</sup>

The UN Secretary-General explains that further negotiations in Addis Ababa, Ethiopia concluded with the signing of nine agreements on 27 September, which were ratified by South Sudan on 15 October:

an overall cooperation agreement and eight detailed agreements on security arrangements, oil, trade, banking, specific economic matters, pensions, border issues and the status of one country's nationals in the other. The issues of the disputed and claimed border areas and the final status of the Abyei Area remain unresolved.<sup>94</sup>

According to the Congressional Research Service, "The implementation of agreements previously reached by the parties has not kept pace with international expectations, leading to some skepticism about this latest accord".<sup>95</sup> UNOCHA reported that on 5 January 2013, the Presidents of South Sudan and Sudan again agreed to implement the September cooperation agreements on oil, border demarcation and security issues, which still had not been realised, following two days of talks hosted by the African Union (AU) in

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<sup>91</sup> *ibid*, paragraph 3

<sup>92</sup> *ibid*, paragraph 3

<sup>93</sup> *ibid*, paragraph 4

<sup>94</sup> *ibid*, Paragraph 19

<sup>95</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, Overview

Addis Ababa.<sup>96</sup> It further notes that the parties have agreed to abide by AU timelines due to be announced by 13 January<sup>97</sup>

With regards to the status of South Kordofan and Blue Nile States, the CPA did not provide for any right to self-determination for these areas given that both lie north of the 1956 border, but instead proposed ‘popular consultations’ which the Congressional Research Service describes as “an ambiguous mechanism intended to offer greater autonomy for these states within Sudan”.<sup>98</sup> The process has been continually postponed due to growing conflicts between SAF and SPLA-N, who have been joined by rebels of Justice and Equality Movement (JEM) in both States.<sup>99</sup> Whilst access to both states has been extremely limited since hostilities began in July 2011, the media and human rights organisations report that the SAF and allied militia may be responsible for grave human rights violations.<sup>100</sup> FIDH summarises the security situation in these States:

Numerous international and local civil societies report serious human rights violations committed by SAF, which may amount to international crimes, war crimes and crimes against humanity. Indiscriminate bombings are killing civilians and destroying villages and land, leading to a dire humanitarian crisis. Extrajudicial killings, enforced disappearances, rape and looting are also committed during military attacks.<sup>101</sup>

Human Rights Watch reports that an estimated 900,000 people have been displaced or severely affected by the conflict in South Kordofan and Blue Nile States.<sup>102</sup> The conflict has forced some 110,000 people to flee into South Sudan. For further information see section [4.5 Internal displacement/Situation of Returnees/Situation of Refugees](#).

## **2.1.1 Continuing tensions between the Countries in border areas within South Sudan. Specific cases include, but are not limited to:**

### **2.1.1.1 Disputed state of Abyei**

Abyei lies on the border between South Sudan and Sudan. The Congressional Research Service reports that “This region between Sudan and South Sudan was accorded ‘special administrative status’ under the CPA, and it has repeatedly been a flashpoint for violence between north and south”.<sup>103</sup> Its status remains one of the key unresolved issues between South Sudan and Sudan. Abyei was supposed to have a referendum at the same time as South Sudan in January 2011 but this did not occur because the parties were unable to agree on the criteria for determining who should vote in such a referendum.<sup>104</sup> Abyei is home to the Ngok Dinka, a subset of South Sudan’s largest ethnic group, who typically support the SPLM.<sup>105</sup> Abyei has also long been used by the Misseriya, an Arab nomadic group who migrate south through Abyei each cattle

<sup>96</sup> UNOCHA, [South Sudan Humanitarian Bulletin](#), 31 December - 6 January 2013

<sup>97</sup> *ibid*

<sup>98</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Southern Kordofan and Blue Nile*

<sup>99</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, *The Three Outstanding Issues*

<sup>100</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Southern Kordofan and Blue Nile*

<sup>101</sup> *ibid*, 2. *Humanitarian consequences of the conflict in South Kordofan and Blue Nile*

<sup>102</sup> Human Rights Watch, [Under Siege; Indiscriminate Bombing and Abuses in Sudan’s Southern Kordofan and Blue Nile States](#), 11 December 2012, *Executive summary*

<sup>103</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Abyei*

<sup>104</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012

<sup>105</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Abyei*

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grazing season, members of whom fought in militias allied with Khartoum during the civil war.<sup>106</sup> The Small Arms Survey reports that:

The CPA explicitly granted voting rights to the Ngok Dinka—widely expected to vote to join the South—and 'other Sudanese residing in the area'. The NCP insisted that the Missiriya should count as residents, while the Sudan People's Liberation Movement (SPLM) insisted they should not, because they are seasonal migrants. The SPLM feared that the National Congress Party (NCP) would move Missiriya into the area in an attempt to secure a vote to stay in what was then the North.<sup>107</sup>

The Minority Rights Group reports that "Although the Ngok Dinka promised the Misseriya that their grazing rights would be respected if Abyei joined South Sudan, a Misseriya chief warned that there would be 'immediate war' if this happened".<sup>108</sup>

Amnesty International considers that in the absence of a referendum, the status of Abyei remains disputed, with both Sudan and South Sudan trying to consolidate their hold on the area ahead of a vote.<sup>109</sup> It further notes that:

Over the past years and months SAF-backed Misseriya armed militias, have repeatedly attacked Dinka Ngok residents and forced them out of their homes and out of Abyei altogether and have looted and burned down their homes, seemingly in a deliberate attempt to prevent their return to Abyei. Dinka Ngok community leaders have accused the GoS of using Misseriya militias to deliberately force the Dinka Ngok population out of Abyei in order to replace them with Misseriya loyal to the GoS. The GoS and the Misseriya for their part have complained that the Dinka Ngok are seeking to undermine their long-established residency and grazing rights in Abyei.<sup>110</sup>

According to the Congressional Research Service, Abyei's territorial significance is now driven less by oil, but by politics and cultural history, in part because the region's major oil fields including Heglig are outside the Abyei area to be agreed upon in the referendum.<sup>111</sup>

The Small Arms Survey reports that as the January 2011 referendum on South Sudan's independence approached, "around 40,000 Ngok Dinka returned to Abyei from the North, fearing retaliation if South Sudan voted for secession. Many returnees reported being shot at by Missiriya militias as their buses went through territory north of Abyei, in addition to incidents of rape and harassment".<sup>112</sup> It further notes that in February and March 2011, despite tenuous security agreements, 154 people died in clashes in Abyei, at least two villages were razed and several others partially burned down.<sup>113</sup> Reportedly the Missiriya militias were backed by the SAF.<sup>114</sup> Clashes in March also interrupted the negotiations and resulted in the Missiriya being unable to graze their cattle at the river Kiir, south of Abyei town for the first season in living memory.<sup>115</sup>

The Small Arms Survey reports that the situation continued to deteriorate and came to a head on 19 May 2011 when SPLA shots hit SAF soldiers who were being escorted by UNMISS.<sup>116</sup> It reports that this was "the

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<sup>106</sup> *ibid*

<sup>107</sup> Small Arms Survey, [The Crisis in Abyei](#), updated 10 October 2011

<sup>108</sup> Minority Rights Group, [State of the World's Minorities and Indigenous Peoples 2012](#), 28 June 2012, *South Sudan*

<sup>109</sup> Amnesty International, [Destruction and desolation in Abyei](#), 20 December 2011, *Background- civilians trapped in endless cycle of violence*

<sup>110</sup> *ibid*

<sup>111</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, *Abyei*

<sup>112</sup> Small Arms Survey, [The Crisis in Abyei](#), updated 10 October 2011

<sup>113</sup> *ibid*

<sup>114</sup> *ibid*

<sup>115</sup> *ibid*

<sup>116</sup> *ibid*

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justification that SAF needed to launch a full-scale, premeditated attack on Abyei the following day”.<sup>117</sup> The attacks forced most of the 100,000 population of the majority Dinka Ngok community to flee south towards Agok.<sup>118</sup> Whilst most civilians fled after the bombing began, the Abyei administration estimated that 116 were killed and “during a visit to Khartoum in June, the UN human rights envoy for Sudan, Mohamed Chande Othman, highlighted reports of rape during the assault on Abyei town, but stressed that these reports could not be verified due to SAF restrictions on investigators”.<sup>119</sup> Satellite imagery shows that approximately one-third of Abyei town was entirely burned down.<sup>120</sup> Amnesty International reports that:

During and immediately after the clashes, Misseriya militias, acting alongside PDF and with the support and complicity of SAF, systematically looted and burned down the inhabitants’ homes and properties in Abyei town, the region’s capital, and in surrounding villages. The looting and burning continued for days, while SAF was in full control of the area, and in the presence of UN peacekeepers.<sup>121</sup>

In June 2011, an agreement was reached between the Government of Sudan and the Sudan People’s Liberation Movement on ‘Temporary Arrangements for the Administration and Security of the Abyei Area’ on 20 June 2011 in Addis Ababa, Ethiopia.<sup>122</sup> Following the agreement, the UN established the UN Interim Security Force for Abyei (UNISFA) to monitor the flashpoint border between north and south which is authorized to use force in protecting civilians and humanitarian workers in Abyei.<sup>123</sup> While the agreement puts in place a security framework for Abyei, it does not address the militias who took part in the assault on Abyei.<sup>124</sup> In December 2011, Amnesty International reported that no adequate investigation had yet been carried out into the human rights abuses committed by the various parties during and after the May 2011 clashes.<sup>125</sup>

Almost immediately after the signing of the agreement, disputes began over when SAF should withdraw.<sup>126</sup> Only on 30 May 2012, did SAF finally withdraw from Abyei, a year after it had occupied the territory.<sup>127</sup> However, the UN Secretary-General reported in November 2012 that between 120 and 150 Sudanese oil police continued to be deployed in the Abyei Area, in violation of the 20 June 2011 Agreement and Security Council resolutions.<sup>128</sup>

Both states agreed to form a new Abyei Area Administration (AAA) and an Abyei police force as part of the Addis Ababa agreement, but as the Small Arms Survey explains, this is stalled as:

they disagreed over the composition of the entity, with Sudan claiming that South Sudan rejected all its nominees for the position of deputy administrator, while some Ngok Dinka leaders complained that Sudan was nominating NCP members from Khartoum, rather than people from Abyei.<sup>129</sup>

In May 2012, Sudan offered the Ngok Dinka Sudanese citizenship, in an attempt to attract them into Sudan, but according to the Small Arms Survey, “Given the degree of hostility felt by most Ngok Dinka towards SAF and the Sudanese government, the measure has little chance of succeeding, and is more indicative of Sudan’s ongoing efforts to undermine South Sudanese claims on Abyei”.<sup>130</sup>

<sup>117</sup> *ibid*

<sup>118</sup> IRIN, Ayom Nyol, [“There is nothing left from the burning”](#), 21 December 2012

<sup>119</sup> Small Arms Survey, [The Crisis in Abyei](#), updated 10 October 2011

<sup>120</sup> *ibid*

<sup>121</sup> Amnesty International, [Destruction and desolation in Abyei](#), 20 December 2011, *Introduction*

<sup>122</sup> UN Security Council, [Resolution 1990 \(2011\)](#), 27 June 2011

<sup>123</sup> UNISFA, [Demilitarizing and monitoring peace in the disputed Abyei Area](#), undated current webpage (accessed 10 January 2013)

<sup>124</sup> Small Arms Survey, [The Crisis in Abyei](#), updated 10 October 2011

<sup>125</sup> Amnesty International, [Destruction and desolation in Abyei](#), 20 December 2011, *Build-up to outbreak of violence*

<sup>126</sup> Small Arms Survey, [The Crisis in Abyei](#), updated 10 October 2011

<sup>127</sup> Small Arms Survey, [The Crisis in Abyei](#), updated 2 June 2012

<sup>128</sup> UN Secretary-General, [Report of the Secretary-General on the situation in Abyei](#), 23 November 2012, *paragraph 2*

<sup>129</sup> Small Arms Survey, [The Crisis in Abyei](#), updated 2 June 2012

<sup>130</sup> *ibid*

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The UN Secretary-General reports in November 2012 that “the 2012-2013 annual migration of Misseriya nomads through the Abyei Area commenced and proceeded without any significant security incident”.<sup>131</sup> However, it reports tense relations between the Ngok Dinka and Misseriya and that the security situation is “calm but volatile”.<sup>132</sup> On 6 November 2012 the same source notes that UNISFA maintained a presence in the Um Khariet area as approximately 15 to 20 armed men, allegedly from a Misseriya rebel group, refused either to leave the area or to disarm.<sup>133</sup> On 12 November, 19 Misseriya tribal leaders were attacked with stones by a group of 35 Ngok Dinka while travelling on a bus through Abyei town, 5 of whom sustained injuries and all were given refuge within the UNISFA headquarters.<sup>134</sup> The following day, a group of around 40 Ngok Dinka gathered to demand the removal of the Misseriya from the headquarters.<sup>135</sup> This was followed by a group of around 200 people gathering at a mosque in Abyei Town, and in order to prevent damage to the mosque, UNISFA troops fired shots to disperse the crowd, killing one UNISFA member and injuring another.<sup>136</sup> As a result of the security situation, the UNISFA relocated all Misseriya traders present in Abyei town to the local market.<sup>137</sup>

On 21 September 2012, the African Union High-level Implementation Panel submitted its proposal aimed at resolving the final status of the Abyei Area to the governments of Sudan and South Sudan.<sup>138</sup> The proposal provides for a referendum in October 2013 to be prepared by a commission under the leadership of a Chair nominated by the African Union and that eligible voters would be residents of the Abyei Area, whose voter eligibility would be decided by the commission.<sup>139</sup> Whilst South Sudan accepted the proposal, a 5 December 2012 deadline imposed by African Union mediators passed with Khartoum rejecting it.<sup>140</sup> Voice of America reported in December 2012, that according to Achuil Akol Miyan, acting chief of the Abyei Administration in Agok, Misseriya chief has been on state TV to broadcast threats of more violence if there is a referendum.<sup>141</sup>

### Situation of IDPs from Abyei

In December 2011, Amnesty International reported that:

more than six months after the May 2011 clashes the displaced Abyei residents are still living in dire conditions in hastily set-up camps or crowding in with relatives in host communities who have little or nothing to share. They are dependent on international humanitarian organizations for shelter, food, water and health care.<sup>142</sup>

IRIN cited an ICRC official as stating in April 2012 that as the displaced from Abyei missed out on cultivation, they didn't have a harvest or seeds to cultivate in 2012.<sup>143</sup> IRIN further reported that “most people have been relying on the help of relatives or the kindness of strangers, but with the rainy season coming and stocks depleted, survival options in these villages are running out”.<sup>144</sup> In June 2012, the Internal Displacement Monitoring Centre reported that IDPs from Abyei were still in need of food, water and

<sup>131</sup> UN Secretary-General, [Report of the Secretary-General on the situation in Abyei](#), 23 November 2012, paragraph 3

<sup>132</sup> *ibid*, paragraphs 2-8

<sup>133</sup> *ibid*, paragraph 5

<sup>134</sup> *ibid*, paragraph 7

<sup>135</sup> *ibid*

<sup>136</sup> *ibid*

<sup>137</sup> *ibid*

<sup>138</sup> UN Secretary-General, [Report of the Secretary-General on the situation in Abyei](#), 23 November 2012, paragraph 10

<sup>139</sup> *ibid*

<sup>140</sup> Voice of America, [Uncertainty, Fear for Future in Abyei](#), 24 December 2012

<sup>141</sup> *ibid*

<sup>142</sup> Amnesty International, [Destruction and desolation in Abyei](#), 20 December 2011, *Dire conditions and bleak prospects for the displaced population*

<sup>143</sup> IRIN, [Abyei displaced struggle to survive in impoverished villages](#), 10 April 2012

<sup>144</sup> *ibid*

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sanitation, and medical care and that many remained out of the reach of humanitarian organizations because of lack of permits.<sup>145</sup> In March 2012 UNOHCA reported that over 40 national NGO staff members were abducted in the Agok area following the start of a forced recruitment drive by apparent security forces.<sup>146</sup> All but two were later released.<sup>147</sup> UNOHCA reporting on the third quarter of 2012 noted that humanitarian agencies continued to provide food assistance to 75,000 people in the Abyei/Akok region.<sup>148</sup>

According to a June report from the Small Arms Survey, whilst UNISFA has been able to maintain security in Abyei, only 5,300 IDPs had returned, in part due to the onset of the rainy season and because full scale returns remain unlikely without the establishment of services.<sup>149</sup> By November 2012, the UN reported that 13,500 had returned.<sup>150</sup> UNOCHA reported in November 2012 that the low return rate is attributable to a number of factors, including “limited access during the rainy season (July-October), lack of housing and infrastructure in Abyei and concerns of political instability”.<sup>151</sup>

According to UNHCR, “the majority of returnee families are female-headed as it is mainly the role of women in Abyei to start rebuilding the shelter and clean up the houses, while many husbands remain in areas of displacement with children. While some families have started to reunite, female-headed households remain the majority”.<sup>152</sup>

### 2.1.1.2 Heglig/Panthou border

IRIN reports that Heglig (Thou or Panthou in Dinka) lies in the middle of the border between Sudan and South Sudan:

between Abyei, another disputed area, and the Nuba Mountains of Sudan's South Kordofan State, where, since June 2011, government forces have been battling insurgents (SPLA-N) with links to the former rebels now in power in Juba. Heglig is also close to the border town of Jau, which was captured in late February by the SPLA-N.<sup>153</sup>

Heglig is Sudan’s largest oil field, which has become even more crucial to Sudan’s economy following South Sudan’s January 2012 suspension of oil production.<sup>154</sup> It lies north of the 1956 border that is supposed to demarcate the territory of the two states.<sup>155</sup> However, as the Small Arms Survey explains, Heglig was one of the territories depopulated by Sudanese paramilitary Popular Defence Forces to remove southern residents from areas around oil-producing sites, so for many Dinka in this area, accepting Sudan’s claim to the land “is tantamount to accepting the ethnic clearings of the 80s and 90s”.<sup>156</sup>

The Small Arms Survey reports with regard to the outbreak of conflict in Heglig that:

On or around 26 March 2012, fighting between the Sudan People’s Liberation Army (SPLA) and Sudan Armed Forces (SAF) erupted around Heglig, the disputed oil-producing area generally considered a part of South

<sup>145</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012, *Fighting in Abyei between the SAF and the SPLA*

<sup>146</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 15 March 2012

<sup>147</sup> *ibid*

<sup>148</sup> UNOHCA, [Sudan Humanitarian Update:3<sup>rd</sup> Quarter 2012](#), 1 November 2012

<sup>149</sup> Small Arms Survey, [The Crisis in Abyei](#), updated 2 June 2012

<sup>150</sup> UN Secretary-General, [Report of the Secretary-General on the situation in Abyei](#), 23 November 2012, paragraph 18

<sup>151</sup> UNOCHA, [Sudan Humanitarian Update:3<sup>rd</sup> Quarter 2012](#), 1 November 2012

<sup>152</sup> *ibid*

<sup>153</sup> IRIN, [Sudan-South Sudan: Heglig and the border](#), 13 April 2012

<sup>154</sup> Small Arms Survey, [The Conflict over Heglig](#), updated 26 April 2012

<sup>155</sup> *ibid*

<sup>156</sup> *ibid*

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Kordofan state (Sudan) but also claimed by the South as part of Unity state. The SPLA says it responded to Sudanese air and ground attacks on Unity state, and then chased SAF back to Heglig. SAF says the SPLA attack was unprovoked—a claim that seems difficult to justify given the Sudanese air bombardment in the vicinity during previous weeks. The SPLA seized the area with support from the Darfurian Justice and Equality Movement (JEM) and other members of the Sudan Revolutionary Front alliance: groups that, just one month ago, the SPLA denied supporting.<sup>157</sup>

On 10 April 2012, South Sudanese forces captured Heglig and the UN Secretary-General reports that the “situation seriously escalated with intensive ground fighting between SPLA and the Sudanese Armed Forces and air attacks by the Sudanese Armed Forces in South Sudan, including bombardments in and around Bentiu on 14-15 April, resulting in several civilian casualties, and an aerial bombardment that killed seven people and damaged a United Nations county support base in Mayom County, Unity State, on 15 April”.<sup>158</sup> The Enough Project reports that during the 10 days in which the SPLA held Heglig, “Khartoum intensely bombed the disputed area and strategic sites in the South with the aim of cutting off supply lines. Fighting between the two armies spread along the entire border, in and around at least three other disputed border sites”.<sup>159</sup> According to UNHCR reporting on 24 April 2012, the border fighting displaced around 35,000 people in areas around Heglig, Talodi and other parts of Sudan's South Kordofan province.<sup>160</sup>

According to FIDH, the war that broke out on 10 April 2012 between SAF and SPLA around the Heglig oilfield region “originated from multiple unresolved conflicts between the two countries since the independence of South Sudan” including: contested border territories, accusations of proxy war and the “oil issue”.<sup>161</sup> For further details on the ‘oil issue’ see section [1.6 6 Overview of current socio-economic issues](#). It explains that in 2009 the Permanent Court of Arbitration (PCA) in The Hague ordered the redrawing of the northern, eastern and western boundaries, thus decreasing the size of Abyei.<sup>162</sup> As a result Sudan considered the Heglig oilfield to be part of South Kordofan.<sup>163</sup> However, the court did not determine whether Heglig was part of South Kordofan or Unity state.<sup>164</sup> FIDH also notes that tensions between the two countries had been fuelled by “each party accusing the other of providing support to rebel groups operating in their respective territories”.<sup>165</sup> South Sudan accuses the North of backing the South Sudan Democratic Movement (SSDM) and Sudan accuses South Sudan of backing the Sudan People’s Liberation Army-North (SPLA-N).<sup>166</sup> See [2.1.2 Accusations of aid by Sudan and South Sudan governments to rebel groups](#).

The International Crisis Group similarly reports that the fighting over Heglig was the “predictable outcome” of the following negative trends:

conflicts in Southern Kordofan and Blue Nile; lack of agreement on transitional economic and financial arrangements between the two countries; Khartoum’s seizure of Southern oil; South Sudan’s decision to stop oil production; and sporadic cross-border attacks and bombings. It occurs amid mutual recriminations: of Khartoum arming Southern rebels and the SPLA providing material support to its former brothers-in-arms now fighting for the Sudanese Peoples’ Liberation Movement-North (SPLM-N) in Southern Kordofan and Blue Nile, as well as political support to members of the Sudan Revolutionary Front (SRF) seeking to topple President Bashir.<sup>167</sup>

<sup>157</sup> Small Arms Survey, [The Conflict over Heglig](#), updated 26 April 2012

<sup>158</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 25

<sup>159</sup> Enough Project, [South Sudan and Sudan Back to War? A View from Juba](#), May 2012

<sup>160</sup> UNHCR, [Recent fighting near Sudan-South Sudan border displaces 35,000](#), 24 April 2012

<sup>161</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part 1- Situation of Human Rights

<sup>162</sup> *ibid*

<sup>163</sup> *ibid*

<sup>164</sup> Small Arms Survey, [The Conflict over Heglig](#), updated 26 April 2012

<sup>165</sup> *ibid*

<sup>166</sup> *ibid*

<sup>167</sup> International Crisis Group, [Preventing Full-Scale War between Sudan and South Sudan](#), 18 April 2012

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The UN Secretary-General reports that “South Sudan announced that it would retain its position until guarantees had been made that Heglig would not be used to launch further attacks on its territory”.<sup>168</sup> However, as FIDH notes, on 20 April 2012 South Sudan announced it was withdrawing from the area, following international condemnation and the discussion of possible sanctions at the UN Security Council.<sup>169</sup> The UN Secretary-General reports with regards to the cessation of hostilities that:

In the light of continued fighting on the border and aerial bombardments, the African Union Peace and Security Council adopted a road map on 24 April with implementation timelines to resolve outstanding issues. Thereafter, the Security Council endorsed the African Union Peace and Security Council road map through the adoption of Council resolution 2046 (2012) on 2 May under Chapter VII of the Charter of the United Nations. The road map called for, among other things, a cessation of hostilities within 48 hours and activation of the Joint Border Verification and Monitoring Mechanism, the Safe Demilitarized Border Zone, and the reaching of an overall settlement on all disputes within three months. [...]

On 3 May, the Government of the Republic of South Sudan declared that it would fully comply with Council resolution 2046 (2012) and that it would seek to resolve its claim on Heglig through international legal mechanisms.<sup>170</sup>

### 2.1.1.3 Mile 14 area

The 14 mile area between Northern Bahr el Ghazal and East Darfur is one of the five disputed areas of Sudan/South Sudan which, as the Congressional Research Service reports, is one of the richest grazing areas in the region.<sup>171</sup>

The UN Secretary-General reports in November 2012 that following the adoption of the May 2012 resolution 2046 by the Security Council, the number of reported cross-border incidents steadily decreased whilst remaining tense.<sup>172</sup> The same source notes however that many reported violations remained unconfirmed owing to the limited access of the UNMISS to border areas in South Sudan.<sup>173</sup> The Resolution called for, among other things, a cessation of hostilities within 48 hours and activation of the Joint Border Verification and Monitoring Mechanism, the Safe Demilitarized Border Zone, and the reaching of an overall settlement on all disputes within three months.<sup>174</sup> See above [section 2.1 Relations with Sudan since secession and situations left unresolved between Sudan and South Sudan by the 2005 Comprehensive Peace Agreement](#).

On 27 September 2012, Sudan and South Sudan signed an agreement on security arrangements, (amongst other issues), in which it was agreed to withdraw all forces to their respective side of the border, and to make immediately operational the ‘ Safe Demilitarized Border Zone’ in accordance with the administrative and security map that was presented by the Panel in November 2011.<sup>175</sup> The UN Secretary-General notes with regards to the Mile 14 area that:

The agreement makes provision for special arrangements for what is known as the “14-mile area”, which involve its complete demilitarization, overseen and supported by the mechanisms established under the Joint Political and Security Mechanism. The parties agreed to maintain the status quo of the joint tribal mechanisms for the resolution of disputes between the Rizeigat and the Dinka Malual communities in the area and to immediately open the 10 agreed border-crossing corridors linking the two States.

<sup>168</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 17

<sup>169</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part 1- Situation of Human Rights

<sup>170</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 17 and 18

<sup>171</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, Appendix A. Status of Negotiations

<sup>172</sup> United Nations, [Report of the Secretary-General on the Sudan and South Sudan](#), 26 November 2012, paragraph 5

<sup>173</sup> *ibid*

<sup>174</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 17 and 18

<sup>175</sup> *ibid*, paragraph 11

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The agreement further provides that the parties are to make the Joint Border Verification and Monitoring Mechanism operational immediately and activate the Ad Hoc Committee as a subcommittee of the Joint Political and Security Mechanism, designated to receive and investigate complaints and allegations made by one State against the other and to investigate any threats to those arrangements emanating from beyond the Safe Demilitarized Border Zone.<sup>176</sup>

The Congressional Research Service explains that the borderline “does not prejudice a final decision on the border, but is to be used by a joint entity, composed of political and security officials from both sides, to oversee implementation of border-related deals and resolve related disputes”.<sup>177</sup>

According to the Sudan Tribune in November 2012, “Although both sides agreed to withdraw 10km either side of a notional, non-binding line proposed by the AU, the security elements of the deal have not been implemented and it has faced stern criticism in South Sudan where many see Mile 14’s inclusion as a recognition that the area i[s] disputed”.<sup>178</sup> In October 2012, police used live rounds against demonstrators in Juba from the Greater Bahr el Ghazal region who were protesting against what they perceived as the ‘gifting’ of parts of South Sudan to Khartoum.<sup>179</sup> The South Sudan Civil Society Alliance also protested against the four freedoms, believing it not to be in the best interests of the South Sudanese people, as it seemed to resemble the return to the partnership between SPLM and NCP during the interim period.<sup>180</sup> In October 2012 the Aweil Community wrote to President Salva Kiir Mayardit noting that it “in the strongest terms, condemns and vehemently rejects the so-called Security Arrangements that has categorised some part of our ancestors’ land as part of the disputed areas”.<sup>181</sup> The Sudan Tribune notes that the Rezeigat pastoralists of East Darfur similarly accused the Sudanese government of failing to defend their rights over the 14 mile area.<sup>182</sup>

#### Insecurity in the 14 mile area

The following non-exhaustive incidents are illustrative of the recent security situation in the 14 mile area. Radio Dabanga reports that the area along the river Bahr al Arab (also known as the River Kiir), is currently under control of SPLA who claims that the area is part of Northern Bahr al Ghazal of South Sudan, while Sudan claims it belongs to the state of East Darfur in Sudan.<sup>183</sup> A leader of the Rizeigat shura council is cited as stating that the river Bahr al Arab is the only source for drinking water for their cattle.<sup>184</sup> Warguet (Samaha) is described as a ‘military barrack’ of the 3rd Division of the SPLA.<sup>185</sup> In March 2012 the SPLA accused the SAF of bombing in its territory in Warguet.<sup>186</sup> According to UNOCHA, in November 2012, 10,000 people displaced from earlier bombardments in March and April 2012 in the Kiir Adem area of Mile 14 remained displaced.<sup>187</sup>

The UN Secretary-General reported that in May 2012 there were confirmed reports of displaced persons leaving War Guit, which lies within the disputed area along the Eastern Darfur-Northern Bahr el Ghazal portion of the Kiir/Bahr el-Arab River, due to fighting between the SPLA and SAF.<sup>188</sup> UNMISS was informed of the July 2012 bombing of Rumaker by the SAF which reportedly claimed two casualties, where it was

<sup>176</sup> *ibid* paragraphs 11 and 12

<sup>177</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, Appendix A. Status of Negotiations

<sup>178</sup> Sudan Tribune, [South Sudan: 900 displaced by Sudan air attacks](#), 26 November 2012

<sup>179</sup> Sudan Tribune, [S. Sudan president backs deal with Khartoum amid protest](#), 15 October 2012

<sup>180</sup> Gurtong, [Protests Against The Four Freedoms](#), 15 October 2012

<sup>181</sup> Sudan Tribune, [Aweil Community Rejects Khartoum claims of Mile – 14 South of river Kiir](#), 18 October 2012

<sup>182</sup> Sudan Tribune, [NBGS deplors categorization of 14 mile as international border](#), 8 October 2012

<sup>183</sup> Radio Dabanga, [Sudan and South Sudan in fresh border clashes](#), 26 December 2012

<sup>184</sup> *ibid*

<sup>185</sup> *ibid*

<sup>186</sup> *ibid*

<sup>187</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 19-25 November 2012

<sup>188</sup> United Nations, [Report of the Secretary-General on the Sudan and South Sudan](#), 26 November 2012, paragraph 7

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able to confirm bomb craters.<sup>189</sup> The same source notes that Sudan continued to claim that the SPLA were occupying Samala in South Darfur State, the crossing point at the bridge over the Kiir/Bahr el-Arab River, and other areas in Southern Kordofan State.<sup>190</sup>

UNOCHA reported that “An estimated 200 people were displaced from the disputed Mile 14 area in the Northern Bahr el Ghazal State border area, following recent aerial bombing from 20-22 November. While no bombardments were reported in the past week, the situation was tense and unpredictable”.<sup>191</sup> The Sudan Tribune reports that the number displaced by the bombings reached 900, which were reportedly carried out by Sudanese warplanes.<sup>192</sup> It further reports that Khartoum has denied bombing South Sudanese territory, but that it bombed rebel positions 10 kilometres north of the Mile 14 area.<sup>193</sup> On 26 December 2012, Radio Dabanga reported that fighting at Warguet (Samaha) on the border between Sudanese forces and the SPLA had killed an unconfirmed number of people (reports varied between 8 and 28 people dead).<sup>194</sup> According to UNOHCA, the attacks forced 700 people into displacement.<sup>195</sup> UNOCHA reported in January 2013 that:

Northern Bahr el Ghazal State has seen a surge in the number of people displaced in recent weeks, in the wake of escalating border tensions between South Sudan and Sudan. About 8,000 people have been newly displaced over the past month, according to the Relief and Rehabilitation Commission. The majority of those displaced are located in Maker Anei and Jar Akol in Aweil East County, and Wachum and Jaac in Aweil North County. The humanitarian consequences of such displacement are of concern to aid organizations, particularly in light of reported troop build-up along both sides of the border.<sup>196</sup>

### 2.1.2 Accusations of aid by Sudan and South Sudan governments to rebel groups

The Small Arms Survey reporting in April 2012 on arms flow and holdings in South Sudan notes that:

In the past, the Sudanese government and SAF have maintained long-standing relationships with armed forces fighting against the SPLA and South Sudanese government. These included both Sudanese forces and groups originating outside the country, such as the Ugandan Lord’s Resistance Army (LRA). With South Sudan’s independence, non-state armed group activity has increased dramatically and, with it, proxy arming.<sup>197</sup>

Stiftung Wissenschaft und Politik reported in February 2012 that:

Although accusations by Juba that Khartoum was behind some of the rebellions and ethnic conflicts in South Sudan have not been independently confirmed, there can be no doubt that the Northern security apparatus is capable of destabilising South Sudan, given its longstanding relationships with former militia leaders there. Meanwhile, the Southern government is suspected of supporting Darfur rebel groups as well as former SPLA forces in the states of South Kordofan and Blue Nile which are waging an insurgency against the Khartoum government.<sup>198</sup>

<sup>189</sup> *ibid*, paragraph 8

<sup>190</sup> *ibid*, paragraph 9

<sup>191</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 26 November -2 December 2012

<sup>192</sup> Sudan Tribune, [South Sudan: 900 displaced by Sudan air attacks](#), 26 November 2012

<sup>193</sup> *ibid*

<sup>194</sup> Radio Dabanga, [Sudan and South Sudan in fresh border clashes](#), 26 December 2012

<sup>195</sup> UNOCHA, [South Sudan Humanitarian Bulletin](#), 24- 30 December

<sup>196</sup> UNOCHA, [South Sudan Humanitarian Bulletin](#), 31 December - 6 January 2013

<sup>197</sup> Small Arms Survey, [Reaching for the gun, Arms flows and holdings in South Sudan](#), April 2012, *Acquisitions and holdings among non-state groups*

<sup>198</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *External vulnerability*

FIDH notes in June 2012 that tensions between Sudan and South Sudan have in part been fuelled by “each party accusing the other of providing support to rebel groups operating in their respective territories”.<sup>199</sup> The Small Arms Survey further notes that:

Evidence from fieldwork tends to support the claims by associates of top dissident commanders— most notably Gadet, the late Athor, and Yau Yau—that the Sudanese security apparatus is the primary source of weapons to rebel militias in South Sudan.<sup>200</sup>

FIDH reports that Sudan accuses South Sudan of backing the Sudan People’s Liberation Army-North (SPLA-N).<sup>201</sup> There are also reports that north Sudanese rebels are using Yida refugee camp in South Sudan as recruitment grounds for troops including child soldiers.<sup>202</sup>

The Enough Project reports that during the April 2012 security talks in April in Addis Ababa:

the South Sudanese delegation would not, publicly or privately, admit to providing any support to the SPLA-N and JEM, nor did it agree to disarm the two rebel groups. According to Southern officials, Sudan’s negotiators offered to disarm the militias Khartoum supports in South Sudan in exchange, including militias under the command of Johnson Olonyi, Bapiny Monituel, and David Yauyau. These militias have not recently posed a significant security challenge to South Sudan. From the perspective of the South, Khartoum’s disarmament request was unrealistic in that it would require the SPLA to forcibly disarm—or fight—the SPLA-N and JEM. More important, the South was not ready to end assistance for the SPLA-N until Khartoum began to address the unimplemented pieces of the Comprehensive Peace Agreement aimed at resolving the political grievances of populations in South Kordofan and Blue Nile.<sup>203</sup>

Following the integration of approximately 1,800 of South Sudan Democratic Movement/Army forces with the SPLA, the UN Secretary-General notes that “The Government of the Republic of South Sudan currently maintains that all remaining militia in South Sudan are proxies of the Sudan, instructed to overrun oil installations, declare independence from South Sudan, and overthrow the Government of the Republic of South Sudan”.<sup>204</sup>

The November 2012 report of the UN Secretary-General notes with regards to the harbouring of and provision of support to rebels that:

Accusations that each side was harbouring and supporting the other’s rebel groups were made to the Security Council by both sides during the period under review. With the renewed commitment of the parties to the Memorandum of Understanding on Non-Aggression and Cooperation of 10 February 2012, both parties also renewed their pledge to cease harbouring and supporting the other’s rebel groups. Any progress in the implementation of this pledge has been difficult to verify in the absence of the full operationalization of the Ad Hoc Committee and the Joint Border Verification and Monitoring Mechanism. Each party continued to accuse the other throughout the reporting period. In fact, the issue of how to monitor compliance became the most contentious point, leading to a lack of progress on the implementation of the security agreement at the meeting of the Joint Political and Security Mechanism held in Juba in November.<sup>205</sup>

For further information on the funding of South Sudan militia, see [2.2 Violence by armed opposition groups](#).

<sup>199</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part 1- Situation of Human Rights

<sup>200</sup> Small Arms Survey, [Reaching for the gun, Arms flows and holdings in South Sudan](#), April 2012, *Acquisitions and holdings among non-state groups*

<sup>201</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, Part 1- Situation of Human Rights

<sup>202</sup> Agence France Presse, [Sudan rebels recruit children from S.Sudan refugee camp: US](#), 31 October 2012

<sup>203</sup> Enough Project, [South Sudan and Sudan Back to War? A View from Juba](#), May 2012

<sup>204</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 28

<sup>205</sup> United Nations, [Report of the Secretary-General on the Sudan and South Sudan](#), 26 November 2012, paragraph 13

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## 2.2 Violence by armed opposition groups

### 2.2.1 South Sudan Liberation Movement / Army (SSLM/A)

In April 2011, Peter Gadet Yak announced his new movement, the South Sudan Liberation Army (SSLA).<sup>206</sup> Gadet had formerly been a member of the Khartoum-backed South Sudan Unity Movement/Army (SSUM/A) which fought against the SPLA during the war.<sup>207</sup> In 2000 Gadet integrated into the SPLA and after the 2005 CPA, served in senior positions in Northern Bahr el Ghazal and Upper Nile states until his defection.<sup>208</sup> The Small Arms Survey notes that he accuses the SPLM/A of corruption and tribalism and has announced his intention to bring down the SPLM government and to replace it with “national broad-based government agreed upon by all the South Sudan political parties”.<sup>209</sup> Amnesty International reports that “under the SSLA’s banner Peter Gadet’s forces and other Nuer field commanders, including Matthew Pul Jang, Bapiny Monytil and Gai Yoach, coordinated attacks against the SPLA during 2011”.<sup>210</sup> The Small Arms Survey describes the clashes between the SSLA and SPLA which began on 19 April 2011 and reports that the SSLA became involved in cattle-raiding between Nuer and Dinka groups on the Warrap-Unity border in May 2011.<sup>211</sup> As a result of SSLA and SPLA fighting in May 2011, 7,800 huts were reportedly burned in Mayom county.<sup>212</sup> Deaths, injuries and displacement were also reported as a result of this fighting by Amnesty International.<sup>213</sup> See [2.3 Inter-communal violence](#) for further information.

The U.S. State Department reported that during 2011, the SSLA “perpetrated numerous human rights abuses, including killings and politically motivated kidnappings and disappearances” and also “abducted women and children and recruited child soldiers”.<sup>214</sup> The UN Secretary-General also reported that during the May 2011 conflict between the SSLA and SPLA, rapes by both parties were reported, including the SSLA rape of a 15 year old girl in Mayom County, and in April 2011 the SSLA abduction and rape of three girls (ages 16, 16 and 17 years) in Abiemnom County.<sup>215</sup>

Reporting on the supply of weapons to the SSLA, Amnesty International notes that:

Members of the armed opposition group, the South Sudan Liberation Army (SSLA), told Amnesty International that new weapons were delivered to them via Sudan in 2011. Their statements are supported by evidence of their use of 2010-manufactured Sudanese assault rifle ammunition, 2010-manufactured mortar shells and new-condition Chinese-manufactured Type 56-1 assault rifles. The match of these weapons and munitions with those in the stocks of the Sudanese Armed Forces (SAF) also supports allegations that these arms derive from Sudanese military stocks. The uniformity of the weaponry found in use - such as the single type of new Kalashnikov ammunition identified in SSLA rifles – also indicates that these supply lines from or via Sudan have been comparatively unconstrained.<sup>216</sup>

<sup>206</sup> Small Arms Survey, [Peter Gadet’s Rebellion](#), 3 June 2011

<sup>207</sup> *ibid*

<sup>208</sup> *ibid*

<sup>209</sup> *ibid*

<sup>210</sup> Amnesty International, [South Sudan: Overshadowed Conflict: Arms supplies fuel violations in Mayom County, Unity State](#), 28 June 2012, 3. *Armed opposition in Mayom county, Unity state*

<sup>211</sup> Small Arms Survey, [Peter Gadet’s Rebellion](#), 3 June 2011

<sup>212</sup> *ibid*

<sup>213</sup> Amnesty International, [South Sudan: Overshadowed Conflict: Arms supplies fuel violations in Mayom County, Unity State](#), 28 June 2012, 3. *Armed opposition in Mayom county, Unity state*

<sup>214</sup> United States Department of State, [2011 Country Reports on Human Rights Practices - South Sudan](#), 24 May 2012, *Executive summary*

<sup>215</sup> UN Security Council, [Conflict-related sexual violence, Report of the Secretary-General](#), 13 January 2012, paragraph 48

<sup>216</sup> Amnesty International, [South Sudan: Overshadowed Conflict: Arms supplies fuel violations in Mayom County, Unity State](#), 28 June 2012, *Introduction*

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The Small Arms Survey reports that “In addition to local recruitment, there are credible reports of Khartoum-based SSLA officials forcibly conscripting young South Sudanese men on the streets of Khartoum, and sending them south for training”.<sup>217</sup>

Amnesty International reports that on 3 August 2011, “Peter Gadet announced that he had signed a ceasefire with the government; thus, several hundred of his fighters are currently undergoing reintegration into the SPLA in Mapel, Northern Bahr el Ghazal State. Other Unity State SSLA commanders, however, remained in the field or in Khartoum”.<sup>218</sup> In June 2012 the UN Secretary-General reported that Peter Gadet was appointed deputy commander of the civilian disarmament operation in Jonglei.<sup>219</sup> Reporting on the SSLA supply of weapons after Gadet, the Small Arms Survey reports that SSLA commanders have stated that they are receiving weapons from security elements in Sudan and that the SSLA has enough arms to last two years.<sup>220</sup>

The Small Arms Survey reports that following Gadet’s integration into the SPLA, James Gai Yoach assumed leadership of the SSLA with the same goal to overthrow the government on the grounds that it is corrupt and prohibits political dissent.<sup>221</sup> In October 2011, it was reported that the SSLA attacked Mayom in Unity State.<sup>222</sup> The BBC notes that accounts of the number of casualties widely differed, with an army spokesman reporting that 15 civilians and 50 rebels had been killed and the SSLA reporting that they had killed more than 700 SPLA soldiers.<sup>223</sup> According to the March 2012 UN-Secretary General report, “SSLA militia appear to retain a significant presence in Mayom County and landmines laid by the group remain a serious threat. On 16 January 2012, a group of 50 to 70 SSLA militia forces reportedly approached national military officials to enter the amnesty process”.<sup>224</sup>

The UN Secretary-General reports that on 15 April 2012, the SSLA and the South Sudan Democratic Army (SSDA) issued a press release announcing that David Yau Yau, who recently re-defected to Khartoum, had been appointed overall commander of the militia forces in Jonglei State.<sup>225</sup> It further notes in November 2012 that the SSLA continued to maintain “the existence of an alliance of rebel groups, including itself, the South Sudan Democratic Army, David Yau Yau and the self-proclaimed Lou Nuer prophet, Dak Kueth, but UNMISS could not confirm such linkages”.<sup>226</sup>

The Small Arms Survey reports that as of November 2012, the predominantly Nuer SSLA has an estimated 1,200-3,000 fighters.<sup>227</sup> Reporting on recent activity and areas of operation the same source notes that:

The SSLA currently operates out of the borderlands north of Unity state in South Kordofan. Offensives in November 2011 in Mayom county, which left a reported 70 dead, and in April 2012 in areas close to Unity state, were the largest SSLA attacks in the past year. The latter engagements were conducted concurrent with fighting between the Sudan Armed Forces (SAF) and the SPLA in and around the Heglig area.<sup>228</sup>

The Small Arms Survey further reports that “Despite Gadet’s integration in August 2011, he remains a volatile figure due to his record of repeated defections”.<sup>229</sup>

<sup>217</sup> Small Arms Survey, *Reaching for the gun, Arms flows and holdings in South Sudan*, April 2012, *Rebel militia groups*

<sup>218</sup> Amnesty International, *South Sudan: Overshadowed Conflict: Arms supplies fuel violations in Mayom County, Unity State*, 28 June 2012, 3. *Armed opposition in Mayom county, Unity state*

<sup>219</sup> UN Security Council, *Report of the Secretary-General on South Sudan*, 26 June 2012, *paragraph 28*

<sup>220</sup> Small Arms Survey, *Reaching for the gun, Arms flows and holdings in South Sudan*, April 2012, *Rebel militia groups*

<sup>221</sup> Small Arms Survey, *Southern Dissident Militias*, updated 8 November 2012

<sup>222</sup> BBC, *South Sudan rebel group attacks town in oil-rich state*, 29 October 2012

<sup>223</sup> *ibid*

<sup>224</sup> UN Security Council, *Report of the Secretary-General on South Sudan*, 7 March 2012, *paragraph 24*

<sup>225</sup> UN Security Council, *Report of the Secretary-General on South Sudan*, 26 June 2012, *paragraph 28*

<sup>226</sup> UN Security Council, *Report of the Secretary-General on South Sudan*, 8 November 2012, *paragraph 19*

<sup>227</sup> Small Arms Survey, *Southern Dissident Militias*, updated 8 November 2012

<sup>228</sup> *ibid*

<sup>229</sup> *ibid*

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## 2.2.2 Militias allied with David Yau Yau (Yau Yau Rebellion)

The Small Arms Survey reports that David Yau Yau, a civilian from the minority Murle tribe, launched an armed rebellion in Jonglei State following his failure to win a seat as an independent candidate in the April 2010 elections.<sup>230</sup> The same source notes that “Yau Yau is viewed by Murle elders and the tribe’s elite as having support only among local youth, and is resented for not having sought the consent of Murle leaders before running in the elections”.<sup>231</sup> Yau Yau launched his first attack in May 2010, operating in Pibor county, and was provided with arms via George Athor (see section [2.2.4 South Sudan Democratic Movement/Army \(SSDM/A\)](#) below).<sup>232</sup> He continued to mount ambushes on SPLA troops and South Sudan wildlife rangers.<sup>233</sup> After several rounds of negotiations, Yau Yau announced in June 2011 that he had signed a ceasefire agreement with the government, and his force were integrated into the SPLA in February 2012.<sup>234</sup> The Jamestown Foundation reports that “Yau Yau received the usual reward for rebels who have given up their struggle—a general’s rank in the SPLA, despite Yau Yau’s utter lack of military experience”.<sup>235</sup>

However in April 2012, the SPLA announced that Yau Yau had defected and since then, the Small Arms Survey reports that it is estimated that between 4,000 and 6,000 largely Murle youths have either joined Yau Yau or received arms and ammunition from him.<sup>236</sup> The same source notes that South Sudan accuses of Sudan of financially backing the rebellion, but it has been unable to verify the origin or Yau Yau’s arsenal.<sup>237</sup> It notes that:

The scale of mobilization of youth by Yau Yau suggests that the rebellion has access to significant resources and that the rebellion has successfully capitalized on the feelings of resentment, distrust, and marginalization among the Murle population toward the army, most recently exacerbated by an abusive SPLA disarmament campaign.<sup>238</sup>

For further details, see section [2.4.6 March 2012 government civilian disarmament campaign, Operation Restore Peace](#). The Small Arms Survey also explains that the Murle youth also have a vested interest in acquiring weapons and ammunition “for purposes of age-set struggles, cattle-raiding, and personal grievances against the SPLA”.<sup>239</sup>

The Small Arms Survey reports on the clashes between the SPLA and Yau Yau, the first of which after Yau Yau’s re-emergence took place on 22 August 2012, resulting in more than 100 SPLA deaths.<sup>240</sup> It also reports that cattle raiding in Jonglei state escalated in November 2012 and

may be exacerbated this dry season by the presence of Yau Yau’s militia and the accompanying influx of arms and ammunition into the area, underlining the way in which militia activity in Jonglei intersects with inter-communal violence. Local officials have accused Yau Yau affiliated youth for conducting these raids, but their claims are difficult verify.<sup>241</sup>

See section [2.3 Inter-communal violence](#) for further information.

<sup>230</sup> Small Arms Survey, [David Yau Yau’s Rebellion](#), 17 December 2012

<sup>231</sup> *ibid*

<sup>232</sup> *ibid*

<sup>233</sup> Jamestown Foundation, [South Sudan’s Yau Yau Rebellion Creating Insecurity in Jonglei State](#), 13 September 2012, Terrorism Monitor Volume: 10 Issue: 17

<sup>234</sup> Small Arms Survey, [David Yau Yau’s Rebellion](#), 17 December 2012

<sup>235</sup> Jamestown Foundation, [South Sudan’s Yau Yau Rebellion Creating Insecurity in Jonglei State](#), 13 September 2012, Terrorism Monitor Volume: 10 Issue: 17

<sup>236</sup> Small Arms Survey, [David Yau Yau’s Rebellion](#), 17 December 2012

<sup>237</sup> *ibid*

<sup>238</sup> *ibid*

<sup>239</sup> *ibid*

<sup>240</sup> *ibid*

<sup>241</sup> *ibid*

Furthermore, Pibor county officials have reported that Yau Yau's forces "have killed and raped civilians, looted property, and slaughtered the livestock of those who will not join the rebellion".<sup>242</sup> IRIN reported in September 2012 that Nuer as well as Murle youths are being recruited into Yau Yau's rebellion.<sup>243</sup> According to sources cited by IRIN including an international aid worker and Defence Minister Majak D'Agoot, the main reason for the youths joining Yau Yau is on account of how abusive the disarmament process is.<sup>244</sup> It is also reported by South Sudan's military spokesman, Philip Aguer, that some Murle may have joined Yau Yau to resist moves to be disarmed.<sup>245</sup> Aguer accused Yau Yau in September 2012 of "instigating the youth of Murle not to accept disarmament".<sup>246</sup> In October 2012 the Sudan Tribune reported that a district chief was killed by Yau Yau fighters for not allowing youth to join the rebels.<sup>247</sup>

On 18 November 2012, UNMISS received a threatening letter allegedly from Yau Yau, ordering it to withdraw within 24 hours and to stop assisting the SPLA.<sup>248</sup> In 2 December 2012, a Yau Yau commander defected to the SPLA with 183 of his followers, the first large defection since Yau Yau's re-emergence, which the Small Arms Survey considers "may reflect a growing inability to supply his forces with food and ammunition".<sup>249</sup> On 10 December, the SPLA killed 14 people who it claimed were Yau Yau fighters, although local officials insist that they were civilians.<sup>250</sup>

The Sudan Tribune reported that on 1 January 2013 "Four people were killed, two wounded and children rescued in attempted abduction in three raids across Bor County in South Sudan's Jonglei State [...] in the latest series of attacks blamed on men from neighboring Pibor County loyal to rebel leader David Yau Yau".<sup>251</sup> The same source notes that "There is a growing fear among civilians that the area in which rebel David Yau Yau operates are expanding from his home county of Pibor into other areas of Jonglei".<sup>252</sup>

### 2.2.3 Militia allied with Johnson Olonyi and Ayok Ogot

Reporting on the history of the Shilluk rebellions in Upper Nile State, the Small Arms Survey notes that:

Robert Gwang, Alyuak Ogot, and Johnson Olonyi initially each led separate insurgencies. All of them served at various times in branches of the Southern security forces, but their stated reasons for rebelling were not explicitly linked to discontent with the leadership of the SPLA, police, or prisons services. Instead, each of their rebellions has aimed to draw attention to Shilluk community-wide land-related grievances against Dinka populations in Upper Nile. In the Shilluk kingdom— on the western bank and parts of the eastern bank of the Nile—popular support for the rebellions stemmed from widely held perceptions of a pro- Dinka Upper Nile state government and an openly hostile SPLA presence in the area.<sup>253</sup>

The Small Arms Survey further notes that Ogot and Olonyi's areas of operation and influence are the Shilluk areas along the western bank of the Nile River in Upper Nile state.<sup>254</sup> It also reports that the militias have

<sup>242</sup> ibid

<sup>243</sup> IRIN, [Disarmament and rebellion in Jonglei](#), 11 September 2012

<sup>244</sup> ibid

<sup>245</sup> BBC, [South Sudan troops killed by Yau Yau rebels in Jonglei](#), 27 August 2012

<sup>246</sup> IRIN, [Disarmament and rebellion in Jonglei](#), 11 September 2012

<sup>247</sup> Sudan Tribune, [Jonglei: Pibor authorities persuade chiefs to stop young men from joining rebellion](#), 3 October 2012

<sup>248</sup> IRIN, [Women and children bear brunt of Jonglei violence](#), 5 December 2012

<sup>249</sup> Small Arms Survey, [David Yau Yau's Rebellion](#), 17 December 2012

<sup>250</sup> Kenya Daily Nation, [South Sudan soldiers kill 14 in volatile state: officials](#), 10 December 2012

<sup>251</sup> Sudan Tribune, [New Year's Day raids kill 4 in Jonglei](#), 1 January 2013

<sup>252</sup> ibid

<sup>253</sup> Small Arms Survey, [Fighting for spoils: Armed insurgencies in Greater Upper Nile](#), November 2011, *The Shilluk rebels*

<sup>254</sup> Small Arms Survey, [Southern Dissident Militias](#), updated 8 November 2012

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made occasional incursions from locations across the border in South Kordofan and that Olonyi is reportedly to be in command of an estimated 700-800 men.<sup>255</sup>

The Small Arms Survey reports that in November 2012, Olonyi forces together with the SSLA were reportedly based at 'Kilo 23,' a base between Heglig and Kharasana where the groups have undergone training and that Sudan has used these forces against the SPLM-N in South Kordofan.<sup>256</sup> The Enough Project also reports that Olonyi's forces have been backed by Sudan, noting that in the April 2012 security talks between South Sudan and Sudan in Addis Ababa, "According to Southern officials, Sudan's negotiators offered to disarm the militias Khartoum supports in South Sudan in exchange, including militias under the command of Johnson Olonyi, Bapiny Monituel, and David Yauyau" which reportedly "have not recently posed a significant security challenge to South Sudan".<sup>257</sup>

In March 2011, clashes occurred between Olonyi's militia and the SPLA in Upper Nile State in which Human Rights Watch reported that more than 60 ethnic Shilluk people were killed, 7,000 displaced and "soldiers fired indiscriminately at civilians and burned and looted homes".<sup>258</sup> A counter-attack by Olonyi's troops in Malakal killed 45 soldiers and rebels.<sup>259</sup> Human Rights Watch further reported in April 2011 that:

The Shilluk community has borne the brunt of political violence and human rights abuses, fuelled in large part by rivalries between the ruling SPLM and the SPLM-DC over the last two years. After the April 2010 elections, for example, the SPLA carried out operations against militia allegedly linked to SPLM-DC in Fashoda county, committing serious human rights abuses in the process.<sup>260</sup>

The Small Arms Survey further notes that the rebel assault "provoked a harsh response" from the SPLA which used the incident to arbitrarily found up Shilluk youths, worsening the relationship between the Shilluk community and the Dinka and Nuer populations in Malakal.<sup>261</sup> The Small Arms Survey reports that after the March 2011 fighting, George Athor of the South Sudan Democratic Movement/Army (SSDM/A) declared that Olonyi's troops were loyal to him.<sup>262</sup> According to the UN Secretary-General, fighting in Manyo County from 18 to 20 August 2011 reportedly left 35 SPLA troops and 63 of Olonyi's troops dead.<sup>263</sup> The same source reporting in March 2012, noted that Olonyi and Ogot "remain active in Upper Nile State, and reportedly engaged with SPLA forces in Manyo County from 9 to 11 November 2011, leaving 19 SPLA soldiers wounded. On 7 January 2012, 34 fighters associated with the two leaders surrendered to Manyo County authorities".<sup>264</sup>

In April 2012, Olonyi was reported to be leading the South Sudan Democratic Movement/Army (SSDM/A) (see the next section [2.2.4 South Sudan Democratic Movement/Army \(SSDM/A\)](#)).<sup>265</sup> The Sudan Tribune reported that "In March [2012] the South Sudan Liberation Movement/Army; a predominantly Nuer, Unity state rebel group; claimed an imminent attack on Malakal, the state capital also in northern Upper Nile, would be carried out by their forces and the SSDA under the command of Olonyi".<sup>266</sup> The Small Arms Survey further notes that divisions between Olonyi and Ogot have been reported as have divisions between Olonyi's forces and the SSLA.<sup>267</sup>

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<sup>255</sup> *ibid*

<sup>256</sup> *ibid*

<sup>257</sup> Enough Project, [South Sudan and Sudan Back to War? A View from Juba](#), May 2012

<sup>258</sup> Human Rights Watch, [Southern Sudan: Abuses on Both Sides in Upper Nile Clashes](#), 19 April 2011

<sup>259</sup> *ibid*

<sup>260</sup> *ibid*

<sup>261</sup> *ibid*

<sup>262</sup> Small Arms Survey, [SPLM/A–Shilluk Conflict in Upper Nile](#), April 2011

<sup>263</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 2 November 2011, paragraph 24

<sup>264</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 7 March 2012, paragraph 24

<sup>265</sup> Sudan Tribune, [SAF/ S. Sudan rebels battle with SPLA in Upper Nile state](#), 15 April 2012

<sup>266</sup> *ibid*

<sup>267</sup> Small Arms Survey, [Southern Dissident Militias](#), updated 8 November 2012

## 2.2.4 South Sudan Democratic Movement/Army (SSDM/A)

According to the Small Arms Survey, following his defeat in the April 2010 Jonglei state election, George Athor formed the rebel South Sudan Democratic Movement/Army (SSDM/A) in Ayod, Fangak, and Piji counties which was “separate yet cooperative” with Yau Yau’s militia in Pibor county.<sup>268</sup> Athor reportedly built his force with SPLA defectors from the 8th Division in Jonglei and the 3rd Division in Northern Bahr al Ghazal.<sup>269</sup> The Small Arms Survey further reports that Athor’s militia orchestrated numerous clashes following the announcement of his election defeat, leading to a “substantial deterioration in the security situation in the north-western corner of Jonglei state”.<sup>270</sup>

The same source notes that with regards to financial support for the SSDM that:

With backing from Khartoum and according to some accounts, Eritrea, Athor built up an arsenal that exceeded his available manpower. He not only acted as a conduit for arms deliveries to Yau Yau, he persuaded local Nuer youths to join his force in exchange for weapons. However, this strategy often backfired. In May 2011, he armed more than 1,000 youths with 1,500 Kalashnikov-pattern assault rifles, 27 PKM-type machine guns, and about 90,000 rounds of ammunition. The youths ultimately did not follow Athor’s orders to attack the SPLA in their native counties, but used their new weapons to attack the Murle in June and July 2011. Athor continued to supply Lou Nuer youths with weapons but they had to pay with valuable cattle. Photographs of the Lou Nuer after the Murle attack on Pieri in August 2011 showed they had the same new Type 56-1 (copy of the AKS-47) assault rifles and PKM-type machine guns that the Small Arms Survey observed in Athor’s stocks in April 2011. Images of Lou Nuer youths returning to Akobo, after their attack on Pibor county in December and January, showed the same new rifles.<sup>271</sup>

In January 2011, a last minute ‘permanent ceasefire agreement’ was signed between the SPLA and SSDM.<sup>272</sup> However, weaknesses contributing to its collapse included the fact that it did not set out the consequences for failing to implement the terms of the agreement, nor did it resolve the rank which George Athor would be integrated into the SPLA nor did it address the “enduring political and military rifts within the SPLM/A that continue to pit powerful leaders and commanders against each other in high-stakes competitions”.<sup>273</sup> In its annual report covering events in 2011, Amnesty International reported that “On 9 and 10 February, fighting erupted between the SPLA and forces loyal to the armed opposition leader General George Athor Deng in Fangak County, Jonglei State. At least 154 civilians were killed and 20,000 people displaced. Further clashes occurred on 12 March in Malakal, Upper Nile”.<sup>274</sup>

The UN Secretary-General reports that despite negotiations in November 2011 which reportedly yielded another peace agreement, General Athor intensified attacks on SPLA forces and claimed credit for raids in southern Jonglei State early in December.<sup>275</sup> On 19 December Athor was killed by the SPLA in Mbororo County, Central Equatoria State.<sup>276</sup> The same source notes that following his death, the activities of the SSDM/A declined significantly.<sup>277</sup>

The Small Arms Survey reports in November 2012 that “Following Athor’s death, his South Sudan Democratic Movement/Army (SSDM/A) came under the leadership of Peter Kuol Chol Awan. In February

<sup>268</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>269</sup> Small Arms Survey, [Reaching for the gun. Arms flows and holdings in South Sudan](#), April 2012, *South Sudan Democratic Movement/ Army (SSDM/A)*

<sup>270</sup> Small Arms Survey, [George Athor’s Rebellion, Jonglei State](#), updated April 2011

<sup>271</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>272</sup> Small Arms Survey, [George Athor’s Rebellion, Jonglei State](#), updated April 2011

<sup>273</sup> *ibid*

<sup>274</sup> Amnesty International, [Annual Report 2012, The state of the world’s human rights](#), 24 May 2012

<sup>275</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 7 March 2012, *paragraph 22*

<sup>276</sup> *ibid*

<sup>277</sup> *ibid*

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2012, Awan also returned to the SPLA. Core forces from the SSDM/A and those under the command of Gadet, Gai, and Tang-Ginye have undergone an integration process with the army”.<sup>278</sup>

The UN Secretary-General, reporting on the period of March to June 2012 noted that no confirmed militia incidents took place in Unity or Jonglei States:

The Government concluded negotiations with the South Sudan Democratic Movement/Army and is in the process of integrating approximately 1,800 of South Sudan Democratic Movement/Army forces with the SPLA. The negotiations resulted in the signing of an agreement in early March with Peter Kuol Chol, who succeeded the late George Athor. On 15 April, the South Sudan Liberation Army and the South Sudan Democratic Army issued a press release announcing that David Yau Yau (a Murle), who recently re-defected to Khartoum, had been appointed overall commander of the militia forces in Jonglei State. The process of integration of several hundred of Athor’s forces into the SPLA continued. Former militia leader Peter Gadet was appointed deputy commander of the civilian disarmament operation in Jonglei.<sup>279</sup>

However according to the Small Arms Survey, since Peter Kuol Chol Awan’s defection, “a separate and smaller faction of the force, still active in Upper Nile state, assumed the SSDM/A title. In northern Upper Nile, Maj. Gen. Johnson Olonyi leads a predominantly Shilluk cadre of about 800 fighters”.<sup>280</sup> See section [2.2.3 Militia allied with Johnson Olonyi and Ayok Oqat](#).

### 2.2.5 Lord’s Resistance Army (LRA)

The Centre for Strategic and International Studies explains that the Lord’s Resistance Army (LRA) is an armed group which emerged in the Acholi district of northern Uganda in the late 1980s in resistance to the area’s political marginalization under President Yoweri Museveni.<sup>281</sup> The same source reports that:

The LRA’s recipe for reviving its fortunes was spiritual purification, to be achieved by violent resistance to the new government and an internal purge of those who collaborated with it. Its leader, Joseph Kony, is a self-styled prophet and medium whose spiritual powers elicit fear and devotion from his followers, many of whom were abducted as children in LRA raids on villages and schools. The LRA has carried out shocking atrocities, hacking off limbs and cutting off the noses, lips, and ears of its victims, in order to create fear among the general population and warn them against assisting the authorities.<sup>282</sup>

In the mid-2000s, the LRA moved from its northern Uganda base into remote areas on the borders of the Democratic Republic of Congo (DRC), Central African Republic (CAR), and South Sudan.<sup>283</sup> The Small Arms Survey reports that “Breathtaking brutality, political manoeuvring, and propaganda have marked the conflict on all sides”.<sup>284</sup> The same source notes that before the signing of the CPA, “it was an obvious advantage for Khartoum to ally itself with the LRA” and the perfect set-up for carrying out a proxy war.<sup>285</sup> This relationship is reported to have waned in 1996, but the exact end of the co-operation is difficult to establish and is disputed, although sources report the LRA was completely disengaged from Sudan by early 2006.<sup>286</sup> In 2005 the newly established International Criminal Court (ICC) issued its first warrants to Kony and four other LRA commanders.<sup>287</sup>

<sup>278</sup> Small Arms Survey, [Southern Dissident Militias](#), updated 8 November 2012

<sup>279</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 28

<sup>280</sup> Small Arms Survey, [Reaching for the gun, Arms flows and holdings in South Sudan](#), April 2012, *South Sudan Democratic Movement/ Army (SSDM/A)*

<sup>281</sup> Centre for Strategic and International Studies, [The Lord’s Resistance Army](#), 18 October 2011

<sup>282</sup> *ibid*

<sup>283</sup> *ibid*

<sup>284</sup> Small Arms Survey, [The Lord’s Resistance Army in Sudan: A History and Overview](#), September 2012, *Introduction*

<sup>285</sup> *ibid*, IV. *Allies and enemies, The Government of Sudan*

<sup>286</sup> *ibid*

<sup>287</sup> *ibid*

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In 2008, a failed joint offensive on an LRA camp in northeastern DRC led by Uganda, the DRC and South Sudan was launched which succeeded in scattering the LRA in smaller groups, making them more difficult to trace.<sup>288</sup> It also led to reprisal attacks that left hundreds of civilians dead in the following months.<sup>289</sup> The Internal Displacement Monitoring Centre reports that “the LRA has long abandoned any political agenda and its sole objective is survival, with methods such as attacking and looting villages (and pillaging food, medicines and arms), killing civilians and abducting boys for use as child soldiers and girls for use as sex slaves”.<sup>290</sup> The same source reporting in June 2012 notes that in South Sudan, the LRA is active in Western Equatoria and Western Bahr el Ghazal states and in 2011, 25 attacks were reported, displacing nearly 7,400 people, bringing the number of people to have fled LRA violence in South Sudan since 2008 to 70,000.<sup>291</sup> Also see [3.4.2 Vulnerability of women to sexual and gender based violence \(SGBV\)](#) and [3.4.6 Vulnerability of children to violence](#).

The UN Secretary-General reporting on the situation of children and armed conflict affected by the Lord’s Resistance Army, noted that between July 2009 to February 2012 in South Sudan, in addition to child abductions and forced recruitment, there were 27 cases of killings and 22 cases of maiming in the context of LRA attacks on civilians or during clashes between LRA and UPDF [Uganda People’s Defence Force], SPLA or “Home Guards”, 27 cases of sexual violence against girls by LRA elements and LRA attacks on schools.<sup>292</sup> According to the LRA Crisis Tracker as of September 2012, the last reported LRA attack in South Sudan was in Western Bahr el-Ghazal in September 2011 on a police station in the town of Deim Jallab, west of Raga.<sup>293</sup> It also reports that LRA forces last clashed with Darfuri rebel groups in November 2011, but that “senior LRA commanders, including Joseph Kony, reportedly sought refuge in Sudan’s South Darfur region”.<sup>294</sup> Reportedly, LRA groups have been active in South Darfur State and the Kafia Kingi enclave, a disputed area along the border between South Darfur (Sudan) and Western Bahr el-Ghazal (South Sudan).<sup>295</sup>

The December 2012 UN Secretary-General report noted with regard to the operation of the LRA in South Sudan in 2012 that:

To date in 2012, there have been no reports of alleged LRA attacks in South Sudan. The improvement in the security situation has allowed some 21,000 people to return to Yambio, Nzara, Ezo, Mundri, Maridi and Tambura counties. There remain, however, 49,000 persons displaced as a result of LRA attack. [...] While the security situation in South Sudan has improved, there is growing concern about the LRA presence in the disputed area of Kafia Kingi on the border with the Central African Republic. Sudanese refugee populations in Sam Ouandja, Central African Republic, in addition to several recent defectors, described the existence of an LRA base south of Garmadora.<sup>296</sup>

<sup>288</sup> Centre for Strategic and International Studies, [The Lord’s Resistance Army](#), 18 October 2011

<sup>289</sup> International Crisis Group, [The Lord’s Resistance Army: End Game?](#) 17 November 2011, *Executive summary and recommendations*

<sup>290</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence: A profile of the internal displacement situation](#), 26 June 2012, *The Lord’s Resistance Army*

<sup>291</sup> *ibid*

<sup>292</sup> UN Security Council, [Report of the Secretary-General on the situation of children and armed conflict affected by the Lord’s Resistance Army](#), 25 May 2012, *paragraph 16, 25, 31, 35*

<sup>293</sup> Invisible Children and Resolve, [LRA Crisis Tracker Mid-year Security Brief](#), Jan-June 2012 and Invisible Children and Resolve, [LRA Crisis Tracker: Quarterly Security Brief](#), July-September 2012

<sup>294</sup> Invisible Children and Resolve, [LRA Crisis Tracker Mid-year Security Brief](#), Jan-June 2012

<sup>295</sup> *ibid*

<sup>296</sup> UN Security Council, [Report of the Secretary-General on the activities of the United Nations Regional Office for Central Africa and on areas affected by the Lord’s Resistance Army](#), 13 December 2012, *paragraph 34-35*

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## 2.2.6 Other armed opposition groups (such as JEM) and self-defense groups (such as the Home Guard (formerly Arrow Boys) in opposition to LRA)

### JEM

The Small Arms Survey reports that:

The Justice and Equality Movement (JEM) was established early in 2003 by a group of educated, politically experienced Darfurians, many of them former members of the Popular Congress Party (PCP) of Hassan al Turabi, architect of Sudan’s Islamic revolution. Most of its leaders and membership initially came from the Kobe tribe, a Zaghawa sub-group more numerous in Chad than in Darfur. Since 2007 JEM has worked actively to recruit Darfurian Arabs, including from government-supported militias or ‘janjaweed’.<sup>297</sup>

It further explains that JEM seeks national reform and regime change, attempting to use the atrocities in Darfur to delegitimize the government of Sudan.<sup>298</sup> JEM withdrew from peace negotiations with the government of Sudan in 2010 and refused to sign the 2011 Doha peace agreement on Darfur.<sup>299</sup> On 13 November 2011, JEM joined the SPLM-N under the umbrella of the Sudan Revolutionary Forces (SRF) in both Blue Nile and South Kordofan states where fighting has been “raging” against the SAF since the Abyei Crisis.<sup>300</sup> The SRF also includes the Sudan Liberation Army factions of Minni Minawi (SLA-MM) and Abdul Wahid (SLA-AW).<sup>301</sup>

The Small Arms Survey reports that the SRF “subsequently announced regime change by either political or military means as the only solution to a national problem of which Darfur was only one expression”.<sup>302</sup> It also reports that SRF’s military activity is most prevalent in South Kordofan but extends to Blue Nile, and into South Sudan’s border states.<sup>303</sup> Furthermore it notes that all Darfurian members of SRF remain active in Darfur, often near to the South Darfur/South Sudan border, but that the SLA-MM and SLA-AW have decided not to participate in military operations outside of Darfur.<sup>304</sup> Sudan considers the SRF to be a proxy of the SPLA.<sup>305</sup> The Small Arms Survey identifies challenges to the alliance as “persistent power struggles and philosophical differences between the Darfur factions, as well as the challenges of increased military cooperation”.<sup>306</sup>

Following the death of JEM Chairman, Khalil Ibrahim in 25 December 2011, his brother Jibril Ibrahim was elected chairman.<sup>307</sup> Since Khalil Ibrahim’s death, the Small Arms Survey reports that JEM’s achievement has been:

to partially integrate itself in areas along the South Kordofan/ South Darfur/South Sudan border—areas where it has no Zaghawa kin hosts. Instead, JEM has recruited mid-tier leadership and fighters among the local tribes allowing the movement to become a more “local” force. The overall leadership of this force is JEM’s long-time chief of staff Suleiman Sandal.<sup>308</sup>

<sup>297</sup> Small Arms Survey, [Justice and Equality Movement \(JEM\)](#), 8 October 2012

<sup>298</sup> *ibid*

<sup>299</sup> *ibid*

<sup>300</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, *The Three Outstanding Issues*

<sup>301</sup> Small Arms Survey, [Sudanese Revolutionary Front](#), 8 October 2012

<sup>302</sup> Small Arms Survey, [Justice and Equality Movement \(JEM\)](#), 8 October 2012

<sup>303</sup> Small Arms Survey, [Sudanese Revolutionary Front](#), 8 October 2012

<sup>304</sup> *ibid*

<sup>305</sup> *ibid*

<sup>306</sup> *ibid*

<sup>307</sup> Small Arms Survey, [Justice and Equality Movement \(JEM\)](#), 8 October 2012

<sup>308</sup> *ibid*

The same source further reports that JEM also has smaller liaison units in Juba, Kampala, Uganda, in Eritrea near the eastern border with Sudan and retained a presence in Darfur under Bakheit Abdallah Abdel Karim (Dabajo) which then broke away on 11 September 2012.<sup>309</sup>

The November 2012 report from the UN Secretary-General notes that the security situation along the border between the Sudan and South Sudan “remained tense” and that:

The continuing conflict in Southern Kordofan and Blue Nile States, in addition to the presence of the Darfur rebel groups, including the Justice and Equality Movement (JEM), alongside SPLM/North, compounded the situation.<sup>310</sup>

The Small Arms Survey reports that Chad was JEM’s main financial backer early on in its insurgency and when it expelled JEM in February 2010, it reportedly did so with a ‘severance package’.<sup>311</sup> Subsequently JEM was financially supported by Libya, until the fall of the Gaddafi administration.<sup>312</sup> The Enough Project reports that whilst South Sudan supports SPLN-N, “It is unclear what level of support the South is providing to JEM—sightings of the Darfuri group in Unity state are frequent, and the support provided is likely an extension of support for the SPLA-N, which has allied with JEM in the rebel coalition known as the Sudan Revolutionary Front, or SRF”.<sup>313</sup>

### Home Guard

In a May 2012 report the UN Secretary-General reported that

a consequence of the weakness or absence of State security forces and the judiciary has been the emergence of self-defence groups, established by local communities to protect themselves against LRA, notably in South Sudan (the “Arrow Boys”, also known as “Home Guards”, in Western Equatoria state).<sup>314</sup>

The International Crisis Group, reporting in November 2011, notes that the Home Guard (formerly Arrow Boys) emerged in 2008 and continues to grow.<sup>315</sup> It further notes that its endurance is tied to the strength of the Zande group’s local governance system, and its “mentality of resistance”.<sup>316</sup> The same source notes that “the Home Guard has largely succeeded in protecting civilians from LRA attack”.<sup>317</sup> The LRA Crisis Tracker reported that in 2011:

On the evening of 17 June, 6-7 LRA members reportedly attacked the community of Kidi in South Sudan. The LRA abducted two children - a 14 year-old boy and a 12 year-old girl - and wounded a third community member in the attack. In response, the local Arrow Boy self-defense group pursued the attackers. After clashing with the perpetrators, the Arrow Boys recovered the abducted children and killed an unconfirmed number of LRA members.<sup>318</sup>

The International Crisis Group considers that:

As the Home Guard grows in size and stature, communities are becoming more militant and quicker to use force. This carries risks for Zande and minorities alike. Out of appreciation for their work, communities feed

<sup>309</sup> *ibid*

<sup>310</sup> United Nations, [Report of the Secretary-General on the Sudan and South Sudan](#), 26 November 2012, Paragraph 5

<sup>311</sup> Small Arms Survey, [Justice and Equality Movement \(JEM\)](#), 8 October 2012

<sup>312</sup> *ibid*

<sup>313</sup> Enough Project, [South Sudan and Sudan Back to War? A View from Juba](#), May 2012

<sup>314</sup> UN Security Council, [Report of the Secretary-General on the situation of children and armed conflict affected by the Lord’s Resistance Army](#), 25 May 2012, paragraph 14

<sup>315</sup> International Crisis Group, [The Lord’s Resistance Army: End Game?](#) 17 November 2011, *III Deepening Wounds, A Within Communities*

<sup>316</sup> *ibid*

<sup>317</sup> *ibid*

<sup>318</sup> Invisible Children and Resolve, [LRA Crisis Tracker Annual Security Brief 2011](#), 9 February 2012

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the Home Guard. Local politicians also reach into their pockets. But these contributions risk becoming incentives for people to join and stay in the Home Guard irrespective of threat. There is also a danger politicians will win the loyalty of certain groups. The Western Equatoria State governor is reportedly a benefactor of the Home Guard in his hometown, Tambura. The April 2010 elections saw clashes between his supporters and those of his predecessor. If candidates call on indebted Home Guards, it could be worse next time. Some self-defence units aspire to be military-style squads and are arming themselves with AK-47s as well as homemade shotguns.<sup>319</sup>

The UN-Secretary-General further reports that in South Sudan these “non-statutory self-defence groups” are supported by the central Government and the SPLA is alleged to have equipped the “Arrow Boys”/“Home Guards” with weapons.<sup>320</sup> Moreover, it notes that “United Nations partners have received complaints from communities regarding “Arrow Boy”/“Home Guards” elements adjudicating on civilian cases and attempting to assume the role of the State and traditional authorities”.<sup>321</sup> The International Crisis Group reports on an incident in late 2010 in Western Equatorial State in which the authorities there denied a request from the semi-nomadic Mbororo cattle herders to settle in the region.<sup>322</sup> The authorities sought the assistance of the SPLA and Home Guards to escort the Mbororo from the area and whilst most left of their own accord, “the Home Guard pursued those who refused, killed their cattle and ‘showed no mercy’”.<sup>323</sup> Reportedly the resulting fighting led to the deaths of two Home Guards and an unknown number of Mbororo.<sup>324</sup>

## 2.3 Inter-communal violence

### 2.3.1 Groups involved and areas of operation

The Small Arms Survey reports that whilst South Sudan has faced many internal security challenges since gaining independence, “one of the deadliest and most complex has been inter-tribal violence, mainly involving the Lou Nuer, Murle, and Dinka in Jonglei state”.<sup>325</sup> The source describes that whilst such violence is not a new phenomenon, a series of attacks in 2009 drew the attention of the international community.<sup>326</sup> It provides a table of major clashes between Lou Nuer and Murle in Jonglei, 2009–12, detailing the attacking tribe, location of attack, numbers of deaths and numbers of cattle stolen.<sup>327</sup> MSF also provides a table of the inter-communal clashes it responded to in Jonglei state in 2011 and 2012, which identifies the county the attacks took place in, the estimated number of deaths, number of wounded MSF treated, and the number of people displaced.<sup>328</sup> UNMISS too provides a list of inter-communal attacks it recorded between 23 December 2011 to 4 February 2012 by perpetrator and town.<sup>329</sup>

Inter-communal violence is also reported to take place between the Misseriya and Ngok Dinka during the Misseriya’s annual migration (through the Abyei area). See section [2.1.1.1 Disputed state of Abyei](#).

<sup>319</sup> International Crisis Group, [The Lord’s Resistance Army: End Game?](#) 17 November 2011, *III Deepening Wounds, A Within Communities*

<sup>320</sup> UN Security Council, [Report of the Secretary-General on the situation of children and armed conflict affected by the Lord’s Resistance Army](#), 25 May 2012, paragraph 14

<sup>321</sup> *ibid*

<sup>322</sup> International Crisis Group, [The Lord’s Resistance Army: End Game?](#) 17 November 2011, *III Deepening Wounds, B Between Communities*

<sup>323</sup> *ibid*

<sup>324</sup> *ibid*

<sup>325</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>326</sup> *ibid*

<sup>327</sup> *ibid*

<sup>328</sup> MSF, [South Sudan’s Hidden Crisis](#), 26 November 2012

<sup>329</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *Annex 1: Inter-communal attacks recorded by UNMISS Human Rights Division: 23 December 2011 to 4 February 2012*

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The Small Arms Survey reports that “there is increasing overlap between dissident militias and the activities of tribal militias”:

For example, the forces of Yau Yau, a Murle civilian, re-launched a campaign in Pibor county in August 2012, capitalizing on the Murles’ heightened resentment over the SPLA’s repressive disarmament process there. Yau Yau is thought to have mobilized between 3,000 and 4,000 youths, though the exact relationship between the youths and the militia group is unclear. Yau Yau and his fighters may serve simply as conduits for arms and ammunition without having the youths’ actual allegiance. Unconfirmed reports suggest that the group includes non-Murle, as well.<sup>330</sup>

The UN Secretary-General notes that the now deceased General Athor of the South Sudan Democratic Movement/Army (SSDM/A) had claimed credit for raids in southern Jonglei State early in December 2011.<sup>331</sup> UNMISS also reports that “According to a senior SPLA officer, a large number of the armed Lou Nuer youth had obtained weapons and uniforms from the rebel militia group under the authority of late George Athor that operated in Greater Upper Nile”.<sup>332</sup> This is also reported by the Small Arms Survey, which notes that Athor armed 1,000 Gawaar Nuer and Padeng Dinka youths in exchange for their support in his attack on the SPLA (which they ultimately did not obey).<sup>333</sup> The Small Arms Survey also reports that the SSPS and SPLA are also a source of weapons for tribal militias, particularly the Dinka during clashes with the Lou Nuer in June-August 2011.<sup>334</sup>

Also see section [2.2 Violence by armed opposition groups](#).

### 2.3.2 Types of violence, purpose of violence, and its prevalence

The Small Arms Survey reports that tribes clash over territorial control and access to land for grazing their cattle, which is the primary source of wealth and dowry.<sup>335</sup> Indeed, the Sudan Tribune reports that due to the influx of male returnees to South Sudan after secession and a deficit in cattle due to unfavourable weather conditions, cattle prices are particularly high.<sup>336</sup> The Small Arms Survey also identifies the role of firearms in increasing the level of violence and further underlying causes as including:

persistent lack of services, increased competition over natural resources, and the erosion of traditional leadership structures and the unspoken rules of cattle raiding. Local- and national-level politicians have manipulated the conflict for personal and political gain, while Jonglei-based militia groups have provided weapons to tribal fighters to further their own agendas.<sup>337</sup>

FIDH similarly reports that the following factors that have fuelled the violence between the majority ethnic group Dinka and the minority ethnic groups Lou Nuer and Murle:

These include: competition due to dire poverty, the absence of a national development policy, the significant rise in the cost of dowries, the vicious cycle of attacks and retaliation and the absence of political reaction at the national and local levels. Political alliances also come in to play. In 1991, The Lou Nuer supported the splitting faction of SPLA, which had fought against the Garang’s Dinka tribe in Bor, and caused the death of hundreds of people. The SAF and SPLA had supplied arms to the Lou Nuer’s “white army” during the civil war.

<sup>330</sup> Small Arms Survey, [Southern Dissident Militias](#), updated 8 November 2012

<sup>331</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 7 March 2012, paragraph 22

<sup>332</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *Attack on Pibor: 31 December 2011*

<sup>333</sup> Small Arms Survey, [Reaching for the gun, Arms flows and holdings in South Sudan](#), April 2012, ‘Tribal’ militia groups

<sup>334</sup> *ibid*

<sup>335</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>336</sup> Sudan Tribune, [Four people killed in Unity state cattle raid](#), 28 August 2012

<sup>337</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

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Today, Lou Nuer are under-represented within the SPLM. The Murle are politically marginalised and are accused of having been instruments of Sudan during the civil war.<sup>338</sup>

UNMISS reports on a “legacy of mistrust” between the communities which results in part from “wartime political and military fault lines, including the creation of militias and self-defence forces along ethnic lines to carry out attacks on and subjugate neighbouring groups”.<sup>339</sup> UNMISS also notes that “widespread stereotyping, the creation and use of “enemy” images, hate speech amounting to incitement to violence have also exacerbated the conflicts”.<sup>340</sup> UNMISS further reports that:

The failure of the government (GRSS) to protect civilians from violence, investigate incidents and hold perpetrators accountable is believed to have contributed to this cycle of attacks which have resulted in increasing numbers of casualties and been marked by acts of deliberate cruelty.<sup>341</sup>

For further information on the state’s failure to protect against inter-communal violence, see [2.4.5 Government response to violence in Jonglei State, specifically Pibor County](#).

The Small Arms Survey, reporting on the 2009 inter-communal violence noted that the period was marked by an increase in the intensity and frequency of attacks.<sup>342</sup> It reports that in 2009, 2,500 people were killed and more than 350,000 were displaced by inter-tribal conflict, half of which were from Jonglei state and “The most intense conflicts occurred between the Lou Nuer and Dinka, the Lou Nuer and Murle, and Lou Nuer and Jikany Nuer.”<sup>343</sup> It reports that in 2010 inter-tribal violence subsided, returning to “customary levels of cattle raiding”.<sup>344</sup> Jonglei state then experienced an escalation in inter-communal violence, and according to UNOCHA, there were 302 recorded attacks in the state between January 2011 and September 2012 in which over 200,000 people were displaced and 2,500 were killed.<sup>345</sup>

The Small Arms Survey notes that a new cycle of violence began in February 2011 between the Murle and Lou Nuer, in which the Murle attacked Thiam payam, killing three Lou Nuer chiefs, and the Lou Nuer retaliated, attacking villages across Pibor county, killing some 600 people.<sup>346</sup> In August 2011 the Murle, reportedly armed by Yau Yau, attacked Pieri town “killing at least 650 people, injuring almost 1,000, abducting dozens of women and children, and, according to local witnesses, looting 38,000 cattle”.<sup>347</sup>

The Small Arms Survey reports that by early December 2011, large numbers of Lou Nuer youths were mobilizing across northern Jonglei, at least half of which were armed with Kalashnikov Pattern assault rifles with the rest carrying machetes and sticks.<sup>348</sup> UNMISS reports that the Lou Nuer youths called themselves the “White Army”.<sup>349</sup> The Small Arms Survey reports that around 8,000 Lou Nuer youths marched through Pibor county, attacking over 21 Murle settlements in early January 2012, killing 1,000 at a conservative estimate, most of whom were Murle women and children.<sup>350</sup> UNMISS puts the number of fatalities in the course of the attacks on settlements of the Murle community between 23 December and 4 January at 612.<sup>351</sup> According to Small Arms Survey research, hundreds of women and children were abducted, over

<sup>338</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, *B. Inter-ethnic clashes in Jonglei*

<sup>339</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *IV Contextual background*

<sup>340</sup> *ibid*

<sup>341</sup> *ibid*

<sup>342</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>343</sup> *ibid*

<sup>344</sup> *ibid*

<sup>345</sup> IRIN, [Women and children bear brunt of Jonglei violence](#), 5 December 2012

<sup>346</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>347</sup> *ibid*

<sup>348</sup> *ibid*

<sup>349</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *Executive Summary*

<sup>350</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>351</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *Executive Summary*

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100,000 people displaced, up to 100,000 cattle stolen and entire villages burned and looted.<sup>352</sup> Before the Lou Nuer attackers returned home, Murle youths retaliated, attacking Lou Nuer and Bor Dinka communities between 27 December and 4 February in 44 incidents in which 276 people were killed and at least 60,000 cattle stolen.<sup>353</sup> In March 2012 the Murle attacked Lou Nuer cattle herders, killing at least 225 people and injuring 100.<sup>354</sup> On 4 May 2012 at least 30 people were killed and more than 15 injured in clashes between youth of Lou Nuer and Murle ethnic groups in Nyirol county.<sup>355</sup>

The Small Arms Survey describes the tactics of the Murle and Lou Nuer, reporting that the Murle “are known for their exceptional fighting skills, resilience in harsh conditions, and ability to loot large numbers of cattle with only a few men” and that Murle youths “attack in small, singlefile mobile units, and often use hit-and-run, guerrilla-style techniques”.<sup>356</sup> In contrast, the Lou Nuer “rarely attack their neighbours, but they will attack in large numbers in a highly organized fashion once they have decided to retaliate”.<sup>357</sup>

According to the Sudan Tribune, there has been no information coming out of the Murle communities as to their perspective on the conflict, unlike the “vocal” Lou Nuer whom, the source reports, claim that the Murle have been driven to abducting their children as they are suffering from an infertility endemic.<sup>358</sup>

The following non-exhaustive incidents of inter-communal violence and cattle raiding are illustrative of the situation in the past 2 months. In November 2012, inter-communal violence was reported in a cattle camp in Rumbek Central County in Lakes State between the Panyon and Amothnhon communities of the Dinka ethnic group, killing 12 people and injuring 34.<sup>359</sup> Seven people were killed and 2,6000 displaced in a cattle raiding incident in Bor South county, Jonglei on 29 November 2012.<sup>360</sup>

In Early December 2012, at least 30 people were killed and wounded in a cattle raid between a Dinka Gok ethnic group in Lakes state and a Dinka Rek tribe in Warrap state.<sup>361</sup> On 6 and 7 December 2012, cattle raiding in Panyijiar County, Unity State killed 16 people, injured 11 and displaced, 4,125 people.<sup>362</sup> In December 2012, violence was reported in Wau, Western Bahr el Ghazal State, following the announcement that the seat of local government would be moved out of Wau to the smaller settlement of Bagare nearby.<sup>363</sup> Four people were killed during clashes on the 8 December and then the next day, the SPLA reportedly opened fire on a crowd demonstrating against the previous day’s use of excessive force, shooting a further 6 people dead.<sup>364</sup> Local activists accused the government of exacerbating ethnic tensions, as according to journalist Assad Al Tahir, between 1,000 and 2,000 Dinka tribesmen attacked members of the Fertit tribe on 19 December 2012.<sup>365</sup> According to a hospital doctor, the riots killed at least 12 people, and forced thousands to shelter at a UNMISS base.<sup>366</sup> UN patrols had “observed a number of fires, as well as groups of youths up to 300-strong, some of whom possessed sticks, spears and

<sup>352</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>353</sup> *ibid*

<sup>354</sup> *ibid*

<sup>355</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, *B. Inter-ethnic clashes in Jonglei*

<sup>356</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>357</sup> *ibid*

<sup>358</sup> Sudan Tribune, [Jonglei: two people killed in raid on Anyidi village](#), 12 October 2012

<sup>359</sup> Sudan Tribune, [Rumbek fighting leaves 12 dead and 23 wounded](#), 8 November 2012

<sup>360</sup> UNOCHA, [South Sudan Humanitarian Update](#), 3-9 December 2012

<sup>361</sup> Agence France Presse, [At least 30 killed in South Sudan cattle raid: officials](#), 5 December 2012

<sup>362</sup> UNOCHA, [South Sudan Humanitarian Bulletin](#), 24- 30 December

<sup>363</sup> Agence France Presse, [At least four dead in South Sudanese town riots: witnesses](#), 19 December 2012

<sup>364</sup> *ibid*

<sup>365</sup> *ibid*

<sup>366</sup> Agence France-Presse, [At least 12 killed in South Sudan riots: doctor](#), 20 December 2012

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machetes".<sup>367</sup> On 19 December 2012 Murle raiders took 1,533 cattle from Mission cattle camp in Kongoor Payam, Jonglei, in which three raiders were killed along with one civilian cattle herder.<sup>368</sup>

On 27 December 2012, seven people were killed and two wounded in a raid in Duk, Jonglei state by suspected Murle loyal to Yau Yau, in which over 180 cows were reportedly also stolen.<sup>369</sup> On 31 December suspected Murle cattle rustlers killed a mother and her child and wounded another mother and child in Nyirol County, Jonglei state.<sup>370</sup> UNOCHA reports that on 3 January 2013, cattle-rustling in Tonj East and North counties in Warrap State killed 16 people, injured 17, and displaced an unconfirmed number of people, according to local authorities and partners on the ground.<sup>371</sup> Further cattle raids resulting in one death and two injured were reported on 5 January 2013 in Cueibet County, Lakes state.<sup>372</sup>

### 2.3.3 Targets of violence and who is vulnerable to attack

UNMISS explains that whilst "historically cattle raids and retaliatory attacks were predominantly carried out by small, loosely organised groups against those directly responsible for looking after the cattle, since 2009, revenge attacks have evolved to target civilians indiscriminately and aimed at inflicting maximum damage on communities as a whole".<sup>373</sup>

The Small Arms Survey, reporting on the 2009 inter-communal violence reported that the period was marked by a shift in targeting tactics:

Whereas raiders once focused solely on capturing cattle, attacks became ethnically driven: in addition to looting cattle, attackers began targeting entire villages, killing not only men of fighting age but also women, children, and the elderly, and destroying their homes. Attackers also began targeting state and international NGO facilities such as schools and medical clinics.<sup>374</sup>

Reporting on the 2011/2 violence, the Small Arms Survey reported that the level of violence exceeded customary norms for inter-tribal fighting:

UN observers noted that some victims who had been shot and killed had also been severely beaten and in some cases raped. Although this level of brutality existed during the civil war, cattle raids between tribes tended to focus on stealing livestock, killing herders, and abducting women and children. It is not clear exactly what caused the increased brutality. But residual anger over the killing of three Lou Nuer chiefs, mounting frustration and deprivation among communities, and aggressive anti-Murle rhetoric on the part of the diaspora and government officials, fuelled the flames.<sup>375</sup>

MSF reports that "While appropriating cattle used to be the main aim of the attacks, nowadays civilians are targeted, with women and children making up a large proportion of victims treated by MSF teams".<sup>376</sup> IRIN reporting on the inter-communal violence in Pibor similarly notes that "The men carrying out these attacks view anyone as a viable target - including women and children. Indeed, the cycle of revenge has now spiraled to the extent that the attackers regard the killing or abduction of women and children as a

<sup>367</sup> *ibid*

<sup>368</sup> Sudan Tribune, [Jonglei: Four killed in Twice East cattle raid](#), 22 December 2012

<sup>369</sup> Sudan Tribune, [Jonglei: Seven killed, two wounded in Duk county raid](#), 29 December 2012

<sup>370</sup> Sudan Tribune, [Jonglei: Nyirol raid kills mother and child – official](#), 31 December 2012

<sup>371</sup> UNOCHA, [South Sudan Humanitarian Bulletin](#), 31 December - 6 January 2013

<sup>372</sup> Sudan Tribune, [Lakes: One killed, two wounded in Cueibet raid](#), 5 January 2013

<sup>373</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, IV Contextual background

<sup>374</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>375</sup> *ibid*

<sup>376</sup> MSF, [South Sudan's Hidden Crisis](#), 26 November 2012, Executive summary

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necessary method of revenge”.<sup>377</sup> IRIN cites the head of MSF in South Sudan as stating that sexual violence is also emerging as a new dynamic in Jonglei’s Pibor County.<sup>378</sup> UNMISS similarly reports that

From the manner in which the attacks were conducted by the Lou Nuer youth, the objective of the December/January attacks appears to go beyond retaliatory reprisals and more towards the depopulation, displacement and possibly even destruction of the opposing community and their livelihood, as well as undermining the credibility of the State.<sup>379</sup>

See [3.4.2 Vulnerability of women to sexual and gender-based violence \(SGBV\)](#) for further information on the abduction and forced marriage and rape of women in inter-communal violence.

### 2.3.4 Effects on general population

MSF, reporting on the inter-communal violence in Jonglei state considers that it has had a “devastating impact on communities”.<sup>380</sup> In addition to physical violence it notes that “Whole villages have been destroyed and livelihoods affected, as people have lost their homes and belongings. During the attacks, food reserves, crops and seeds were burned and many people feared tending their fields as a result of the insecurity”.<sup>381</sup> With regard to the impact on health, MSF reports:

The insecurity and displacement in Jonglei have further exacerbated the low baseline for healthcare and contributed to the worsening of the population’s health. People have seen their infrastructure and assets destroyed, coping mechanisms lost and agricultural activity diminished. Repeated and prolonged displacements have increased the population’s risk of getting ill and insecurity has reduced the population’s ability to access health centres<sup>382</sup>

MSF also reports on the significant malaria outbreak in 2011/2, noting that the large population displacements as a result of the violence were likely to have increased vulnerability to the disease as many people spent weeks in the bush without protection from mosquitos and lacked access to medical care.<sup>383</sup>

UNMISS reported in June 2012 with regard to the effect on the communities in Jonglei that “the December 2011 and January 2012 attacks deeply impacted on the livelihoods and survival mechanisms of those affected. Many lost everything when their tukuls, crops and food stores were looted and burnt and their cattle stolen. While significant numbers of persons impacted by the violence have returned to their home areas, others remain displaced having lost their homes and belongings”.<sup>384</sup> It further notes that whilst the extent of the psychosocial impact is not yet known, in the course of conducting its investigation, it was clear that many of the victims were traumatised, having lost children or other family members as a result of killings, abductions or displacement.<sup>385</sup>

UNMISS further notes that “The situation of abducted women and children remains one of serious concern. While a small number of abductees have been reunited with their families, it is assumed that a significant number remain with their captors”.<sup>386</sup>

<sup>377</sup> IRIN, [Women and children bear brunt of Jonglei violence](#), 5 December 2012, *Civilians bearing the brunt of inter-communal violence*

<sup>378</sup> *ibid*

<sup>379</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *IV Contextual background*

<sup>380</sup> IRIN, [Women and children bear brunt of Jonglei violence](#), 5 December 2012, *Civilians bearing the brunt of inter-communal violence*

<sup>381</sup> *ibid*

<sup>382</sup> MSF, [South Sudan's Hidden Crisis](#), 26 November 2012, *Executive summary*

<sup>383</sup> *ibid*

<sup>384</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *Executive summary*

<sup>385</sup> *ibid*

<sup>386</sup> *ibid*

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UNOHCA considers that “crisis levels” of food insecurity are expected to continue to March 2013 in Jonglei’s Pibor County “due to the impact of displacement on asset levels, and food and income source” and that in the rest of Jonglei, “Stressed levels of food insecurity will persist through to March 2013 due to the impact of flooding, above-average prices, and the needs of displaced and refugee communities”.<sup>387</sup>

Also see [4.6 Humanitarian access and role of human rights groups and aid organizations within South Sudan](#).

## 2.4 Security and police forces and effectiveness in providing protection

### Overview

The August 2012 report of the UN High Commissioner for Human Rights notes that “The Government of South Sudan bears primary responsibility for providing security and protection to its civilian population. Large-scale loss of life in South Sudan as a result of armed conflict highlights the State’s inability to protect civilians”.<sup>388</sup> The 2011 annual report from the South Sudan Human Rights Commission describes that “Institutions such as the judiciary, police force and the prison service are still relatively young in their development and are facing serious capacity challenges. [...] Many of these institutions if not all are severely under resourced and as a direct result were not able to protect human rights to the extent required”.<sup>389</sup> A February 2012 research paper from Stiftung Wissenschaft und Politik explains that “in recognition of the government’s inability or lack of willingness to establish security, the Security Council in July 2011 explicitly mandated the UN Mission in South Sudan (UNMISS) to protect “civilians under imminent threat of physical violence, in particular when the Government of South Sudan is not providing such security”.<sup>390</sup>

### 2.4.1 Sudan People’s Liberation Army (SPLA)

According to the Small Arms Survey, “South Sudan’s army continues to be the primary security provider, even as it attempts to manage an enormous and expensive force that remains largely unchanged from the civil war era”.<sup>391</sup> The Small Arms Survey notes that reports indicate that just before independence, the SPLA’s strength was estimated to be 207,000 personnel, which represented a 17 per cent increase in manpower in six months, demonstrating that that recruitment and subsequent expansion outpaced Disarmament, Demobilization and Reintegration [DDR].<sup>392</sup> Stiftung Wissenschaft und Politik explains that after the CPA, many armed groups were integrated into the SPLA and into other units including the police, prisons, and wildlife services.<sup>393</sup> However it reports that “militia structures still persist within the security sector or could be restored and the SPLA remains susceptible to new armed groups breaking away” which was illustrated by the armed rebellions by former army officers George Athor in Jonglei and Peter Gadet in Unity state.<sup>394</sup> See section [2.2 Violence by armed opposition groups](#).

<sup>387</sup> UNOCHA, [Humanitarian Bulletin Eastern Africa](#), 29 October-12 November 2012, *South Sudan*

<sup>388</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, *paragraph 19*

<sup>389</sup> SSHRC, [2011 Annual Report](#), January-December 2011, *Part Three: The situation of human rights in South Sudan*

<sup>390</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *State authority and control*

<sup>391</sup> Small Arms Survey, [Facts & Figures: South Sudan](#), undated current webpage, accessed 11 December 2012

<sup>392</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), June 2012

<sup>393</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *State authority and control*

<sup>394</sup> *ibid*

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The Small Arms Survey further notes that despite ‘Objective Force 2017’ which outlines the structure and composition of the SPLA in 2017, which intends to reduce the SPLA to 120,000 personnel, the government’s “commitment to DDR is uncertain given the number of security threats and disagreements with donors over the shape and modalities of future DDR programmes, as well as the roles of coordinating agencies”.<sup>395</sup> Stiftung Wissenschaft und Politik reports that the DDR programme initiated by the CPA only demobilized 12,500 by May 2011 of which only 5,000 had completed their reintegration training.<sup>396</sup> It further notes that there were doubts about the selection process as “at least some participants had already returned to civilian life several years beforehand, were no longer receiving pay and were therefore ineligible for the programme”.<sup>397</sup> It further notes that the DDR Commission itself reports that the programme demobilizes the old and invalid in order to make space for new recruits.<sup>398</sup>

Following a significant salary increase in April 2011, salaries now account for over 80 per cent of the current South Sudan Pound (SSP) 2.1 billion defence budget.<sup>399</sup> The Small Arms Survey considers that “SPLA personnel accountability and affordability are major challenges” and reports with regards to reform of the SPLA that:

Despite the challenges, adjusting the physical components of the army—its size, composition, structure, and equipment—is arguably less demanding than changing the conceptual approach, or altering the mindsets of key commanders and decision-makers. Although the latter is more difficult, a change in mindset and conceptual approach may lead to greater operational effectiveness and accelerated reform in the short term.<sup>400</sup>

It further reports that in attempting to counter insurgent militia groups, the SPLA has always focused on attrition with poor results, and that “In the same way that coercive disarmament is the only attempted response to interethnic fighting, offers of amnesty and integration have been the primary strategy used to address militia groups. This has promoted further instability and budget challenges”.<sup>401</sup>

The Stiftung Wissenschaft und Politik further reports that not only does the SPLA lack the necessary mobility and infrastructure to quickly react to local conflicts, but:

Impartial intervention in conflicts is also made difficult by dominant tribal loyalties within many SPLA units. At the level of the rank-and-file, SPLA units often resemble irregular armed groups, with poorly paid and undisciplined men left to fend for themselves, including through arbitrary requisitioning and illegal taxation. At the officer level too, the SPLA’s guerilla past is still very present, as witnessed by attempts to end disputes over land and political representation through harsh military repression. In many cases, severe human rights violations instead provoked a further escalation.<sup>402</sup>

The U.S. State Department notes that “While not legally invested with the power to arrest or detain civilians, the SPLA arrested and detained persons”.<sup>403</sup> It further notes with regard to the conduct of the SPLA that:

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<sup>395</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), June 2012

<sup>396</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *Disarmament, Demobilization and Reintegration*

<sup>397</sup> *ibid*

<sup>398</sup> *ibid*

<sup>399</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), June 2012

<sup>400</sup> *ibid*

<sup>401</sup> *ibid*

<sup>402</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *State authority and control*

<sup>403</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *d. Arbitrary Arrest or Detention*

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During the year the SPLA's conduct of internal security and civilian disarmament was often unsystematic and failed to simultaneously disarm rival communities. Citizens charged that the SPLA's lack of discipline and political neutrality contributed to tensions between communities. There were reports that the SPLA used indiscriminate and excessive force, particularly against women.<sup>404</sup>

Freedom House reports that "The army is often called upon to perform policing functions, and the SPLA committed serious abuses while carrying out such duties, according to Human Rights Watch and Amnesty International. These included extrajudicial killings, the destruction of homes, and looting".<sup>405</sup>

Also see [2.4.4 State violence against civilians and accountability of offenders within the military and police force](#), [2.4.5 Government response to violence in Jonglei State, specifically Pibor County](#) and [2.4.6 Civilian disarmament campaign Operation Restore Peace](#).

## 2.4.2 South Sudan Police Service (SPSS)

The UN Secretary-General reported that as of 14 June 2012, there were 37,500 South Sudan Police Service (SPSS) registered.<sup>406</sup> Human Rights Watch reports that the Police Service Act, which dates only from 2009, defines as its duties to "prevent, combat and investigate crime," to "maintain law and public order," to "protect the people...and their properties," and to "uphold and enforce" the Constitution, but it considers that "it is largely unable to provide these services because it lacks sufficient resources and trained personnel".<sup>407</sup> Human Rights Watch explains that the CPA provided for the disarmament, demobilization, and reintegration of former combatants as well as for the dissolution of all armed groups other than the Sudanese Armed Forces (SAF) and the SPLA, resulting in their transfer to the police and prisons services.<sup>408</sup> Following independence, the SPSS received a further 4,000 police of Southern Sudanese origin from the North, which Human Rights Watch estimates put the total number of police personnel at around 55,000.<sup>409</sup> The Small Arms Survey notes that the SPSS absorbed this large number of SPLA personnel with little or no training.<sup>410</sup>

Freedom House considers that the SPSS "is ill-equipped, unprofessional, and overwhelmed by the country's security challenges".<sup>411</sup> A Stiftung Wissenschaft und Politik research paper reports in February 2012 that the police are unable to provide security outside of towns, are regarded as incompetent and corrupt by the local population, and considers that in addition to representing a threat to the civilian population, "the state will be unable to provide anything more than islands of security in the provinces".<sup>412</sup> It further notes that state security forces pose a threat to the population:

The spectrum of transgressions ranges from everyday incidents such as illegal 'taxation' at checkpoints, police corruption and assaults by drunken soldiers through to grave human rights violations during major operations.<sup>413</sup>

<sup>404</sup> *ibid*, *Role of the Police and Security Apparatus*

<sup>405</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>406</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 52

<sup>407</sup> Human Rights Watch, ["Prison Is Not For Me"](#), 21 June 2012, *I. Criminal Justice in the New Nation, Weaknesses in the Police Service*

<sup>408</sup> *ibid*

<sup>409</sup> *ibid*

<sup>410</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), June 2012

<sup>411</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>412</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *State authority and control*

<sup>413</sup> *ibid*, *The Emerging Regime: One-party state, military junta or clientelist network?*

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The UN High Commissioner for Human Rights reports that “of grave concern is the almost total lack of capacity to investigate and prosecute serious crimes committed in the context of inter-communal violence”.<sup>414</sup> The same source notes with regards to the resources of the SPSS that:

The lack of a meaningful State presence, particularly outside major urban areas, has led to increased militarization of civilians. In vast areas of the country, the police, prosecutors and the judiciary are chronically underresourced and poorly trained. Some progress in the professionalization of the police, by means of training programmes and the establishment of a national training centre, has not obviated the challenges for the South Sudan National Police Service, which has an illiteracy level estimated as high as 90 per cent. This capacity gap has led in part to the usurpation of police powers by the SPLA.<sup>415</sup>

The Small Arms Survey reports that the SPSS, like the SPLA, faces numerous operational challenges; a desperate lack of basic resources, including lack of communications, transportation, and trained personnel.<sup>416</sup> It further notes that:

The South Sudan Police Service (SSPS) does not have enough personnel to defend against armed youths. It also has no capacity to enforce the rule of law and cannot—and to some extent simply will not—arrest perpetrators. As a result, youths can arm themselves and attack with impunity.<sup>417</sup>

Human Rights Watch also reports that the SPSS operates under “significant constraints”: in 2011, 95 percent of the Police Service’s budget was spent on salaries, leaving little funds for infrastructure and equipment.<sup>418</sup> It further describes that police officers lack important supplies such as paper and official forms, and have insufficient transportation and communication equipment which impacts on their ability to complete investigations or take detainees to court.<sup>419</sup> It further notes that “many have received little or no training, and therefore lack knowledge of law enforcement, human rights, or fundamental legal texts”.<sup>420</sup>

UNMISS, reporting on the obstacles to accountability for inter-communal violence in Jonglei state notes that:

Much of the police force is illiterate, without the necessary skills to undertake basic criminal investigations and maintain investigation records. Although the SSPS is deployed in each payam of every county in Jonglei, its personnel are neither trained nor resourced to respond to the specific challenges which they face on an ongoing basis. Outside of Bor County, seat of the state capital, police stations are also not equipped with basic communications equipment, such as radios and an official telephone, or with stationery, a typewriter or computer.<sup>421</sup>

The 2011 South Sudan Human Rights Commission report notes that less than 9 per cent of the police force are women, approximately 65 per cent are illiterate and “without proper training and logistical support the police are generally unable to do their job effectively as required”.<sup>422</sup>

With regards to misconduct, the Small Arms Survey reports that:

<sup>414</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 26

<sup>415</sup> *ibid*, paragraph 14

<sup>416</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), June 2012

<sup>417</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012, *Competition over resources and economic interests*

<sup>418</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, *I. Criminal Justice in the New Nation, Weaknesses in the Police Service*

<sup>419</sup> *ibid*

<sup>420</sup> *ibid*

<sup>421</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, VII: Justice and accountability

<sup>422</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.11.5. *The Police Force*

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SSPS personnel deployed in major towns—especially the traffic police—continue to be accused of intimidation and extortion. Their conduct, along with the behaviour of other security force personnel at joint military/security force checkpoints in Juba in 2010 and early 2011, was often deplorable, particularly at night. Accounts of drunkenness, unnecessary aggression, assault, and extortion were routine.

The independence period has seen some improvement in SSPS conduct. Reports of intimidation and assaults have declined, particularly since the Rescue Force has deployed. However, surges in insecurity in Juba and other major towns are still blamed on the police. Extortion remains a major problem, and is attributed to the relatively low police salaries, compared to SPLA counterparts.<sup>423</sup>

The North-South Institute similarly reports that “reports of SSPS personnel abusing civilians, foreign nationals, and international organization staff members are all too common and point to the need for a formal vetting process within the police service”.<sup>424</sup>

According to the North-South Institute, real and widespread changes are unlikely to be visible for some time in South Sudan, largely because of the number of police officers involved and time it will take to address chronic problems such as illiteracy, cattle raiding, and unprofessional behaviour like public drunkenness and civilian abuse.<sup>425</sup>

Also see [2.4.4 State violence against civilians and accountability of offenders within the military and police force](#), [2.4.5 Government response to violence in Jonglei State, specifically Pibor County](#) and [2.4.6 Civilian disarmament campaign Operation Restore Peace](#).

### 2.4.3 South Sudan Prison Service

According to the UN High Commissioner for Human Rights, “The South Sudan National Prison Service currently falls short of fulfilling its mission to be correctional, reformative and rehabilitative” and the main challenges that it faces remain the lack of resources and capacity among prison personnel.<sup>426</sup> The Small Arms Survey reports that the Prison Service of South Sudan suffers from poor infrastructure, overcrowding, and unskilled prison officers.<sup>427</sup> Human Rights Watch reports that as with the SPSS, the Prisons Service has incorporated a large number of demobilized SPLA soldiers and members of other armed groups, many of which have only undergone three months of training in prison administration.<sup>428</sup> It further notes that “Among prison staff, there is also a high level of illiteracy and insufficient knowledge of prison regulations, and as such prison files are often in disarray”.<sup>429</sup> Moreover, the Prisons Service used 93 percent of its 2011 budget to pay salaries for around 20,000 staff, more than three times the number of prisoners, leaving little funds for improvements to infrastructure or to provide adequate food and medicine for those in detention.<sup>430</sup>

<sup>423</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), June 2012

<sup>424</sup> The North-South Institute, [Policy Briefing: Police Reform in an Independent South Sudan](#), 22 July 2012

<sup>425</sup> *ibid*

<sup>426</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 56

<sup>427</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), 27 June 2012, *The Prisons Service*

<sup>428</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, *I. Criminal Justice in the New Nation, Prisons: The End Point*

<sup>429</sup> *ibid*

<sup>430</sup> *ibid*

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#### 2.4.4 State violence against civilians and accountability of offenders within the military and police force

According to the UN High Commissioner for Human Rights, “Largely as a result of an inadequately trained police force, arbitrary arrest and detention are widespread in South Sudan and commonly combined with other serious human rights violations, such as torture or other ill treatment of detainees and prolonged detention”.<sup>431</sup> The same source further reports with regards to impunity that:

Impunity remains widespread in South Sudan, particularly among members of the security forces. SPLA members often refuse to submit to civilian authority. Human rights abuses are often not investigated and perpetrators are rarely identified and brought to justice. State security agents enjoy what often seems to be complete impunity for human rights violations, including arbitrary arrest and detention, ill treatment of detainees, sexual and gender-based violence, and violations of the right to life.<sup>432</sup>

According to FIDH, “The legacy of civil war, the guerilla reflexes, the absence of legal provisions on security forces’ mandates, certain loopholes in the Code of Criminal Procedure Act (2008), and impunity, create conditions for unlawful behaviour by SPLA members, police officers and intelligence services, notably arbitrary arrests and detentions”.<sup>433</sup> Human Rights Watch similarly reports that “Lack of accountability for serious crimes is a longstanding problem in South Sudan, a country with limited law enforcement capacity and a vast territory”.<sup>434</sup> According to the U.S. State Department, “Complaints of police abuse were rarely investigated, and impunity was a serious problem”.<sup>435</sup>

According to the report of the Secretary-General on Conflict related sexual violence covering the period between December 2010 and November 2011, “Several communities located near SPLA camps or barracks reported sexual violence, particularly rapes, perpetrated by SPLA soldiers. These communities reported that they felt that SPLA operated in their areas with impunity, and that they frequently could neither protect themselves from such abuses nor seek redress”.<sup>436</sup> In a report on disarmament in Pibor County, Amnesty International reported that “Insufficient and inadequate accountability mechanisms have led to ongoing impunity for grave human rights violations perpetrated by the SPLA and SSPS Auxiliary forces during the civilian disarmament campaign”.<sup>437</sup>

The 2011 U.S. State Department report describes the South Sudan Police Services as “ineffective and corrupt”.<sup>438</sup> Indicative of the impunity for corruption within the police force, Human Rights Watch notes that:

Other high-profile cases in Juba underscore concern that the government is unwilling to hold people who commit serious crimes accountable, Human Rights Watch said. Gen. Marial Nuor Jok, the former Director of Public Security (PS) and the Criminal Investigations Department (CID) in the South Sudan Police Service, was arrested in July 2011 for allegedly forcibly disappearing a civilian, accepting bribes, allowing arbitrary detentions, and extorting money. More than a year later, he has yet to be brought to trial, and the prosecutor’s office claims that it is still investigating.<sup>439</sup>

<sup>431</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph, 11

<sup>432</sup> *ibid*, paragraph 25

<sup>433</sup> International Federation for Human Rights (FIDH) [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012; 3. *Illegal arrests and detentions*

<sup>434</sup> Human Rights Watch, [South Sudan: Step Up Urgent Human Rights Reforms](#), 5 July 2012

<sup>435</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *d. Arbitrary Arrest or Detention*

<sup>436</sup> UN Security Council, [Conflict-related sexual violence, Report of the Secretary-General](#), 13 January 2012, paragraph 46

<sup>437</sup> Amnesty International, [South Sudan: Lethal disarmament: Abuses linked to civilian disarmament in Pibor County, Jonglei State](#), 3 October 2012, *Conclusion*

<sup>438</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *d. Arbitrary Arrest or Detention*

<sup>439</sup> Human Rights Watch, [South Sudan: Step Up Urgent Human Rights Reforms](#), 5 July 2012

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A research paper from Stiftung Wissenschaft und Politik reports that:

Another obstacle to closer control of the security apparatus is the state of the courts. A multitude of formal and informal institutions exercise jurisdiction in the absence of clear guidelines about their relationships to one another and what law is to be applied. Moreover, many of them appear to be corrupt. Even more problematic with respect to the security sector is the reluctance of police and courts to pursue transgressions by SPLA soldiers.<sup>440</sup>

The same source notes that reasons for indiscipline include the poor pay of the security forces, the fact that most of the police are still former soldiers and militia members and that the level of training is limited by the lack of elementary schooling received.<sup>441</sup>

UNOCHA reports that “Centralized control of the armed forces and police is low in South Sudan” and that it recorded 26 incidents in which South Sudan’s military or other state actors “commandeered relief assets, occupied humanitarian premises, physically assaulted staff, or restricted the ability of humanitarians to reach populations in need quickly and safely” in the first quarter of 2012.<sup>442</sup> Amnesty International reporting on the 2011 armed insurgency and counter-insurgency operations conducted by the SPLA in the Greater Upper Nile region which covers Unity, Jonglei and Upper Nile State, notes that it:

Resulted in indiscriminate attacks on civilian settlements and the forcible displacement of thousands of people. Armed opposition groups and the SPLA made, in some instances, little distinction between civilian objects and military objectives as required under international humanitarian law. The conflicts have further exacerbated a serious food crisis in the region; and the impact has been particularly severe in Mayom and Abiemnhom counties of Unity State, where an estimated 20-25% of the population failed to cultivate during the 2011 rainy season due to insecurity. Humanitarian access has also been seriously hampered by the fresh laying of landmines on many of Unity and Upper Nile states’ roads by armed opposition forces.<sup>443</sup>

See [2.2 Violence by armed opposition groups](#) and [3.4.2 Vulnerability of women to sexual and gender-based violence \(SGBV\)](#) for further information on violence perpetrated by state security forces in the context of opposition group activity. Also see [4.1 Administration of justice](#)

#### **2.4.5. Government response to violence in Jonglei State violence, specifically Pibor County**

UNMISS explains that whilst there have been state and church led initiatives to mediate between the communities to prevent violence:

these have so far failed to bring about long-term results and have primarily focussed on reconciliation without addressing root causes of the violence or promoting criminal accountability. In some cases, peace efforts have led to temporary reductions in violence but the lack of state responses, and the failure to implement recommendations of past peace initiatives – including, for example, compensation under traditional justice mechanisms, the return of abducted women and children, recovery of assets and the establishment of early-warning and joint monitoring systems to prevent future violence – has usually resulted in communities resorting to traditional methods of using violence.<sup>444</sup>

The Small Arms Survey, reporting on the 2011/2 inter-communal violence in South Sudan notes that although the government of South Sudan and the SPLA had advanced knowledge of the December 2011

<sup>440</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *Security sector reform*

<sup>441</sup> *ibid*, *Capacity-building and security provision*

<sup>442</sup> UNOCHA, [South Sudan Humanitarian Update for January - April 2012](#), 15 May 2012

<sup>443</sup> Amnesty International, [South Sudan: Overshadowed Conflict: Arms supplies fuel violations in Mayom County, Unity State](#), 28 June 2012, *Introduction*

<sup>444</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *IV Contextual background*

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Lou Nuer attack and despite repeated warnings from UNMISS, “the government did little to protect communities in Pibor county”.<sup>445</sup> It notes that whilst some of the SPLA force stayed in their barracks, video footage shows other SPLA “watching as Lou Nuer burned and looted homes just beyond the perimeter of their barracks”.<sup>446</sup> The same source reports that:

As a result, tensions and distrust began to run high between the local Murle community and the Pibor-based SPLA, which the Pibor county commissioner says is three-quarters Lou Nuer and Dinka.<sup>447</sup>

The Minority Rights Group reports that the SPLA “has even stated that it fears to intervene in these conflicts because it is likely to be accused of favouring one particular ethnic group, again reflecting the perception that institutions are not representative of the diversity of South Sudan”.<sup>448</sup> For further information, see [1.5.4 Dominance of certain ethnic groups within the government and security forces](#).

According to UNMISS, SPLA actions to protect against the violence came too late and insufficient troops were deployed at the critical time:

Efforts were made to prevent the violence, but delay in mobilisation, combined with the challenges of accessibility, prevented an adequate protection response. UNMISS itself took a number of early action steps in support of the GRSS through integrated patrols to high-risk areas, including air reconnaissance, in order to deter and later confirm the mobilisation of armed youth. In a series of high-level meetings UNMISS shared its assessments with the GRSS and urged the government to preventively deploy adequate security forces to areas where attacks appeared imminent. UNMISS itself deployed its troops and equipment to those areas. While the actions of both the Mission and the SPLA contributed to saving many lives, the Mission itself, as well as the Government, faced serious constraints in fulfilling their mandate obligations in this regard.<sup>449</sup>

The August 2012 report of the UN High Commissioner for Human Rights reports that “Of grave concern is the almost total lack of capacity to investigate and prosecute serious crimes committed in the context of inter-communal violence”.<sup>450</sup> The Minority Rights Group reported in early December 2011, so before the 2011/2 surge in violence, that “the logistics of operating in Jonglei’s vast, undeveloped rural areas make it virtually impossible for the new government to provide security to the population”.<sup>451</sup>

UNMISS identifies the following factors which constrained the government’s efforts to contain the violence:

the weak capacity of GRSS institutions, particularly local government, security and justice, a lack of human and logistical resources and the tenuous control that state institutions have over territories such as Jonglei, which have been marginalised and neglected over many years. This situation was further exacerbated by a disenfranchised youth, determined to act, and over which government and community leaders had little control. Given the lack of accountability and the prevalent culture of impunity for killings, abductions and destruction of property during previous attacks over the past few years, there was also scant threat of any punishment to deter the attackers.<sup>452</sup>

Following the 2011/2 inter-communal violence, the June report of the UN Secretary-General notes that “The measures taken by the Government of the Republic of South Sudan to address inter-communal conflict and foster security in Jonglei included a civilian disarmament process, a reconciliation process led

<sup>445</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>446</sup> *ibid*

<sup>447</sup> *ibid*

<sup>448</sup> Minority Rights Group, [State of the World's Minorities and Indigenous Peoples 2012](#), 28 June 2012, *South Sudan*

<sup>449</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *Executive summary*

<sup>450</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 26

<sup>451</sup> Minority Rights Group, [Land, livelihoods and identities: Inter-community conflicts in East Africa](#), 5 December 2011

<sup>452</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *VI State response to the attacks in Jonglei state*

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by a Peace Committee appointed by the President, and establishment of an Investigation Committee for the December 2011-January 2012 attacks".<sup>453</sup> However, as of December 2012, the Investigation Committee was yet to be established and no members have been sworn in.<sup>454</sup>

Following peace conferences held by the Peace Committee, a May 2012 agreement was signed.<sup>455</sup> However FIDH expressed its disappointment over the fact that although the May 2012 peace agreement recommended the return of abducted children and women, and the implementation of development projects, such as road construction and the opening of police stations between the communities, it did not address the impunity of the most serious human rights violations.<sup>456</sup> Thus it considers that "Such a deal is therefore unstable as it does not impose sanctions, violates the right of victims to justice, fuels impunity for criminals, and may lead to future retaliative acts".<sup>457</sup>

UNMISS reports with regards to the state's ability to hold perpetrators accountable that:

longstanding impunity, and the failure to treat as crimes killings, abductions and other acts of violence associated with cattle rustling has undoubtedly contributed to the cycles of retaliatory attacks. The acts committed in the context of the Lou Nuer-Murle attacks constitute serious crimes under national legislation and should be prosecuted. UNMISS' report documents some of the main obstacles to accountability, including not only a severe lack of capacity and resources, but also of unwillingness to enforce domestic laws which could be used to hold to account those responsible for the killings, abductions and other crimes. This is partly due to resource constraints and infrastructural challenges, but also to political and cultural reasons. Government and state authorities often define the inter-communal violence as the continuation of a longstanding traditional practice and somehow "understandable."<sup>458</sup>

See [2.4 Security forces and effectiveness in providing protection](#) and [4.1 Administration of Justice](#) for further information.

#### **2.4.6 Civilian disarmament campaign, Operation Restore Peace**

As part of the measures taken by South Sudan to address inter-communal conflict in Jonglei state, the government initiated a civilian disarmament process known as "Operation Restore Peace".<sup>459</sup> Amnesty International explains that the campaign was launched in March 2012 by Presidential decree and is set to continue for an unspecified length of time.<sup>460</sup> The UN Secretary-General reports that the campaign deployed 2,000 South Sudan Police Service and approximately 10,000 SPLA to Jonglei.<sup>461</sup> The SPLA announced that the campaign would be voluntary until 30 April 2012, after which it would be coercive.<sup>462</sup> Already on 6 April 2012 the UN expressed concern over reports on human rights violations in a number of disarmament locations.<sup>463</sup> The Small Arms Survey, reporting in October 2012 notes that:

<sup>453</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 29

<sup>454</sup> European Union, [European Parliament, Report on EU Strategy for the Horn of Africa Committee on Foreign Affairs](#), 12 December 2012, paragraph 45

<sup>455</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, B. *Inter-ethnic clashes in Jonglei*

<sup>456</sup> *ibid*

<sup>457</sup> *ibid*

<sup>458</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, Executive summary

<sup>459</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 29

<sup>460</sup> Amnesty International, [South Sudan: Lethal disarmament: Abuses linked to civilian disarmament in Pibor County, Jonglei State](#), 3 October 2012, Introduction

<sup>461</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 34

<sup>462</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>463</sup> UN News Service, [South Sudan: As civilian disarmament takes place, UN urges respect for human rights](#), 6 April 2012

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The current SPLA-led civilian disarmament campaign, which has yielded more than 11,000 weapons, has helped prevent further largescale attacks but does not address the root causes of the conflict. Soldiers conducting the campaign have committed rapes, torture, and killings—mostly against Murle communities—deepening Murle distrust of the SPLA.<sup>464</sup>

The Enough Project similarly reports that civilian disarmament campaigns have a history of fueling, not reducing violence and that during Operation Restore Peace:

The disarmament in the Lou Nuer and the Murle areas has transpired very differently, contributing to stability in the former and instability in the latter. Few abuses by security forces were reported in Nyirol, Uror, and Akobo counties—the home of the Lou Nuer—while at least 100 cases of beatings, torture, looting, and rape were committed in Murle communities in Pibor County.<sup>465</sup>

The Small Arms Survey further reports that approximately 4,000 of the 11,000 collected weapons were taken from state security force depots in Bor, due to suspicions that the police were holding the civilian weapons there.<sup>466</sup> The same source also notes that as soon as the disarmament campaign was announced, Lou Nuer and Murle youths fled into the bush and into Ethiopia to hide their weapon and most of the 7,000 remaining weapons recovered were owned by civilians holding them for self-defence, not by the perpetrators of the inter-communal violence.<sup>467</sup>

Reporting on the human rights abuses committed by the South Sudan security forces during the disarmament campaign, Amnesty International notes that:

Amnesty International found that men, women and children were subjected to extrajudicial executions and other unlawful killing, torture and other cruel, inhuman or degrading treatment or punishment and unnecessary or excessive use of force by the SPLA and SSPS Auxiliary Force, including shootings, beatings, simulated drowning and rape. The organization also received reports of looting by soldiers. Some of the incidents reported to Amnesty International occurred during the first phase of disarmament, which was supposed to be voluntary.<sup>468</sup>

Indeed, government officials admitted to Amnesty International that soldiers had committed human rights violations during Operation Restore Peace.<sup>469</sup> Amnesty International further notes that previously disarmed soldiers who carried disarmament cards were also subjected to beatings.<sup>470</sup> It also expressed serious concern that the accounts of sexual violence “reflect a wider pattern of the use of sexual violence against women by SPLA soldiers”.<sup>471</sup> See [3.4.2 Vulnerability of women to sexual and gender-based violence \(SGBV\)](#) for further information. Soldiers were also reported to have stolen nutritional supplements intended for malnourished children.<sup>472</sup> The Small Arms Survey also reports that SPLA officers were reported to have stolen cattle.<sup>473</sup>

Human Rights Watch, based on its research in Jonglei from July 19 to 26, 2012 found that “soldiers continued to commit serious crimes against civilians while carrying out disarmament operations” noting:

<sup>464</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>465</sup> Enough Project, [‘Sometimes We See Ourselves as Apart’: South Sudan’s Response to Violence in Jonglei](#), 18 December 2012

<sup>466</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>467</sup> *ibid*

<sup>468</sup> Amnesty International, [South Sudan: Lethal disarmament: Abuses linked to civilian disarmament in Pibor County, Jonglei State](#), 3 October 2012, *Human rights violations related to civilian disarmament in Pibor county*

<sup>469</sup> *ibid*, *Accountability for human rights violations*

<sup>470</sup> *ibid*, *Human rights violations related to civilian disarmament in Pibor county*

<sup>471</sup> *ibid*

<sup>472</sup> *ibid*

<sup>473</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

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Victims and witnesses from the villages of Manyirang, Tangajon, Be, and Likuangole in Pibor county reported to Human Rights Watch specific incidents of soldiers shooting at civilians, and ill-treating them by beatings, tying them up with rope, and submerging their heads in water to extract information about the location of weapons. [...]

Human Rights Watch also received credible reports of rape and beatings and additional acts of torture in Be and Likuangole.<sup>474</sup>

Human Rights Watch also advised that the documented cases are likely to represent only a small fraction of the total number of incidents given that many victims and witnesses do not report crimes to the authorities.<sup>475</sup> This is also reported by the UN Secretary-General who notes that this is particularly the case when the military are still present in communities.<sup>476</sup> The same source reports that UNMISS closely monitored the disarmament process, nonetheless it “received reports of 63 human rights abuse cases in about one third of locations visited” including 6 killings, 13 cases of rape or attempted rape, 33 incidents of torture and other forms of ill-treatment involving some 200 individuals, including allegations of simulated drownings and beatings while tied to a tree.<sup>477</sup>

MSF similarly reports in relation to disarmament violence that “Aimed at bringing security and stability to Jonglei, the process led to widespread insecurity and localised displacement and was accompanied by abuses against the civilian population, including violence and sexual violence treated in MSF health facilities”.<sup>478</sup> MSF notes that between mid-March and September 2012, MSF treated eight wounded in Nyirol and Uror counties and 101 wounded in Pibor county for violent trauma mostly related to beatings carried out under Operation Restore Peace, three of whom died from their injuries and 33 whom required inpatient care.<sup>479</sup> The same source notes that between June and mid-September 2012, MSF treated 26 victims of sexual violence as a result of the disarmament campaign, the first reported cases in Pibor since MSF began working there in 2005.<sup>480</sup>

The Small Arms Survey reporting on the pattern of violence, followed by an ad hoc SPLA disarmament campaign in South Sudan that:

In the worst cases, they contribute to increased violence, both between tribes and between the SPLA and communities.<sup>481</sup>

The Small Arms Survey further notes that the majority of the forces carrying out the disarmament are Dinka and Nuer, and there have been numerous reports of soldiers taking revenge on Murle civilians for the August 2011 attacks in Pieri.<sup>482</sup> Furthermore, it is reported that Yau Yau has gained support amongst the Murle because of how abusive the disarmament process is.<sup>483</sup> See [2.2.2 Militias allied with David Yau Yau \(Yau Yau Rebellion\)](#).

Whilst Amnesty International reports that it was aware of 34 soldiers held in military detention for crimes committed during the campaign, a further 500 SSPS Auxiliary forces were reportedly recalled for re-training due to their conduct, but that it was not aware of any investigation into allegations of human rights violations committed.<sup>484</sup> The same source also notes that while victims of abuse regularly report cases to the relevant SPLA commander in Pibor “the government’s response is often weak”:

<sup>474</sup> Human Rights Watch, [South Sudan: End Abuses by Disarmament Forces in Jonglei](#), 23 August 2012

<sup>475</sup> *ibid*

<sup>476</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, *paragraph 38*

<sup>477</sup> *ibid*, *paragraphs 37 and 38*

<sup>478</sup> MSF, [South Sudan's Hidden Crisis](#), 26 November 2012, *Executive summary*

<sup>479</sup> *ibid*, *Violence during disarmament operations*

<sup>480</sup> *ibid*

<sup>481</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012

<sup>482</sup> *ibid*

<sup>483</sup> IRIN, [Disarmament and rebellion in Jonglei](#), 11 September 2012

<sup>484</sup> Amnesty International, [South Sudan: Lethal disarmament: Abuses linked to civilian disarmament in Pibor County, Jonglei State](#), 3 October 2012, *Accountability for human rights violations*

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The police told Amnesty International that they have written to the military requesting access to those detained in Pibor in order to carry out investigations; however access has been limited. The police further stated that due to logistical and security constraints they were unable to carry out investigations in allegations of sexual violence in Likuangole. Amnesty International is concerned that due to inadequate reporting, investigative and judicial mechanisms, even when violations are reported, appropriate action is rarely taken. Few civilians who have reported abuses either directly to the SPLA or through the local civil administration have had access to justice and redress.<sup>485</sup>

See and [2.4.4 State violence against civilians and accountability of offenders within the military and police force](#) and [4.1 Administration of Justice](#) for further information.

## 2.5 Family feuds or blood feuds and traditional conflict-resolution mechanisms

Reporting on customary law in South Sudan, Human Rights Watch notes that:

Customary law is described as embracing reconciliation and community harmony as principle tenets and is therefore seen by foreign observers and South Sudanese alike as having the ability to promote and maintain community cohesion. Rulings intend to restore that which has been lost or damaged, through compensation awards, often measured in the form of cows or other livestock. Historically, prison sentences were not among the sanctions imposed by customary courts. Murder, for example, is sanctioned under the customary law of many groups through a payment referred to as blood compensation to the family of the deceased.<sup>486</sup>

Human Rights Watch reports that under customary law acts of adultery, theft, and injury are also all dealt with through awards of compensation, and that persons may be detained in South Sudan for non-payment of compensation awards, in some cases indefinitely.<sup>487</sup> The UNDP cites Alice Adye from Eastern Equatoria state who participated in a UNDP-sponsored paralegal training as stating that “When a family is suspected or accused of murder in my community, the girl child is traded to the victim’s family as compensation. In other cases, accused women are stoned and beaten to death”.<sup>488</sup> The 2011 U.S. State Department report similarly noted that:

The practice of girl compensation--compensating the family of a crime victim with a young girl from the perpetrator’s family--occurred in three counties of Eastern Equatoria State. Victims were generally between the ages of 11 and 15, were often physically and sexually abused, did not attend school, and served as servants for the victim’s family.<sup>489</sup>

However, Human Rights Watch goes on to report that customary law is evolving and that traditional chiefs now draw on elements of statutory justice, commonly apply provisions of the Penal Code and impose punitive penalties such as prison sentences.<sup>490</sup> See section [4.1.1 Traditional conflict resolution mechanisms and statutory law](#) for further information.

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<sup>485</sup> *ibid*

<sup>486</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, *I. Criminal Justice in the New Nation, The Customary System*

<sup>487</sup> *ibid*

<sup>488</sup> UNDP, [Paralegals bring justice to women in South Sudan](#), 2 October 2012

<sup>489</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Section 6, Children*

<sup>490</sup> *ibid*

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### 3. Human Rights Issues

#### 3.1 Ethnicity

##### 3.1.1 Domestic legal framework relating to ethnicities/ minorities/ use of language

The 2011 Transitional Constitution of the Republic of South Sudan sets out with regards to ethnic equality that:

14. All persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status. [...]

Rights of Ethnic and Cultural Communities

33. Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures. Members of such communities shall have the right to practice their beliefs, use their languages, observe their religions and raise their children within the context of their respective cultures and customs in accordance with this Constitution and the law.<sup>491</sup>

With regards to language it provides that:

Language

6. (1) All indigenous languages of South Sudan are national languages and shall be respected, developed and promoted.

(2) English shall be the official working language in the Republic of South Sudan, as well as the language of instruction at all levels of education.

(3) The State shall promote the development of a sign language for the benefit of people with special needs.<sup>492</sup>

##### 3.1.2 Cross border tribes, migration patterns and treatment of minority ethnic groups

###### 3.1.2.1 Mbororo

Refugees International reports that the “while the Mbororo (also known as Fulbé, Peul, Fula, or Fulani) have historically been a semi-nomadic people, many have a habitual residence in RoSS that goes back decades. Some have left the pastoral livelihood and are settled business owners. Yet the government and many South Sudanese believe the Mbororo are “outsiders” from Chad”.<sup>493</sup> The Open Society Institute notes that the Mbororo are traditionally pastoralists, whose routes cross both Sudan and South Sudan, as well as Chad, Central African Republic, Democratic Republic of Congo and Cameroon.<sup>494</sup> Refugees International further reports that some government officials have claimed that the Mbororo are allied with Sudan.<sup>495</sup> For these reasons it considers that the Mbororo are “at an exceptionally high risk of statelessness despite their decades-long presence in the nation”.<sup>496</sup> The Open Society similarly identifies ‘members of historical migrant communities’ including the Mbororo amongst those populations potentially adversely affected by the changes in nationality law.<sup>497</sup> For additional information on South Sudan nationality issues see [3.2.2 Practical impediments to the acquisition and confirmation of nationality of South Sudan/Sudan](#).

<sup>491</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011

<sup>492</sup> *ibid*, July 2011

<sup>493</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>494</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *Members of historical migrant communities*

<sup>495</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>496</sup> *ibid*

<sup>497</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *Members of historical migrant communities*

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Reporting on the treatment of the Mbororo ethnic group, the Internal Displacement Monitoring Centre reports that:

In South Sudan, the relationship between the Zande and Mbororo communities has always been difficult. The Zande, who are farmers, have always accused the Mbororo, who are nomadic cattle herders, of destroying Zande crops when grazing their animals, and of killing wild animals that would normally have been hunted for food by the Zande. Today, the Zande have also accused the Mbororo of collaborating with the LRA who use Mbororo cattle routes to find their way through the bush. In 2010, a request by the Mbororo to settle in Western Equatoria was denied by local authorities. The SPLA and the “Arrow Boys” escorted the Mbororo out of the region and into CAR and DRC. Those who refused to leave were chased out by force and had their cattle killed (ICG, 17 November 2011).<sup>498</sup>

The UN Secretary-General similarly reported in May 2012 that:

the Mbororo pastoralist ethnic group (also known as Fulani, or Peul), which is present in the LRA area of operations, has become vulnerable not only to LRA attacks — as manifested by the cases of abduction described in the present report — but also to stigmatization by other ethnic groups in the region, who presume their association with LRA as a result of their nomadic way of life.<sup>499</sup>

The U.S. State Department report notes that during July 2011:

State authorities in Western Bahr el Ghazal ordered 3,000 to 5,000 members of the nomadic Mbororo population to leave the state; the Mbororo are a nomadic population who move between the DRC, CAR, and South Sudan. State authorities claimed that other ethnic communities living in Western Bahr el Ghazal feared an “Arabization” of Western Bahr el Ghazal by the Mbororo population and complained of land disputes and crop damage from Mbororo cattle. Most Mbororo members departed the state for South Darfur and the CAR; however, between 150 and 160 Mbororo members remained in Western Bahr el Ghazal and were de facto stateless. Observers agreed that the Mbororo population posed no security threat and that action taken against the Mbororo was motivated by ethnic and political considerations.<sup>500</sup>

In January 2012 UNMISS reported that a group of 17 Mbororo nomads were repatriated from Western Bahr El-Ghazal state, South Sudan to the Central African Republic following “a history of uneasy relations and disputes over grazing land between the Mbororo and host community”.<sup>501</sup> AbuBakar Adam Mohamed, head chief of the Mbororo Community in Western Bahr El-Ghazal, reported to UNMISS that his people were leaving due to the government policy, adding that “the situation of Mbororo in Wau has deteriorated, leaving them hopeless”.<sup>502</sup>

### 3.1.2.2 Falata

Refugees International reports that ‘Falata’ is the term used in South Sudan for all Muslims of West African Origin.<sup>503</sup> It describes that the Falata “already faced barriers to fair nationality proceedings in the former united Sudan, and there is little indication that the process will be easier in the RoSS”.<sup>504</sup> The Open Society Institute reports that whilst many Falata have become integrated into Sudanese society and were granted land by Sudanese governments seeking their support in conflict with the South, they had faced difficulties in acquiring Sudanese nationality and may face further issues in Sudan and especially South Sudan in the

<sup>498</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012, *The Lord's Resistance Army (LRA)*

<sup>499</sup> UN Security Council, [Report of the Secretary-General on the situation of children and armed conflict affected by the Lord's Resistance Army](#), 25 May 2012, paragraph 15

<sup>500</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 2, *Stateless Persons*

<sup>501</sup> UNMISS, [Mbororo begin repatriating to Central African Republic](#), 25 January 2012

<sup>502</sup> *ibid*

<sup>503</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>504</sup> *ibid*

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future.<sup>505</sup> Refugees International considers that there are “significant concerns that [...] Falata individuals will not be recognized as nationals of South Sudan and will be rendered stateless”.<sup>506</sup> The Open Society similarly identifies ‘members of historical migrant communities’ such as the Falata amongst those populations potentially adversely affected by the changes in nationality law.<sup>507</sup> For additional information on South Sudan nationality issues see [3.2.2 Practical impediments to the acquisition and confirmation of nationality of South Sudan/Sudan](#).

### 3.1.2.3 Misseriya

Following the rainy season, there is an annual migration of Arab Misseriya nomads with their livestock, which can reach up to 100,000, through the majority Ngok Dinka Abyei Area each October and May.<sup>508</sup> IRIN reports that the Misseriya, who have been passing through Abyei for 250 years are generally aligned with Khartoum, and according Achuil Akol Miyan, acting chief of the Abyei Administration in Agok, their role has been “politicized” and they have been sent to secure oil production in Abyei by occupying the area.<sup>509</sup> Abyei has repeatedly been a flashpoint for violence between Sudan and South Sudan, and there have been repeated attacks between the Misseriya and Dinka Ngok. For further information on violence between these communities, see [2.1.1.1 Disputed state of Abyei](#).

The International Crisis Groups reports that whilst much attention had been paid to migration via Abyei, there has been less focus on the “problematic dynamics in final destinations across the border in South Sudan, particularly in Unity. More specifically, groups from the Awlad Umran and Fadliya sub-clans traverse the eastern corridor, often through Dumboloya in eastern Abyei and further east, to reach the waterways and grazing areas of Abiemnom, Pariang, Mayom and Rubkhona counties”.<sup>510</sup>

### 3.1.2.4 Kresh, Kara, Yulu, Frogai, and Bigna

Refugees International reports that historically migrant populations are at risk of statelessness under the new nationality laws of South Sudan and Sudan; the Falata and Mbororo (whom it considers are at “exceptional risk”) and the Kresh, Kara, Yulu, Frogai, and Bigna who reside on both sides of the Sudan/South Sudan border, some in disputed areas.<sup>511</sup> UNOCHA reports that some of these communities live in parts of Buram and Radom localities in South Darfur State that are disputed between Sudan and South Sudan.<sup>512</sup> In January 2012 UNOCHA also reported that:

One group’s chief has written to the Government of Sudan requesting that his tribe be allowed to remain in Sudan. In addition, the presence of mixed marriage families and longstanding ties between some South Sudanese and Sudanese tribes and fears about integration prospects in South Sudan - especially for children of mixed marriages – are a source of concern.<sup>513</sup>

<sup>505</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *Members of historical migrant communities*

<sup>506</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>507</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *Members of historical migrant communities*

<sup>508</sup> UN Secretary-General, [Report of the Secretary-General on the situation in Abyei](#), 23 November 2012, *paragraph 3*

UNOCHA, [Humanitarian Bulletin South Sudan](#), 12-18 November 2012

<sup>509</sup> Integrated Regional Information Networks (IRIN), [Sudan-South Sudan: Fear keeps Abyei residents from returning home](#), 8 January 2013

<sup>510</sup> International Crisis Group, [Compounding Instability in Unity State](#), 17 October 2011, *VII Misseriya migration and cross-border relations*

<sup>511</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>512</sup> UNOCHA, [Sudan Weekly Humanitarian Bulletin](#), 16-22 January 2012

<sup>513</sup> *ibid*

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For additional information on South Sudan nationality issues see [3.2.2 Practical impediments to the acquisition and confirmation of nationality of South Sudan/Sudan](#).

### 3.1.3 Government response to ethnic violence and ethnic tensions

FIDH reports that “Ethnic clashes for territorial control, local political leadership and economic subsistence are a common phenomenon in all of South Sudan”.<sup>514</sup> According to a February 2012 research paper from Stiftung Wissenschaft und Politik “civil war and the formation of militias have politicized ethnic and tribal identities in a process further exacerbated in recent years by ongoing conflict and ease of access to small arms. Rivalries and vendettas between tribes and ethnic groups have thus become a source of conflict in their own right”.<sup>515</sup> See [2.2 Violence by armed opposition groups](#) and [2.3 Inter-communal violence](#) for further information.

The government response to ethnic violence has also been reported to further fuel ethnic tensions; see sections [2.4.5 Government response to Jonglei State violence, specifically Pibor County](#) and [2.4.6 Civilian disarmament campaign ‘Operation Restore Peace’](#).

### 3.1.4 Political representation of ethnic groups

See section [1.5.4 Dominance of certain ethnic groups within the government and security forces](#)

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<sup>514</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, B. *Inter-ethnic clashes in Jonglei*

<sup>515</sup> Stiftung Wissenschaft und Politik, [International State Building and its limits](#), February 2012, *State authority and control*

## 3.2 Citizenship / Nationality

### 3.2.1 Domestic legal framework

The Open Society Institute reports that whilst it was intended that the question of how people would be awarded the nationality of the Republic of Sudan or the Republic of South Sudan was to be resolved in advance of the January 2011 referendum on independence or, at the latest, before the 9 July 2011 official independence of South Sudan, the parties failed to reach an agreement.<sup>516</sup> Instead, both States separately introduced new nationality laws.<sup>517</sup> South Sudan passed a 2011 Nationality Act which introduced an ethnic definition into Sudanese nationality law for the first time.<sup>518</sup> Article 8 of the Nationality Act sets out the eligibility requirements for nationality by birth:

#### Article 8

- (1) A person born before or after this Act has entered into force shall be considered a South Sudanese National by birth if such person meets any of the following requirements—
- (a) any Parents, grandparents or great-grandparents of such a person, on the male or female line, were born in South Sudan; or
  - (b) such person belongs to one of the indigenous ethnic communities of South Sudan.
- (2) A person shall be considered a South Sudanese National by birth, if at the time of the coming into force of this Act—
- (a) he or she has been domiciled in South Sudan since 1.1.1956; or
  - (b) if any of his or her parents or grandparents have been domiciled in South Sudan since 1.1.1956.
- (3) A person born after the commencement of this Act shall be a South Sudanese National by birth if his or her father or mother was a South Sudanese National by birth or naturalization at the time of the birth of such a person.
- (4) A person who is or was first found in South Sudan as a deserted infant of unknown Parents shall, until the contrary is proved, be deemed to be a South Sudanese National by birth.<sup>519</sup>

The law also provides for acquisition of nationality by naturalization based on 10 years' residence (longer than the five years applied in the north since 1994) and other conditions.<sup>520</sup> Despite introducing the ethnic definition, no eligible communities are identified, nor are any criteria provided of how to be deemed a member of one of these groups.<sup>521</sup> The Open Society Institute reports that it is not clear whether 'indigenous ethnic communities' includes cross-border groups such as the Kresh, Kara, Yulu, Frogai and Bigna, which are all ethnic groups that exist on both sides of the border between South Darfur and Western Bahr el Ghazal state.<sup>522</sup> It is also not clear whether it includes pastoralists who spend only part of the year in the South, or descendants of immigrants from other parts of Africa such as the pastoralist Mbororo, or those not resident in South Sudan, including the Ngok Dinka of the Abyei Area (which the Government of Sudan claims is Sudanese, and the Government of South Sudan claims is South Sudanese), or those of mixed ethnic descent.<sup>523</sup>

The South Sudan Transitional Constitution provides for dual nationality.<sup>524</sup>

<sup>516</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *New Nationality Laws in 2011*

<sup>517</sup> *ibid*

<sup>518</sup> *ibid*

<sup>519</sup> [The Nationality Act, 2011 \[South Sudan\]](#), 7 July 2011

<sup>520</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *New Nationality Laws in 2011*

<sup>521</sup> *ibid*

<sup>522</sup> *ibid*

<sup>523</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *The impact of the new nationality laws*

<sup>524</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011

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In December 2011, South Sudan adopted regulations on the implementation of the South Sudan Nationality Act. The Open Society Institute reports that importantly, the regulations provide procedures to permit both administrative and judicial appeal of decisions made under the act.<sup>525</sup>

The 2011 Nationality Regulations set out that all applications for nationality certificates and naturalization certificates must be submitted to the Issuing Authority, at the Directorate of Nationality, Passports and Immigration in Juba, or local branches in the ten States of South Sudan, or to designated Embassies.<sup>526</sup> According to the 'General Procedures for all Nationality and Naturalization Certificates: Inquiry and Standard of Proof':

(22) The Issuing Authority inquires into the facts relating to an application.

(23) The responsibility to adduce sufficient evidence to support the application remains primarily with the applicant.

(24) The applicant may establish the facts supporting his/her application by documentary evidence.

(25) The applicant must provide a witness(es) who is/are believed to be elders and next of kin.

(26) Where documentary evidence is not available to support an application, the Issuing Authority takes into consideration sworn statements by any witnesses adduced by the applicant. Such witnesses may be, primarily but not only,

a. Community leaders,

b. Traditional authorities,

c. Church and/or religious leaders,

d. County, Payam, and/or Boma officials,

e. Chiefs and/or sub-chiefs from the applicant's local indigenous group;

f. Relations of the applicant, or

g. Any other persons of good standing who has own firsthand knowledge of the identity of the applicant.

(27) The Issuing Authority decides on the application on the basis of the preponderance of evidence, considering whether the facts alleged by the applicant are more likely to be true than not.<sup>527</sup>

For applications for nationality certificates, the applicant must provide their signature, any available identity documents, passports or birth certificates of the applicant, together with 2 photographs.<sup>528</sup>

For applications for nationality by descent from persons born in South Sudan under Article 8 (1a) of the Act, the applicant must also provide the name, date of birth of one of any parents, grandparents or great-grandparents on whom the application relies.<sup>529</sup>

For applications for Nationality by Descent from South Sudanese Nationals under Article 8 (3), the applicant requires the date and manner of acquisition of nationality of the respective parent who was a South Sudanese National and a copy of their birth certificate, certificate of nationality, South Sudanese identity document or passport, or naturalization certificate.<sup>530</sup>

For applications for Nationality by Ethnic Affiliation under Article 8 (1b), the name of the indigenous community is required, together with the name of the Payam, Boma, chief and sub-chief of the local unit that the applicant belongs to and in case of trans-boundary communities, confirmation that the applicant belongs to the South Sudanese part of the indigenous community.<sup>531</sup>

<sup>525</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *The impact of the new nationality laws*

<sup>526</sup> [Nationality Regulations 2011 \[South Sudan\]](#), 29 December 2011, *General Requirements for All Applications (Nationality Certificates and Naturalization Certificates); Institution Framework*

<sup>527</sup> *ibid*, *General Procedures for all Nationality and Naturalization Certificates: Inquiry and Standard of Proof*

<sup>528</sup> *ibid*, (37) *Material Requirements for Applications for Nationality Certificates*

<sup>529</sup> *ibid*, (41) *Additional Requirements for Nationality by Descent from Persons Born in South Sudan*

<sup>530</sup> *ibid*, (42) *Additional Requirements for Nationality by Descent from South Sudanese Nationals*

<sup>531</sup> *ibid*, (43) *Additional Requirements for Nationality by Ethnic Affiliation*

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In cases where applications are for Nationality by Residence under Article 8 (2a or b) the applicant must provide their proven address or any residence in South Sudan since 1.1.1956, or the address of their parents or grandparents on whom the application relies, the starting date of residence and confirmation that the residence has not been interrupted since its inception.<sup>532</sup>

If the application is for Nationality of Foundlings under Article 8(4), the legal guardian of the applying deserted infant must additionally provide the place and date the infant was found and confirmation that his/her parents are unknown.<sup>533</sup>

In July 2011, the Republic of Sudan adopted amendments to the existing Sudan Nationality Act of 1994 which provides for loss of Sudanese nationality by those who take on the nationality of South Sudan:

10(2) Sudanese nationality shall automatically be revoked if the person has acquired, de jure or de facto, the nationality of South Sudan.

10(3) Without prejudice to Section 15,17 Sudanese nationality shall be revoked where the Sudanese nationality of his responsible father<sup>18</sup> is revoked in accordance with section 10(2) of this Act.<sup>534</sup>

In Sudan dual nationality is therefore not allowed with South Sudan, although dual nationality with any other country has been permitted since 1994.<sup>535</sup> It also means that a person with one South Sudanese parent and one who remains Sudanese will lose his or her Sudanese nationality.<sup>536</sup> The Open Society Institute considers that the law raises serious concerns over the lack of respect for due process and the creation of statelessness as the law provides no process to allow a person to argue that he or she has not obtained the nationality of South Sudan, nor to renounce any such right in order to remain a citizen of the Republic of Sudan.<sup>537</sup> It also does not provide for any specific right of appeal against a decision to withdraw Sudanese nationality.<sup>538</sup>

Another amendment to the Sudan Nationality Act provides for naturalization:

Article 16

Without prejudice to Article 10(2), the president may upon application restore nationality to any individual whose nationality was revoked or withdrawn.<sup>539</sup>

However, the period of residence to be able to naturalise a citizen has been increased from five to ten years, and is now required to be “lawful and continuous”, while two additional conditions for naturalisation have been added to require that the person be of sound mind and have a lawful way of earning a living, revisions which the Open Society Institute consider appear designed to make it more difficult for South Sudanese to naturalise.<sup>540</sup> The same source further reports that is unclear whether individuals will be able to reacquire nationality on the basis that they have been refused recognition of South Sudanese nationality and that the reliance on presidential discretion raises the risk of discrimination on grounds of religion or political opinion where only those from approved backgrounds are allowed to reacquire nationality.<sup>541</sup>

<sup>532</sup> *ibid*, (44 and 45) *Additional Requirements for Nationality by Residence*

<sup>533</sup> *ibid*, (46) *Additional Requirements for Nationality of Foundlings*

<sup>534</sup> [The Sudanese Nationality Act 1994 and Sudanese Nationality Act \(Amendment\) 2011 \[Sudan\]](#), 10 August 2011

<sup>535</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *New Nationality Laws in 2011*

<sup>536</sup> *ibid*, *Summary*

<sup>537</sup> *ibid*, *New Nationality Laws in 2011*

<sup>538</sup> *ibid*, *The impact of the new nationality laws*

<sup>539</sup> [The Sudanese Nationality Act 1994 and Sudanese Nationality Act \(Amendment\) 2011 \[Sudan\]](#), 10 August 2011

<sup>540</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *The impact of the new nationality laws*

<sup>541</sup> *ibid*

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The Open Society Institute considers that the amendments enable the Sudanese authorities to arbitrarily deprive someone of Sudanese nationality, including persons who have a Sudanese parent, as well as persons who have only a very weak connection to South Sudan and whose entire life and livelihood is based in Sudan.<sup>542</sup>

In February 2012 the governments of the Republic of Sudan and the Republic of South Sudan signed a “Memorandum of Understanding (MOU) on the Return of the Nationals of South Sudan”, in which they agreed a “Charter of Voluntary Return” (Article 2), providing that:

The return of Southerners currently residing in the territories of the Republic of the Sudan should take place on their own free will based on adequate knowledge of the circumstances and conditions prevailing in their original home areas.<sup>543</sup>

The Open Society Institute further explains that “The MOU did not, however, refer to the laws of either country to clarify this definition, nor did it provide any mechanism to resolve cases where the person’s status as a national of either or both states is in doubt”.<sup>544</sup> This was stated to expire at the end of the transitional period following the secession of South Sudan, on 8 April 2012, the date by which the Government of Sudan stated that southerners resident in the north must “regularize their status” or face deportation similar to any other unlawful foreigner.<sup>545</sup> The Open Society Institute describes the situation for people in Sudan who may be believed to have acquired South Sudanese nationality as precarious and reports that:

Southerners resident in the north have been dismissed from employment in the civil service and in the private sector, have had their children refused registration in school, and treatment in public health clinics. [...] Khartoum State announced that it is establishing evacuation camps for moving “foreigners who live illegally in Khartoum”, while the popular committees at neighbourhood level were instructed to draw up lists of foreign residents and report violators.<sup>546</sup>

According to Refugees International, “The longer the period between departure from Sudan and recognition as South Sudanese nationals, the more vulnerable southerners are to violence, exclusion, and poverty”.<sup>547</sup>

The Open Society reports that on 13<sup>th</sup> March 2012 representatives of the two governments agreed the “Framework Agreement on the Status of Nationals of the Other State and Related Matters”.<sup>548</sup> This provides that:

In accordance with the laws and regulations of each State, nationals of each State shall enjoy in the other State the following freedoms:

- (a) Freedom of residence;
- (b) Freedom of movement;
- (c) Freedom to undertake economic activity;
- (d) Freedom to acquire and dispose of property.<sup>549</sup>

However, the April 2012 signing ceremony was cancelled due to hostilities on the border in Heglig, and whilst the agreement remained unsigned, it was not officially in force.<sup>550</sup> Finally on 16 October 2012, South

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<sup>542</sup> *ibid*

<sup>543</sup> *ibid*, *Agreement on ‘voluntary return’*

<sup>544</sup> *ibid*, *The ‘Four Freedoms’ and the Situation of Southerners Resident in the North*

<sup>545</sup> *ibid*

<sup>546</sup> *ibid*

<sup>547</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>548</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *The ‘Four Freedoms’ and the Situation of Southerners Resident in the North*

<sup>549</sup> National Legislative Bodies, [Framework Agreement on the Status of Nationals of the Other State and Related Matters between The Republic of the Sudan and The Republic of South Sudan](#), 13 March 2012

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Sudan ratified the 27 September 2012 agreements in Addis Ababa on security, the common border and economic relations.<sup>551</sup> Amongst other demonstrators, the South Sudan Civil Society Alliance (SSCSA) protested against the four freedoms signed between South Sudan and Sudan as they believed that it was not in the best interests of the South Sudanese people, but rather that it seemed to resemble the return to the partnership enjoyed by SPLM and NCP during the interim period.<sup>552</sup>

### 3.2.2 Practical impediments to the acquisition and confirmation of nationality of South Sudan/Sudan, including outside of the country such as in Egypt and for returnees to South Sudan

The Open Society Institute reported in July 2012 that several hundred thousand people who are presumed to have acquired South Sudanese nationality are still resident in the Republic of Sudan, despite the February 2012 agreement between the two states for their 'voluntary return'.<sup>553</sup> As of November 2012, UNHCR estimated that there were between 300,000 and 350,000 people of South Sudanese origin still in Sudan which includes 200,000 - 250,000 people in Khartoum State, some 50,000 people of South Sudanese origin in the Darfur region, and some 30,000 people of South Sudanese origin in eastern Sudan.<sup>554</sup>

Reporting on the difficulties in leaving Sudan for South Sudan, Refugees International noted in May 2012 that apart from those who were airlifted by IOM:

Other movement out of Sudan, however, is almost impossible because the GoS has stopped all barges down the Nile for security reasons. Neither trains nor buses are viable options as they require movement through Southern Kordofan, where ongoing fighting between the Sudan Armed Forces and the Sudan People's Liberation Movement – North makes passage unsafe. Travel south has been further complicated by the arrival of the rainy season. These conditions will inevitably create new logjams for those waiting to leave Sudan. As many as 500,000 southerners still live in Sudan. Among the most vulnerable to attack and discrimination are the 127,000 in Khartoum who have registered their intent to leave.<sup>555</sup>

UNOCHA reported that between July to September 2012, returns from Sudan to South Sudan slowed down due to the closed border, insecurity along some major return routes and poor road conditions as a result of heavy seasonal rains.<sup>556</sup> UNOCHA further reports that due to insecurity along the border, the sole viable corridor for large-scale returns is by barge through Upper Nile State, via Renk.<sup>557</sup> IOM explains that once returnees from Sudan enter South Sudan, they can remain stranded at their points of entry for several months waiting for transport and that from Renk, it is an arduous three-week journey by barge to reach Juba.<sup>558</sup> The Internal Displacement Monitoring Centre cites sources which report that in addition to security challenges, logistical challenges creating bottlenecks at points of departure in the north and at transit sites in south include: "a shortage of river barges, the large amounts of luggage and personal property returnees bring with them, limitations in onward travel south overland during the rainy season, a lack of information as to where returnees wish to settle and confusion over the allocation of land for them".<sup>559</sup> Reporting on the returnee experience to South Sudan, UNOCHA similarly notes that:

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<sup>550</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *The 'Four Freedoms' and the Situation of Southerners Resident in the North*

<sup>551</sup> Gurtong, [South Sudan Parliament Ratifies Border Deal](#), 17 October 2012

<sup>552</sup> Gurtong, [Protests Against The Four Freedoms](#), 15 October 2012

<sup>553</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *Summary*

<sup>554</sup> UNOHCA, [Sudan Humanitarian Update:3<sup>rd</sup> Quarter 2012](#), 1 November 2012

<sup>555</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>556</sup> UNOHCA, [Sudan Humanitarian Update:3<sup>rd</sup> Quarter 2012](#), 1 November 2012

<sup>557</sup> UNOCHA, [South Sudan Humanitarian Update January - April 2012](#), 15 May 2012

<sup>558</sup> IOM, [Barge Convoy Moves 2,500, But a Shortage of Funds May Force End to IOM South Sudan Transport Operations](#), 10 August 2012

<sup>559</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012, *Return movements*

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Returnees from Sudan typically arrived by bus to Renk, South Sudan's northernmost border crossing, with a large amount of luggage making swift onward transportation difficult. Poor road conditions, infrequent river barges, funding constraints for both the Government of South Sudan and humanitarian partners, and insecurity all prolong waiting time in Renk. Excessive luggage makes transport even more difficult.<sup>560</sup>

In August 2012 a ship carrying over 2,000 South Sudanese was reported to have arrived in Bor, the Jonglei state capital from Renk in Upper Nile state, on its way to Juba.<sup>561</sup> Reportedly people died onboard due to a lack of medical services.<sup>562</sup> The Sudan Tribune reported that "Describing the difficulties before reaching the ship, one passenger claimed they struggled to bring their grandchild with them, as local Sudanese authorities in Rebek thought that his light complexion meant he was of Arab descent and therefore not South Sudanese".<sup>563</sup> In October 2012 IOM reported that the sixth convoy of river barges left Renk in South Sudan's Upper Nile State on a two-week journey to Juba.<sup>564</sup> It further noted that 13,660 still remained in the transit camps, awaiting transportation on barge convoys, the only way to travel during the wet season.<sup>565</sup> Radio Miraya reported that according to the latest figures from the IOM, the number of South Sudanese stranded in Renk had shot up from the previous figure of 13,732 to 20,457 in November 2012.<sup>566</sup>

UNOCHA further explains that South Sudanese were forced to wait at overfilled sites in the Khartoum area for many months.<sup>567</sup> Extremely vulnerable individuals in Khartoum unable to make the journey by river barge identified by IOM and UNHCR have been airlifted to South Sudan.<sup>568</sup> IRIN reported that in April 2012, around 14,000 people awaiting transport to South Sudan were evicted from the Sudanese river port of Kosti, White Nile State, resulting in aid agencies transporting them to Khartoum and flying them on to Juba.<sup>569</sup> UNOCHA reported that at the end of September 2012, there were still an estimated 3,500 people of South Sudanese origin stranded at the Kosti railway station who required travel assistance.<sup>570</sup>

At the end of June 2012, humanitarian organisations assessed the situation in open air departure points in Khartoum used by an estimated 40,000 people of South Sudanese origin who were waiting to return to South Sudan.<sup>571</sup> UNOCHA reported that these departure points lacked adequate shelter and some basic services, and that most people at the departure point lacked the means to travel to South Sudan and had lost their jobs.<sup>572</sup> In early December 2012 it was reported that around 5,000 people of South Sudanese origin living in open areas in Jabarona South and North in Khartoum State had received a written notification from the Government to vacate all occupied open spaces and departure points by the end of December 2012.<sup>573</sup>

In addition to the issues in accessing the territory of South Sudan, difficulties in accessing documentation are also reported. UNOCHA reported that only in April 2012 did the embassy of South Sudan in Khartoum start processing applications for emergency travel documents, nationality certificates and passports which allowed people of South Sudanese origin to make a one-way journey to South Sudan within three months.<sup>574</sup> However, this travel document cannot be used as proof of South Sudan nationality, which as

<sup>560</sup> UNOCHA, [South Sudan Humanitarian Update January - April 2012](#), 15 May 2012

<sup>561</sup> Sudan Tribune, [Ship carrying over 2,000 S. Sudanese returnees arrives in Jonglei](#), 22 August 2012

<sup>562</sup> *ibid*

<sup>563</sup> *ibid*

<sup>564</sup> IOM, [South Sudan Barge Convoy Leaves Renk for Juba, But Thousands Remain Stranded](#), 30 October 2012

<sup>565</sup> *ibid*

<sup>566</sup> Radio Miraya, ["Alarming increase of returnees in Renk": IOM](#), 20 December 2012

<sup>567</sup> UNOCHA, [South Sudan Humanitarian Update January - April 2012](#), 15 May 2012

<sup>568</sup> UNOCHA, [Weekly Humanitarian Bulletin Sudan](#), 23-29 July 2012

<sup>569</sup> IRIN, [South Sudan one year on from independence](#), 9 July 2012

<sup>570</sup> UNOCHA, [Sudan Humanitarian Update: 3<sup>rd</sup> Quarter 2012](#), 1 November 2012

<sup>571</sup> UNOCHA, [Sudan Humanitarian Update; 2nd Quarter 2012](#), 15 July 2012

<sup>572</sup> *ibid*

<sup>573</sup> UNOCHA, [Humanitarian Bulletin Sudan 28 November-2 December](#), 6 December 2012

<sup>574</sup> UNOCHA, [Sudan Weekly Humanitarian Bulletin](#), 23-29 April 2012

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Refugees International reports, undermines its utility.<sup>575</sup> In April the independent news project Gurtong reported that whilst the registration of South Sudanese by the Government of Sudan had begun, “protection partners remained concerned about the type of detailed data being collected including religion and tribe and the reasons for collecting it”.<sup>576</sup>

UNOHCA reports on UNHCR’s efforts to improve the registration system in Sudan for both Sudanese and foreigners:

UNHCR is monitoring the issuance of documentation for South Sudanese people. Preliminary information in some communities revealed that there is a general lack of knowledge on the documentation available for South Sudanese in Sudan and on the procedures to obtain documents. Concerns were also raised about the high associated costs and the need for supporting documents such as birth and age assessment certificates. Students and retired persons need documentation to be admitted to schools and to collect their pensions.<sup>577</sup>

With regards to issues in accessing documentation and proof of nationality in South Sudan, the Open Society Institute reports that:

Lack of civil documentation, such as birth certificates or identity papers, is commonplace in both Sudan and South Sudan, making it difficult to provide proof that a parent, grandparent or great grandparent was born in South Sudan, one condition for acquisition of the nationality of the new state. There are provisions in the South Sudanese regulations to allow witness statements from a broad range of people on behalf of an applicant where documentary evidence is not available, but the nature of displacement during the civil war may make even suitable witness testimony difficult to obtain.<sup>578</sup>

According to Refugees International, as of May 2012 approximately only 40,000 South Sudanese individuals possessed a nationality certificate out of a population of over 8 million.<sup>579</sup> As of October 2012, people wishing to apply for citizenship in South Sudan still had to travel to the main immigration office in Juba to have their documents processed, resulting in long queues.<sup>580</sup> The Minister of Interior, Alison Monani Magaya announced in October 2012 that the Ministry was intending to deploy teams to each state headquarters to handle applications for citizenship.<sup>581</sup> In November 2012, the Directorate of Nationality, Passport and Immigration opened a passport office in Bor, Jonglei state and in December 2012, opened branches in Northern Bahr el Ghazel State and in Western Equatoria State.<sup>582</sup> Refugees International also reports that for the vast majority of South Sudanese nationals, the fees associated with making an application are prohibitive.<sup>583</sup>

Reporting on the implementation of South Sudan’s Nationality Act and Regulations Refugee International notes that:

The general flexibility of RoSS’ Nationality Act and regulations, if implemented correctly, should result in high rates of nationality certification and the prevention of statelessness. However, if implemented incorrectly, too rigidly, or in a discriminatory or arbitrary manner, the risk of statelessness will increase exponentially.

<sup>575</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>576</sup> Gurtong, [S. Sudan Embassy In Khartoum Issues 3,000 Travel Documents](#), 30 April 2012

<sup>577</sup> UNOCHA, [Weekly Humanitarian Bulletin Sudan](#), 6-12 August 2012

<sup>578</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, Summary

<sup>579</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>580</sup> Radio Miraya, [States to issue nationality certificates in two weeks](#), 16 October 2012

<sup>581</sup> *ibid*

<sup>582</sup> Radio Miraya, [New passport office opened in Bor](#), 28 November 2012; Radio Miraya, [ID and passport office opened in Aweil](#), 22 December 2012; Gurtong, [Immigration, Nationality And Passport Office Launched In Yambio](#), 19 December 2012

<sup>583</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

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Unfortunately, early indications suggest that all three concerns are present in the adjudication of nationality applications in Juba.<sup>584</sup>

As set out in the Nationality Regulations, while the burden of proof is on the applicant, they need only demonstrate that they are 'likely' to be a national of South Sudan.<sup>585</sup> Refugees International reports that based on its observations and discussions with individuals and organizations, people from communities or tribes outside the Juba area, particularly in the Equatorias and border regions, were finding it more difficult to demonstrate they were 'likely' to be South Sudanese.<sup>586</sup> It further reported that even after providing a witness and attestations from two local authorities, some nationality officers were requesting more evidence.<sup>587</sup> According to nationality office employees, applicants and employers of South Sudanese nationals that Refugees International consulted, not "looking" South Sudanese creates barriers to successfully acquiring a nationality certificate.<sup>588</sup> Refugees International also observed irregularities in the supporting evidence required for applications.<sup>589</sup> It further reports that "Because no oversight or accountability is built into the system, the predispositions, mood, or personality of an adjudicator may be determinative as to whether a person receives a nationality certificate, is required to provide more information, or is denied proof of nationality".<sup>590</sup> In June 2012, Radio Miraya reported that one of the concerns of the nationality assessment was that the investigators were not from the same regions as the applicants, so were unable to understand or verify the languages they spoke.<sup>591</sup> This was acknowledged by the deputy minister of Interior, Salva Mathok Gengdit, who reported that it was intended to move some teams to the borders in order to involve the chiefs and payam administrators.<sup>592</sup> However, he raised the issue that "If very senior people legalize foreigners to get nationality, the certainty that the correct thing will be at the border, we don't know. But still, it is the only option now we are going to do. Maybe the chiefs may do better work than what we have here".<sup>593</sup> In September 2012 it was reported that more than ten local chiefs from different Payams in Western Bahr el Ghazel State were briefed on the new procedures for acquiring South Sudan nationality and citizenship in preparation for the official opening of a Nationality, passport and immigration office in Wau.<sup>594</sup>

In December 2012 Gurtong reported that "The Central Equatoria State government have demanded for localization in provision of nationality cards after a report showed that some citizens in the state are being denied access to the cards despite proving their South Sudanese citizenship".<sup>595</sup> According to the Central Equatoria State Legislative Assembly, "there have been challenges faced by chiefs from travelling to the Capital, Juba to verify whether citizens who claim to be from their areas state correct information".<sup>596</sup> In June 2012 a motion was raised in the Central Equatoria State parliament over the issue that some of their tribes were being harassed when they went to collect Nationality Identity cards, which was denied by the deputy minister of Interior, Salva Mathok Gengdit.<sup>597</sup>

Whilst the Nationality Regulations allow for judicial review, Refugees International reported in May 2012 that it was told by the Director of the Nationality, Passport and Immigration office that no one has elected

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<sup>584</sup> *ibid*

<sup>585</sup> *ibid*

<sup>586</sup> *ibid*

<sup>587</sup> *ibid*

<sup>588</sup> *ibid*

<sup>589</sup> *ibid*

<sup>590</sup> *ibid*

<sup>591</sup> Radio Miraya, [Who is eligible for South Sudanese nationality?](#), 2 June 2012

<sup>592</sup> *ibid*

<sup>593</sup> *ibid*

<sup>594</sup> Radio Miraya, [Local chiefs briefed on nationality laws](#), 10 September 2012

<sup>595</sup> Gurtong, [Central Equatoria Seeks Localized Provision of Nationality Cards](#), 1 December 2012

<sup>596</sup> *ibid*

<sup>597</sup> Radio Miraya, [Who is eligible for South Sudanese nationality?](#), 2 June 2012

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to use the process as most of the 80–100 denied applications were fraudulent, but that it was not able to review these applications or refused decisions.<sup>598</sup>

The Open Society Institute identifies the following populations at risk of statelessness due to the changes in nationality law: People of southern ethnicity resident in the north; People with one parent from Sudan and one from South; People of more complex mixed ancestry; Members of cross-border ethnic groups; Members of pastoralist communities; Residents of Abyei; Members of historical migrant communities; Residents of third countries without another (non- Sudanese) nationality; and People separated from their families by the war.<sup>599</sup> Refugees International similarly reports that historically migrant populations, including the Falata and Mbororo, are “at an exceptionally high risk of statelessness” as the government and many South Sudanese believe the Mbororo are “outsiders” from Chad and that some government officials claim that the Mbororo are allied with the Government of Sudan.<sup>600</sup> Furthermore Refugees International considers that several ethnic groups are at high risk of statelessness due to their cross-border populations including the Kresh, Kara, Yulu, Frogai, and Bigna who reside on both sides of the new border, some in disputed areas.<sup>601</sup>

The Open Society Institute also reports that those with a right to South Sudanese nationality living outside the new country may face even greater challenges whilst diplomatic representations are still being established and procedures for obtaining documentation overseas are introduced.<sup>602</sup> Furthermore, access to nationality documentation may be restricted for South Sudanese living in Sudan, as tense relations between the states affects co-operation, and that it is also likely to be restricted to Khartoum.<sup>603</sup>

#### *Practical impediments to acquiring South Sudanese nationality in Egypt*

In October 2012 the U.S. Congressional Research service estimated the number of refugees from Sudan in Egypt at 25,000, and the number of refugees from South Sudan in Kenya, Ethiopia, Uganda and Egypt at 83,500.<sup>604</sup> According to a March 2012 statement from South Sudanese Minister of Humanitarian Affairs and Disaster Management, Joseph Lual Achuil, 21,000 South Sudanese in Egypt were in need of immediate repatriation, of which 5,000 were reportedly starving in the open.<sup>605</sup>

In March 2012, UNOCHA reported that “Humanitarian partners are reviewing requests to facilitate the return of South Sudanese in Egypt” but did not provide further details.<sup>606</sup> IOM reported in October 2012 that since January 2012 “the IOM missions in South Sudan and Egypt have worked together to provide return and reintegration assistance to 62 beneficiaries returning from Cairo through the IOM ‘Travel–Regional Assisted Voluntary Return and Reintegration Programme’ for stranded migrants in Egypt and Libya. Beneficiaries under the program include irregular and stranded migrants, rejected asylum seekers and any other vulnerable migrants who wish to return home but lack the means to do so. During the reporting period, 2 beneficiaries received their reintegration support package”.<sup>607</sup> Radio Miraya reported on 24 July 2012 with regard to obtaining South Sudanese nationality certificates in Egypt that:

<sup>598</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>599</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, Summary

<sup>600</sup> Refugees International, [South Sudan Nationality: Commitment Now Avoids Conflict Later](#), 29 May 2012

<sup>601</sup> *ibid*

<sup>602</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, Access to documentation and proof of nationality

<sup>603</sup> *ibid*

<sup>604</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, Appendix B. The Humanitarian Situation

<sup>605</sup> Radio Miraya, [Humanitarian Ministry urgently needs SSP 50M](#), 13 March 2012

<sup>606</sup> UNOCHA, [Weekly Humanitarian Bulletin](#), 15 March 2012

<sup>607</sup> IOM, [IOM South Sudan Periodic Update](#), 22 Sept - 14 Oct 2012

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A team from South Sudan's Ministry of Interior has begun issuing nationality certificates and passports to South Sudanese living in Cairo.

[...] John Bago, South Sudan's ambassador to Egypt, said the move will help the South Sudanese in the north African country to legalize their status.<sup>608</sup>

It was reported in May 2012 by Duer Tut Duer Chairperson of the Relief and Rehabilitation Commission that they were expecting batches of returnees from Egypt and that "the only problem is that some children lack birth certificates".<sup>609</sup> Tut further reported that about eight families were ready to come if they got travel documents in reference to his telephone call with the embassy in Egypt.<sup>610</sup>

However it was reported that IOM was forced to temporarily suspend operations in South Sudan due to a lack of funding.<sup>611</sup> The deputy chairperson of Relief and Rehabilitation Commission, Javana Luka Joseph outlined some of the challenges the Commission is facing as it strives to repatriate South Sudanese:

We have another problem with people who are repatriated from abroad, actually we repatriate them, but once they are here they get Passports and return back to Cairo. They have become a problem to us when they come here the situation is not very fair, with these austerity measures there is no new appointments for new staffs. And those youth come at an age when they are ready to work for their country and if there is no appointments and no way to avail for them opportunities they will decide to go back to Cairo. There the prices are cheap and here in Juba prices are high even in their states things are not well with them, so they come back to Juba and get transport back to Cairo where they can live freely there.<sup>612</sup>

### 3.3 Freedom of Expression

#### 3.3.1 Domestic legal framework

Freedom House's 2012 Freedom of the Press report describes South Sudan's Transitional Constitution as "one of the most progressive in Africa", which guarantees press freedom and ensures that all levels of government uphold this principle.<sup>613</sup> However, Reporters Without Borders notes that South Sudanese media suffers from a "legal void and lack of legislative framework for their activities".<sup>614</sup> The organisation Article 19 reports that Justice Minister John Luk Jok presented a package of three media related bills to the South Sudan's Council of Ministers in March 2012 for their review and eventual submission to the National Legislative Assembly which are currently still pending: the Broadcasting Corporation Bill, 2012 (No. 53, Draft Bill), the Draft Media Authority Bill (No. 52) and the Draft Right to Access Information Bill (No. 54).<sup>615</sup>

According to Article 19, the draft Broadcasting Corporation Bill which envisages the creation of a national public service broadcaster, the South Sudan Broadcasting Corporation (SSBC) significantly differs from the 2006 Draft Bill that it had presented to the then southern Minister of Information and that the biggest changes relate to:

[...] the process for appointing and dismissing members of the Board of Directors of SSBC, and that their effect is to place the broadcaster under the control of the President and Minister of Information and Broadcasting, rather than the National Legislative Assembly. A strong guarantee of independence from the executive branch is one of the key pillars of a democratic public service broadcasting law. With this pillar now

<sup>608</sup> Radio Miraya, [South Sudanese in Egypt get nationality certificates](#), 24 July 2012

<sup>609</sup> The Citizen (Juba), [South Sudan: Officials Expect Batches of Returnees From Egypt](#), 8 May 2012

<sup>610</sup> *ibid*

<sup>611</sup> Sudan Radio Service, [Humanitarian Minister Travels To Geneva To.....](#) 11 September 2012

<sup>612</sup> *ibid*

<sup>613</sup> Freedom House, [Freedom of the Press 2012 - South Sudan](#), 27 November 2012

<sup>614</sup> Reporters Without Borders, [South Sudan: World's Youngest Country to Embark on Road to Civil Liberties, Investigation Report - July 2012](#), July 2012, 3. Urgent need for legal framework

<sup>615</sup> Article 19, [South Sudan: Broadcasting Corporation Bill](#), October 2012

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taken from under the Draft Bill, it is very questionable whether the SSBC will be able to truly deliver on its otherwise well-defined mandate to serve the public – rather than the government.<sup>616</sup>

With regards to the draft Right to Access Information Bill, Article 19 considers that it is “a positive step towards the effective protection of the right to freedom of information in South Sudan. It sets out the principles of access to public information, determines the subjects of the law (both right holders and duty bearers) and regulates the procedure for seeking public information. The Draft Bill also takes a progressive approach to access to information held by private bodies. Moreover, the Draft Bill establishes the office of the Information Commissioner and introduces an enforcement mechanism”.<sup>617</sup> It however identifies areas for improvement:

[...] it is concerning that the Draft Bill and the principle of maximum disclosure does not take precedence over other legislation in the South Sudan. The provisions articulating the nature of the right of access to information would also benefit from clearer wording, while the schedule of exceptions to the right should be more narrowly tailored.

ARTICLE 19 is also concerned that process for appointing and removing the Information Commissioner fails to safeguard the independence of that office. The Draft Bill also lacks provisions providing for the right to access information about oneself, and to correct that information where it is incorrect.<sup>618</sup>

In relation to the draft Media Authority Bill which would create a media regulatory body, Article 19 reports that whilst it demonstrates the intentions of the drafters to adopt legislation that is in line with international standards, the Draft Bill must be improved and that several important elements that endanger the democratic operation of the media supervisory system should be eliminated:

ARTICLE 19’s concerns are primarily related to the lack of independence of the Media Authority from the government. We suggest clarifying the limits of the powers of the Media Authority, among others, in the field of investigation. ARTICLE 19 is also concerned by the Media Authority’s power in respect of content regulation. Furthermore, we consider the appeal mechanism against the Authority’s decisions to be substantially flawed; we recommend abolishing both kinds of appeal bodies, while strongly urging that a full and independent court review of all decisions is secured.<sup>619</sup>

Freedom House reports that the lack of enactment of these media Bills has left journalists without comprehensive legal protections and the media sector without a regulatory framework.<sup>620</sup> Freedom House cites Information Minister Barnaba Marial Benjamin as claiming that the reason for the delay in the bills’ passage was due to a glut of legislation in the parliament, but that journalists were suspicious that individuals within the government opposed their adoption.<sup>621</sup> In any case, Freedom House notes that legal measures were rarely used against the press, apart from a February case in which a bank filed criminal defamation charges against the independent weekly Juba Post after it reported claims that the institution was facing bankruptcy.<sup>622</sup> The editor and a reporter for the paper were detained, but the case had not gone to court by the end of the year.<sup>623</sup>

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<sup>616</sup> *ibid*

<sup>617</sup> Article 19, [South Sudan: Right of Access to Information Bill](#), 21 August 2012

<sup>618</sup> *ibid*

<sup>619</sup> Article 19, [South Sudan: Media Authority Bill](#), June 2012

<sup>620</sup> Freedom House, [Freedom of the Press 2012 - South Sudan](#), 27 November 2012

<sup>621</sup> *ibid*

<sup>622</sup> *ibid*

<sup>623</sup> *ibid*

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### 3.3.2 Treatment of individuals who are critical of the government

The UN High Commissioner for Human Rights notes with regards to the treatment of government opponents that:

Members of several political and opposition groups from around the country have also been arbitrarily arrested and detained by the SPLA in connection with their political activities. In Upper Nile State, the United Nations was denied access to nine members of the Sudan People's Liberation Movement for Democratic Change reportedly in SPLA custody. The SPLA has denied that the men were in their custody. Similarly, the United Nations was also denied access to Sudanese detainees, mostly of Darfurian and Misseriya origin, believed to be held by the SPLA for political reasons.<sup>624</sup>

The 2011 UK Foreign and Commonwealth report notes that in South Sudan "In 2011, there were a number of reported cases of intimidation, confiscation of assets and detention of members of the main opposition party".<sup>625</sup> Freedom House reports that "the SPLM is intolerant of opposition. In July 2011, two leading members of the largest opposition party, SPLM-Democratic Change, said they were arrested and tortured by SPLM security agents".<sup>626</sup>

The U.S. State Department reports that during 2011, "government security forces tortured, beat, and harassed political opponents, journalists, and human rights workers during the year".<sup>627</sup> With regards to political prisoners and detainees the same source notes that:

The government held an undetermined number of political prisoners and detainees. Conditions of detention were harsh. The government permitted access to such persons by international humanitarian organizations. Security forces often detained without charge and abused political opponents. For example, on March 23, prior to the country's July 9 independence, nine opposition members were arrested in connection with a document criticizing the Northern Bahr el-Ghazal governor and calling for antigovernment demonstrations in the state. At year's end the nine were reportedly being held without charge in Machar Konyuk Prison, and no trial had been scheduled.<sup>628</sup>

The U.S. State Department report also noted that there were unconfirmed reports from political opposition leaders that they were not allowed to hold rallies or political events in some states.<sup>629</sup>

The 2012 Amnesty International report notes that "Security forces harassed and arbitrarily detained journalists, members of opposition groups and demonstrators for criticizing the government".<sup>630</sup> FIDH reports that the South Sudan Human Rights Society for Advocacy (SSHRSA) has faced unsolicited and menacing visits to their offices by unidentified men, and were put on surveillance for hours by the intelligence agencies.<sup>631</sup> Despite reporting this to the police and to authorities including the South Sudan Human Rights Commission, the authorities took no action and the SSHRSA was forced to move offices for its own safety.<sup>632</sup> Biel, the coordinator of the SSHRSA reported that it was now contemplating dropping cases involving political opponents or political and security detainees as "if we follow up any politically, militarily or security-related cases in a systematic manner, then we will either be arrested or killed. It is

<sup>624</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 29

<sup>625</sup> Foreign and Commonwealth Office, [Human Rights and Democracy: The 2011 Foreign and Commonwealth Report](#), April 2012

<sup>626</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>627</sup> U.S. State Department, [Country Reports on Human Rights Practices](#), 24 May 2012, Section 1c Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

<sup>628</sup> *ibid*, Section 1e, Political Prisoners and Detainees

<sup>629</sup> *ibid* Section 2 b. Freedom of Peaceful Assembly and Association

<sup>630</sup> Amnesty International, [2012 Annual Report: South Sudan](#), 24 May 2012

<sup>631</sup> International Federation for Human Rights (FIDH) [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, 2.2. Operating environment for human rights defenders

<sup>632</sup> *ibid*

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dangerous. I really suspect that in future people will just be silent about abuses and violations".<sup>633</sup> The SSHRSA had been previously calling for:

"[...] the end of arbitrary detention of Peter Abdul Rahaman Sule the head of the opposition United democratic front, rebel leader Gabriel Tanginye, and Telephone Koukou of SPLA, who has been accused of links to Khatourm. SSHRSA has publicly and closely monitored the high profile case of the April 2012 enforced disappearance of engineer John Luis from Juba. His case remains unresolved even though a high profile suspect has been identified. The suspect, from the intelligence services, remains free, while relatives of Mr. Luis have been threatened, and his house attacked by unknown assailants."<sup>634</sup>

For further information on the treatment of human rights defenders, see section [4.6 Humanitarian access and role of human rights groups and aid organizations within South Sudan](#).

With regards to the treatment of protestors, Amnesty International's annual report notes the following incident in 2011:

On 4 October, secondary school students from Wau in Western Bahr el-Ghazal State peacefully protested against rising food prices and low salaries for teachers. Security forces responded with gunfire and tear gas. At least seven people, including students, were arrested and remained in detention at the end of the year in Wau prison; two people died from gunshot wounds by security forces.<sup>635</sup>

The UN called on South Sudan's security forces to exercise maximum restraint after nine civilians were killed and many more injured in incidents involving protestors and police on 8 and 9 December 2012 in Wau.<sup>636</sup> Reportedly protests began after officials said they would move the seat of local authority out from Wau, capital of Western Bahr el Ghazal state, to a nearby smaller settlement of Bagare.<sup>637</sup> Four people were killed in the town of Wau during clashes on the 8 December and then the next day, the SPLA reportedly opened fire on a crowd demonstrating against the previous day's use of excessive force, shooting a further 6 people dead.<sup>638</sup> It was also reported that police used live rounds to break up protests in Juba mainly on 15 October 2012 of persons from the Greater Bahr el Ghazal region, who were demonstrating against the agreements signed between South Sudan and Sudan on 27 September, particularly in relation to the inclusion of a contentious 14 mile area in the Safe Demilitarized Buffer Zone.<sup>639</sup>

### 3.3.3 Treatment of media/ journalists

Reporters Without Borders notes with regard to the state of the media in South Sudan that "Although enjoying a degree of freedom, the media are still in terrible shape. They have started virtually from scratch and their needs are enormous, especially as regards training and learning journalism ethics and professional conduct. The environment in which they have to operate is barely viable".<sup>640</sup> Freedom House reports with regards to print media that newspapers are largely concentrated in urban areas due to the high cost of transportation and a lack of reliable infrastructure.<sup>641</sup> Furthermore, it notes that "There is a

<sup>633</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, 2.2. *Operating environment for human rights defenders*

<sup>634</sup> *ibid*

<sup>635</sup> Amnesty International, [2012 Annual Report: South Sudan](#), 24 May 2012

<sup>636</sup> UN News Centre, [UN urges restraint by South Sudanese security forces after recent deadly incidents](#), 13 December 2012

<sup>637</sup> Agence France Presse, [10 dead after S. Sudan army fires on protestors: UN](#), 9 December 2012

<sup>638</sup> *ibid*

<sup>639</sup> Sudan Tribune, [S. Sudan president backs deal with Khartoum amid protest](#), 15 October 2012

<sup>640</sup> Reporters Without Borders, [South Sudan: World's Youngest Country to Embark on Road to Civil Liberties, Investigation Report - July 2012](#), July 2012, *War's impact on media*

<sup>641</sup> *ibid*

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general lack of diversity of viewpoints, as reporters are either employed by pro-government media owners or fear reprisals from state authorities".<sup>642</sup> It further notes with regards to online reporting that the lack of official restrictions on online news has allowed several professional, critical websites to emerge, including Sudan Tribune, Sudan Votes, and Gurtong.<sup>643</sup>

According to Freedom House, "Although there is no official censorship, journalists have no effective legal protection from harassment by state officials, and many self-censor to avoid repercussions from their reporting".<sup>644</sup> For example, Reporters Without Borders notes that the UN-backed Radio Miraya scheduled a debate with the opposition parties entitled "Opposition parties: what's your voice?" but all the participants and special guests backed out at the last moment.<sup>645</sup> It reports with regards to access that "It is virtually impossible for news organizations to get to the war zones in South Sudan. Very rarely, teams of journalists may go for just a day to somewhere such as Unity state, "The rest of the time, we rely on what the government and the armed forces tell us," a Juba-based radio journalist said".<sup>646</sup>

The UN High Commissioner for Human Rights notes that "Journalists and human rights defenders in South Sudan face intimidation and arrest in the conduct of their activities. State security forces have been reported to subject journalists to harassment, arbitrary arrest and detention for publishing stories critical of the Government".<sup>647</sup> Freedom House similarly reports that "Security officials and individuals within the government rely on extrajudicial means to silence the private media, and journalists and media houses were regularly subjected to intimidation and physical attacks by security agents both before and after independence".<sup>648</sup> The UK Foreign and Commonwealth Office noted in June 2012 that it continued to receive reports of human rights abuses across South Sudan including prolonged illegal or arbitrary detention of journalists and civil rights activists.<sup>649</sup> Reporters Without Borders describes that whilst journalists are rarely subjected to formal arrest, they are often briefly detained and beaten and that violence and intimidation against journalists by the security forces and SPLA is common.<sup>650</sup> It further notes that "The brutality of the security forces is sometimes the result of orders from the authorities, who want to hunt down spies and who think that their suspicions and national security imperatives justify the use of unorthodox methods. But usually the brutality is the personal initiative of policeman, soldiers, security agents and bodyguards who are not being controlled by their superiors".<sup>651</sup> According to the U.S. State Department, during 2011 in addition to detaining, harassing and intimidating journalists, "Security forces confiscated or damaged journalists' cameras and equipment, demanded photography permits from journalists, and restricted their movements, particularly prior to independence".<sup>652</sup>

Most recently on 3 January 2013, the Committee to Protect Journalists reported that two state journalists were being held without charge, with local journalists suspecting the arrests related to their coverage of ethnic violence in Wau.<sup>653</sup> On 5 December 2012 journalist Diing Chan Awol was reportedly dragged from his

<sup>642</sup> Freedom House, [Freedom of the Press 2012 - South Sudan](#), 27 November 2012

<sup>643</sup> *ibid*

<sup>644</sup> *ibid*

<sup>645</sup> Reporters Without Borders, [South Sudan: World's Youngest Country to Embark on Road to Civil Liberties, Investigation Report - July 2012](#), July 2012, *War's impact on media*

<sup>646</sup> *ibid*

<sup>647</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, *paragraph 27*

<sup>648</sup> Freedom House, [Freedom of the Press 2012 - South Sudan](#), 27 November 2012

<sup>649</sup> UK Foreign and Commonwealth Office, [Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report - Quarterly Updates: South Sudan](#), 30 June 2012

<sup>650</sup> Reporters Without Borders, [South Sudan: World's Youngest Country to Embark on Road to Civil Liberties, Investigation Report - July 2012](#), July 2012, *Current problems and challenges, 1. Heavy-handed security forces*

<sup>651</sup> *ibid*

<sup>652</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Section 2 a. Freedom of Speech and Press*

<sup>653</sup> Committee to Protect Journalists, [In South Sudan, two journalists detained in Wau](#), 4 January 2013

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home in the outskirts of Juba by unidentified gunmen and shot to death.<sup>654</sup> Awol worked as a government official and also went by the pseudonym Isaiah Abraham, writing articles for the news websites of the Sudan Tribune and Gurtong, in which he was often critical of the South Sudanese government.<sup>655</sup> Reporting on the same incident, Reporters Without Borders noted that while the motive for Awol's murder has yet to be established, the threats he had received in connection with his columns suggest that it was directly linked to the views he expressed.<sup>656</sup> It also reported that "Several journalists such as Alan Boswell, Taban Bonifacio and John Madol Panther have been the target of recent intimidation attempts after criticizing the South Sudanese authorities".<sup>657</sup>

The Committee to Protect Journalists reported in March 2012, that a Court ruled against the Citizen newspaper to pay South Sudan's ruling party Secretary-General, Pagan Amum, damages for reporting on the corruption charges that had been brought by former Finance Minister Arthur Akuien Chol.<sup>658</sup> It noted that the ruling sent the message that reporting about corruption can be detrimental to a media house's survival and that sensitive issues such as security are also 'no-go area's for South Sudanese journalists.<sup>659</sup> Human Rights Watch similarly reported in July 2012 that "officials have also sought to clamp down on speech critical of the government, in violation of the right to freedom of expression guaranteed in South Sudan's constitution and international law. In a number of cases Human Rights Watch has documented since South Sudan's independence, security forces arrested, harassed, and detained journalists because of what they wrote or said".<sup>660</sup> Freedom House cites the following 2011 cases of ill-treatment of journalists:

Nhial Bol, editor in chief of the Citizen daily, was arrested in January 2011 and detained without charge following an article on the dispute between a government minister and a Chinese oil company. In March, freelance journalist Isaac Vuni was arbitrarily arrested by Juba police and released more than a month later. In May, security agents detained reporter Mohamed Arkou Ali for over three weeks for taking photographs without a permit, accusing him of espionage. He was reportedly subjected to torture while in custody. In November, Ngor Aguo Garang, editor in chief of the daily Destiny, was arrested following an October column that criticized the marriage of President Salva Kiir's daughter. Several days later, Dengdit Ayok, the author of the article, was arrested and suspended from working as a journalist, and publication of Destiny was also suspended. Both men were released several weeks later without charge, but reported mistreatment while in custody, and Ayok received a death threat via e-mail following his release. Reporters regularly encountered difficulties while covering news stories, including confiscations of equipment and restrictions on their movements by police and security forces.<sup>661</sup>

Further to the examples cited by Freedom House, Human Rights Watch reports that in 2012:

In May, police detained a radio journalist in Rumbek for two days following a radio talk show about the relationship between police and civilians. During the show, callers criticized the police, saying they were slow to respond when needed and alleging that the police demanded money to allow citizens to file complaints. In June, military officers detained and questioned a Sudan Tribune journalist three times in Bentiu, after he had published an article in which women, widowed as a result of South Sudan's recent border clashes with Sudan, accused the military of not providing them with adequate compensation for the death of their husbands. Also in June, NSS officials summoned editors and journalists from five newspapers in Juba and instructed them not to report on corruption or mention a letter the president sent to 75 government officials in May asking them to return stolen funds.<sup>662</sup>

<sup>654</sup> UN News Service, [South Sudan: UN peacekeeping mission deplors killing of journalist, urges investigation](#), 7 December 2012

<sup>655</sup> *ibid*

<sup>656</sup> Reporters Without Borders, [Opinion writer gunned down outside Juba home](#), 6 December 2012

<sup>657</sup> *ibid*

<sup>658</sup> Committee to Protect Journalists, [Corruption a no-go zone for South Sudan's journalists](#), 28 March 2012

<sup>659</sup> *ibid*

<sup>660</sup> Human Rights Watch, [South Sudan: Step Up Urgent Human Rights Reforms](#), 5 July 2012

<sup>661</sup> Freedom House, [Freedom of the Press 2012 - South Sudan](#), 27 November 2012

<sup>662</sup> Human Rights Watch, [South Sudan: Step Up Urgent Human Rights Reforms](#), 5 July 2012

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### 3.4 Women and Children

#### 3.4.1 Domestic legal framework

The South Sudan Transitional Constitution sets out the following rights of women:

16. (1) Women shall be accorded full and equal dignity of the person with men.
- (2) Women shall have the right to equal pay for equal work and other related benefits with men.
- (3) Women shall have the right to participate equally with men in public life.
- (4) All levels of government shall:
  - (a) promote women participation in public life and their representation in the legislative and executive organs by at least twenty-five per cent as an affirmative action to redress imbalances created by history, customs, and traditions;
  - (b) enact laws to combat harmful customs and traditions which undermine the dignity and status of women; and
  - (c) provide maternity and child care and medical care for pregnant and lactating women.<sup>663</sup>

FIDH explains that several laws adopted by Parliament contain provisions criminalising various forms of gender-based and sexual violence and that the Criminal Code adopted in 2008 defines rape and other forms of sexual violence as criminal offences and prohibits female genital mutilation.<sup>664</sup> However, Human Rights Watch reports that the Penal Code explicitly excludes “sexual intercourse by a married couple” within the definition of rape.<sup>665</sup>

In relation to the right of the child, the South Sudan Transitional Constitution stipulates:

- 17 (1) Every child has the right:
  - (a) to life, survival and development;
  - (b) to a name and nationality;
  - (c) to know and be cared for by his or her parents or legal guardian;
  - (d) not to be subjected to exploitative practices or abuse, nor to be required to serve in the army nor permitted to perform work which may be hazardous or harmful to his or her education, health or well-being;
  - (e) to be free from any form of discrimination;
  - (f) to be free from corporal punishment and cruel and inhuman treatment by any person including parents, school administrations and other institutions;
  - (g) not to be subjected to negative and harmful cultural practices which affect his or her health, welfare or dignity; and
  - (h) to be protected from abduction and trafficking.
- (2) In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the paramount consideration shall be the best interest of the child.
- (3) All levels of government shall accord special protection to orphans and other vulnerable children; child adoption shall be regulated by law.
- (4) For the purposes of this Constitution, a child is any person under the age of eighteen years.<sup>666</sup>

With regards to additional domestic legislation protecting child rights, UNMISS sets out that:

South Sudan’s domestic legislation codifies many international and regional human rights standards on child rights and protection, namely: the Penal Code Act of 2008 and the Child Act of 2008 both criminalize child

<sup>663</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011

<sup>664</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, B. *Inter-ethnic clashes in Jonglei, 1. Massacres, abductions, rape and looting*

<sup>665</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, *Imprisonment for Marital and Sexual Offenses, Rights to Privacy and to Autonomy*

<sup>666</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011

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abduction and child trafficking (Penal Code Arts. 269, 254(a); Child Act Arts. 22(1)(3), 119-120). Such offences carry penalties of up to 10 years' imprisonment (id.). Moreover, the Child Act affirms the child's right to life (Art. 12); the right to know, live with and be cared for by his or her parents (Art. 13) and the right to liberty and security of the person (Art. 19). The Child Act clearly provides for enforcement when it states, "The Government shall take concrete measures to protect children from all forms of abuse and to ensure that any child who becomes the victim of abuse, as set out in this section shall be accorded appropriate treatment and rehabilitation" (Art. 22).<sup>667</sup>

However, the UN High Commissioner for Human Rights reported in August 2012 that in relation to juvenile justice the Child Act is yet to be implemented and the Independent Child Commission to be formed.<sup>668</sup>

### 3.4.2 Vulnerability of women to sexual and gender-based violence (SGBV)

According to an August 2012 report of the UN High Commissioner for Human Rights, women and girls in South Sudan continue to face discrimination and abuse, including domestic violence and sexual violence.<sup>669</sup> It further notes that "in spite of the Government's stated commitment to the empowerment of women, discrimination against women remains endemic and widespread, exacerbated in part by cultural and traditional practices".<sup>670</sup> FIDH reports that despite the legal provisions protecting women, "discrimination and violence against women remain highly prevalent. Early and forced marriages, trafficking and forced prostitution are widespread. There are reports of women being forced to undergo abortions and/or sterilisations. Women and girls commonly experience sexual harassment at school and in the workplace".<sup>671</sup> Freedom House considers that "women are routinely exposed to discriminatory practices and domestic abuse".<sup>672</sup> The 2011 report of the South Sudan Human Rights Commission notes that "There are no official statistics on gender based violence in South Sudan; however there is belief that it happens in endemic proportions".<sup>673</sup>

#### Conflict-related SGBV and abduction

In an April 2012 report on Women and Armed Violence in South Sudan, the Small Arms Survey reports that the roles of women have evolved throughout the decades of conflict in South Sudan:

While they were once considered inviolable, the advent of war and the introduction of small arms eroded norms of protection. In the CPA's interim period, women came to be seen as legitimate targets in protracted cycles of tribal attacks and retaliation. Today, there are signs that women are viewed as legitimate—even preferred—targets.<sup>674</sup>

According to a report of the UN Secretary-General covering the period between December 2010 and November 2011, South Sudan experienced conflict related sexual violence, notably in Upper Nile, Jonglei

<sup>667</sup> UN Mission to South Sudan (UNMISS), [Incidents of Inter-Communal Violence in Jonglei State](#), June 2012, VII: Justice and accountability

<sup>668</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 51

<sup>669</sup> *ibid*, paragraph 30

<sup>670</sup> *ibid*

<sup>671</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, B. Inter-ethnic clashes in Jonglei, 1. Massacres, abductions, rape and looting

<sup>672</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>673</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.2.4.2. Gender Based Violence

<sup>674</sup> Small Arms Survey, [Women and Armed Violence in South Sudan](#), 23 April 2012

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and Unity States.<sup>675</sup> The same source notes that “Two observations can be made based on the data currently available: first, cases of sexual violence took place in and around encampments of the Sudan People’s Liberation Army (SPLA), and were reported when the armed forces remained in an area for some time without engaging in active conflict; second, sexual violence took place during SPLA military operations against militia groups”.<sup>676</sup>

UNMISS explains with regards to the abduction of women that:

Murle cattle-raiding has historically been accompanied by abductions of women and children but the Lou Nuer traditionally did not carry out abductions during cattle raids. Over the years, however, their tactics have changed, whether in an attempt to directly recover wives and/or children who had been previously abducted, or purely to strike back at the Murle in a tit-for-tat measure. Indeed, abductions have frequently been the trigger for conflict between the two communities.<sup>677</sup>

On 18 August 2011, thousands of young men from the Murle tribe launched an attack on Lou Nuer communities in the remote northern part of Jonglei, killing 640 people and wounding 750 others.<sup>678</sup> Hundreds of children were reported to have been abducted, thousands of homes were torched, and tens of thousands of cattle were stolen.<sup>679</sup> Then in December 2011, around 6,000 Nuer Youths Army attacked the Murle in Pibor town in Jonglei state, burned and looted homes and killed hundreds of people, mainly children, women and the elderly.<sup>680</sup> With regards to the 2011 and 2012 inter-tribal violence in South Sudan, the Small Arms Survey reports that witness accounts indicate that women and children made up around two thirds of the victims, according to the Pibor Commissioner’s office.<sup>681</sup> The 2011 U.S. State Department report notes that with regards to the impact of inter-communal violence on women that:

Hundreds of women and children were abducted in 2011 during cattle raids and conflicts between rival ethnic groups, as well as during conflicts between the government’s army – the Sudan People’s Liberation Army (SPLA) – and armed groups. Some abductees were subsequently subjected to conditions of domestic servitude, forced animal herding, or commercial sexual exploitation.<sup>682</sup>

UNMISS reports that “abduction is very often followed by forced marriage or assignment to captors and is a form of gender-based violence. Other reports suggest that following the abduction, the woman often becomes the victim of repeated incidents of rape”.<sup>683</sup> The Small Arms Survey further reported with regard to the inter-communal violence that:

Until recently, sexual violence had not been a defining feature of the ethnic violence in South Sudan. This may be changing. After the attack on Pibor, HRW quoted one observer who had seen “three dead women who appeared to have been raped with blunt objects” (Peace Women, 2012). Recent violence has clearly taken a more vicious turn. In a clinic in Nasir, Upper Nile state, where many of the Lou Nuer victims of the Murle assaults were treated, one aid worker said a woman had had her belly sliced open and her unborn child removed.

<sup>675</sup> UN Security Council, [Conflict-related sexual violence, Report of the Secretary-General](#), 13 January 2012, paragraph 46

<sup>676</sup> *ibid*

<sup>677</sup> UNMISS, [Incidents of Inter-communal Violence in Jonglei State](#), June 2012, *The fate of those abducted by Lou Nuer and by Murle attackers*

<sup>678</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, *B. Inter-ethnic clashes in Jonglei, 1. Massacres, abductions, rape and looting*

<sup>679</sup> *ibid*

<sup>680</sup> *ibid*

<sup>681</sup> Small Arms Survey, [Women and Armed Violence in South Sudan](#), 23 April 2012

<sup>682</sup> U.S. State Department, [Trafficking in Persons Report 2012 - South Sudan](#), 19 June 2012

<sup>683</sup> UN Mission to South Sudan (UNMISS), [Incidents of Inter-Communal Violence in Jonglei State](#), June 2012

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There are also reports of a potential new trend; the targeting of women to the exclusion of all other goals. One high profile Murle representative, interviewed by Small Arms Survey, said some young Murle men had indicated in recent discussions that they were only interested in finding and killing Lou Nuer women.<sup>684</sup>

IRIN reporting on the inter-communal violence in Pibor similarly notes that “The men carrying out these attacks view anyone as a viable target - including women and children. Indeed, the cycle of revenge has now spiraled to the extent that the attackers regard the killing or abduction of women and children as a necessary method of revenge”.<sup>685</sup>

The 2012 U.S. State Department Trafficking in Persons report notes that hundreds of women were abducted in 2011, not only during cattle raids and conflicts between rival ethnic groups, but also in conflicts between the government’s army – the Sudan People’s Liberation Army (SPLA) – and armed groups.<sup>686</sup>

In October 2012 Amnesty International published a report on human rights violations committed by security forces while carrying out the civilian disarmament campaign in Pibor County between March and August 2012. It notes that it had received “credible reports of cases of rape and attempted rape by soldiers from the SPLA disarmament force. Standard medical reports show that MSF clinics in Pibor County treated 17 cases of rape and eight cases of attempted rape between mid-March and 31 August 2012”.<sup>687</sup> The UN Secretary-General reported in relation to civilian disarmament that “such rape cases are likely to have been underreported given the reluctance of women to report such abuses, particularly when military are still present in their communities”.<sup>688</sup>

Also see [2.3 Inter-communal violence](#).

### Domestic violence

With regards to domestic violence, the Small Arms Survey describes that levels are ‘extremely high’ in South Sudan and that customary law allows a certain level of violence in the home and permits a man to ‘discipline’ his wife.<sup>689</sup> The same source further notes that “While there is little authoritative research on the scale of the problem, anecdotal evidence from organizations and researchers working with women shows that the majority suffer from domestic violence and that it is widely accepted as being a normal part of married life”.<sup>690</sup> The Internal Displacement Monitoring Centre notes that “men have been increasingly unable to fulfill the roles expected of them as providers and protectors of their families. They have been unable to find work or lack specific skills. Their frustration has often resulted in domestic violence and some have turned to criminal activities to secure an income”.<sup>691</sup> Following her visit to South Sudan the UN High Commissioner for Human Rights, Navi Pillay, reported that civil society organisations as well as individual women “painted a very disturbing picture of domestic violence, and suggested rape was fairly commonplace, but rarely investigated”.<sup>692</sup>

In addition to the issues in accessing protection and justice as set out in the next section 3.4.3, familial pressure to remain in marriages is also reported, as if there is a divorce, the woman’s family will have to

<sup>684</sup> *ibid*

<sup>685</sup> IRIN, [Women and children bear brunt of Jonglei violence](#), 5 December 2012

<sup>686</sup> U.S. State Department, [Trafficking in Persons Report 2012 - South Sudan](#), 19 June 2012

<sup>687</sup> Amnesty International, [South Sudan: Lethal disarmament: Abuses linked to civilian disarmament in Pibor County, Jonglei State](#), 3 October 2012, *Rape and other incidences of sexual violence*

<sup>688</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, *paragraph 38*

<sup>689</sup> Small Arms Survey, [Women's security and the law](#), 24 February 2012

<sup>690</sup> Small Arms Survey, [Women's Security in South Sudan: Threats in the Home](#), 17 January 2012

<sup>691</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012, *Urbanization and gender*

<sup>692</sup> UN News Service, [South Sudan must sustain efforts to protect human rights, says UN official](#), 11 May 2012,

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return the dowry cattle.<sup>693</sup> Furthermore, the risk of losing their children forces many South Sudanese women to remain in abusive marriages as customary law usually dictates that the children of a divorced couple would remain with the husband, unless they are still breastfeeding, in which case they may stay with the mother until they are weaned.<sup>694</sup>

### 3.4.3 Availability of legal recourse, availability of state protection for SGBV

FIDH reports in July 2012 that “Laws protecting women’s rights are rarely enforced. As a result of a general lack of awareness of their rights, stigmatisation of victims, pressure exerted by families, and inadequate training of police and other representatives of the justice system, violence against women and girls goes largely unreported”.<sup>695</sup> An August 2012 report of the UN High Commissioner for Human Rights notes a similar situation:

Although the transitional Constitution of South Sudan and statutory laws contain protection guarantees for women and girls, they are rarely enforced. Serious crimes against women are rarely investigated. Family law, marriage, divorce and custody issues also tend to be addressed under customary law, which does not grant equal rights to women and men and focuses more on reconciliation than on ensuring accountability. These entrenched inequalities affect all women in the country, but impoverished women living in rural communities in particular.<sup>696</sup>

The Small Arms Survey identifies the following issues affecting police protection for sexual and gender-based violence:

Across the country, law enforcement services are weak and police are undertrained and under-resourced. In particular, police are given little training on how to handle cases of gender-based violence and for the most part, they have little knowledge of the concept of women’s rights. Women in focus groups explained that police often refuse to deal with women who report domestic abuse, claiming that this area falls outside of their jurisdiction and sending them home to address the issue within their families. Women complain that police meet reports of sexual violence with indifference or counter-accusations (D’Awol, 2011). Police officers are perceived to be incompetent or corrupt and are known to set suspects free in exchange for small bribes (Small Arms Survey, 2010). In some cases, police have reportedly arrested rape victims for adultery or incarcerated them for their own ‘protection’ until a perpetrator was caught. Police insensitivity can be a significant barrier for women who are seeking protection.<sup>697</sup>

According to the UNMISS report on inter-communal violence in Jonglei State, “in no case did government authorities arrest or initiate criminal proceedings against any of the abductors, whose names and whereabouts were known to the SSPS and/or County Commissioner’s office at the time that the women were turned over to authorities”.<sup>698</sup> UNMISS further explains that as the SSPS and government authorities rarely recognise that abductions may lead to sexual offences, in the rare case that an abducted woman or girl is able to escape and provide a statement to the police, the SSPS do not investigate the possibility of incidents of sexual violence, nor are they equipped and trained to do so.<sup>699</sup> In relation to sexual violence perpetrated by security forces whilst carrying out the civilian disarmament campaign in Pibor County, Amnesty International reported that “numerous sources, including local authorities and international

<sup>693</sup> Small Arms Survey, [Women’s Security in South Sudan: Threats in the Home](#), 17 January 2012

<sup>694</sup> *ibid*

<sup>695</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, B. *Inter-ethnic clashes in Jonglei, 1. Massacres, abductions, rape and looting*

<sup>696</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 31

<sup>697</sup> Small Arms Survey, [Women’s security and the law](#), 24 February 2012

<sup>698</sup> UN Mission to South Sudan (UNMISS), [Incidents of Inter-Communal Violence in Jonglei State](#), June 2012

<sup>699</sup> *ibid*

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NGOs, told Amnesty International that most allegations of rape and sexual violence are not investigated, even when reported".<sup>700</sup>

The U.S. State Department reports that "police seldom intervened in domestic disputes" and that observers have noted that sexual harassment was a serious problem throughout the country, particularly by police.<sup>701</sup> The report of the UN Secretary-General on Conflict-related sexual violence also notes that "It is of concern that law enforcement officials have not regularly undertaken thorough investigations into violations allegedly committed by SPLA. It is also of concern that, where civilian authorities have attempted to pursue those implicated in sexual violence crimes, there has generally been a lack of cooperation from SPLA leadership".<sup>702</sup>

The Small Arms Survey further reports that Special Protection Units, situated at police stations and staffed by police specifically trained to assist women and children offering legal aid, protection, medical care and psychological support were set up to address these issues.<sup>703</sup> It goes on to note however that "The development of these units has been slowed by a lack of trained personnel, however, and they remain largely unavailable outside of major urban centres".<sup>704</sup>

With regards to access to justice in South Sudan, the Small Arms Survey reports that few have recourse to the formal justice system as the limited court infrastructure that existed before the war has been destroyed, and chronic insecurity has prevented development and legal education.<sup>705</sup> Instead, customary law is relied upon in the vast majority of cases- up to 90 per cent, presided over by chiefs who are generally older men with deeply ingrained patriarchal views.<sup>706</sup> Research shows that chiefs are more easily swayed by men's interests and points of view and that their judgments are often biased in favour of men.<sup>707</sup> The Small Arms Survey further reports that "all of the systems of customary law are inherently patriarchal, relegating women to a lower status in the family and community and perpetuating and enforcing a number of customs and traditions that are harmful to women".<sup>708</sup>

Reporting on access to justice for domestic violence, the Small Arms Survey notes that:

Although cases are rarely reported, women may appeal to customary courts if the violence exceeds a reasonable level. That level varies greatly depending on the location, the court, and the individual chief. Domestic violence is often condoned by a court if a wife is found to be 'behaving badly' or not fulfilling her duties, such as by failing to cook for her husband, insulting him, or drinking. Many of the women who take their husbands to court for excessive abuse may end up themselves sentenced by the courts; wives are sometimes punished more harshly than their offending husbands, for example by receiving a larger number of lashings. [...]

A court is likely to order a woman to remain with her husband if he does not wish to be divorced and apologizes to his wife, promising to desist from further excessive beating.<sup>709</sup>

Human Rights Watch explains that "As trials for sexual offenses rarely probe the question of a woman's consent and sometimes fail to enforce 18 as the minimum age of consent, cases of adultery or "pregnancy"

<sup>700</sup> Amnesty International, [South Sudan: Lethal disarmament: Abuses linked to civilian disarmament in Pibor County, Jonglei State](#), 3 October 2012, *Rape and other incidences of sexual violence*

<sup>701</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Section 6 Rape and Domestic Violence*

<sup>702</sup> UN Security Council, [Conflict-related sexual violence, Report of the Secretary-General](#), 13 January 2012, *paragraph 47*

<sup>703</sup> Small Arms Survey, [Women's security and the law](#), 24 February 2012

<sup>704</sup> *ibid*

<sup>705</sup> *ibid*

<sup>706</sup> *ibid*

<sup>707</sup> *ibid*

<sup>708</sup> *ibid*

<sup>709</sup> Small Arms Survey, [Women's security and the law](#), 24 February 2012

may in fact have involved an element of force”.<sup>710</sup> The U.S. State Department reports with regard to convictions for rape that in addition to the government not effectively enforcing the law, that no information was available on the number of persons who were prosecuted, convicted, or punished for rape, but according to observers, sentences meted out to persons convicted of rape were often less than the maximum.<sup>711</sup>

In relation to access to justice for sexual violence the Small Arms Survey reports that:

While the law in South Sudan prohibits sexual violence, most sexual violence cases do not make it to the courts. Women are often made to marry their rapists, an option preferred by some as it prevents men from going to jail and avoids the stigma attached to women who are known to have been raped. If a sexual violence case is taken to court, the chances of conviction are low, largely due to factors including the poor investigative capacity of the police, the evidentiary challenges associated with sexual violence, and court biases.<sup>712</sup>

### 3.4.4 Availability of healthcare and social resources for women

IRIN reports that South Sudan has the highest maternal mortality rate in the world, “conservatively estimated at 2,000 deaths per 100,000 live births and high levels of infant mortality and morbidity”.<sup>713</sup> The 2011 U.S. State Department report notes that “few couples had access to the information and means for responsible birth control methods. Contraception, skilled medical attendance during childbirth, and obstetric and postpartum care were not widely available”.<sup>714</sup> The NGO Merlin reports that in South Sudan “women have limited access to contraception and often have no choice, or control, when it comes to sex”.<sup>715</sup> According to Marie Stopes International, the shortage of clinics and trained health professionals in South Sudan are major hindrances to women's access to family planning and some health facilities don't provide basic reproductive services such as delivery.<sup>716</sup> As of November 2012, IRIN reports that there were only 8 midwives in South Sudan.<sup>717</sup> It is also reported that women do not have equal access to diagnosis and treatment for sexually transmitted diseases because there are no facilities to provide these services.<sup>718</sup>

The March 2012 report of the UN Secretary-General on South Sudan noted that “owing to the lack of national capacity to assess and verify cases of sexual violence, coupled with cultural practices that inhibit reporting, few cases were confirmed during the period. In the absence of gender-based violence referral services in Jonglei State, the gender-based violence sub-cluster of the South Sudan Protection Cluster assisted victims following the attacks of December 2011 and January 2012”.<sup>719</sup> According to sources consulted by the Internal Displacement Monitoring Centre, “The [gender based violence] GBV sub-cluster in South Sudan, which is part of the Protection Cluster and is currently led by UNFPA, has established support and referral mechanisms for survivors of sexual violence, whether conflict-related or not, and has organized sensitization programs on GBV for the SPLA”.<sup>720</sup> However according to Marcy Hersh, a Senior Advocate for Women and Children's Rights at Refugees International, reporting in August 2012 “There is a shortage of rape kits in South Sudanese hospitals, minimal access to birth control, and virtually no medication to

<sup>710</sup> Human Rights Watch, *“Prison Is Not For Me”*, 21 June 2012

<sup>711</sup> U.S. State Department, *County Reports on Human Rights Practices*, 24 May 2012, Section 6 Rape and Domestic Violence

<sup>712</sup> Small Arms Survey, *Women's security and the law*, 24 February 2012

<sup>713</sup> IRIN, *South Sudan: Contraceptives give women the right to choose*, 14 November 2012

<sup>714</sup> U.S. State Department, *County Reports on Human Rights Practices*, 24 May 2012, Section 6 Reproductive rights

<sup>715</sup> Merlin, *Sexually transmitted infections: tackling taboo illnesses on the frontline*, 13 February 2012

<sup>716</sup> IRIN, *South Sudan: Contraceptives give women the right to choose*, 14 November 2012

<sup>717</sup> *ibid*

<sup>718</sup> U.S. State Department, *County Reports on Human Rights Practices*, 24 May 2012, Section 6 Reproductive rights

<sup>719</sup> UN Security Council, *Report of the Secretary-General on South Sudan*, 7 March 2012, paragraph 58

<sup>720</sup> Internal Displacement Monitoring Centre, *New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation*, 26 June 2012

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prevent the spread of HIV and other sexually transmitted diseases. There are also too few doctors trained to perform rape examinations, which are generally necessary to bring cases to trial”.<sup>721</sup>

In relation to sexual violence perpetrated by security forces whilst carrying out the civilian disarmament campaign in Pibor County, Amnesty International reported that “due to stigmas associated with rape and the lack of appropriate healthcare in remote areas of Pibor County, women who have been subjected to sexual violence may not be in a position to report the assault or seek medical assistance”.<sup>722</sup> IRIN, reporting on the disarmament campaign in Pibor County noted that between March and August 2012, MSF treated 90 people with “violent trauma injuries” - including several rape survivors - in its Pibor clinic, three of whom died from their injuries.<sup>723</sup>

It should also be noted with regards to social assistance that according to the Small Arms Survey, “Women’s capacity to own property is among the main factors affecting their security. In a severely underdeveloped country such as South Sudan, which has little in the way of social security and assistance, an abandoned woman who is left without a home or property may become completely destitute”.<sup>724</sup>

### 3.4.5 Forced marriages and early marriages

The Transitional Constitution of the Republic of South Sudan provides for a minimum marriage age of 18<sup>725</sup>, however according to the 2011 U.S. State Department report, “the law was not enforced, and child marriage was a problem”.<sup>726</sup> In August 2012 the UN Human Rights Council reported that girls in South Sudan continue to face discrimination and abuse including forced marriages<sup>727</sup> and according to UNICEF, girls are “vulnerable to social practices such as early marriage and early child bearing”.<sup>728</sup> UNICEF reports that child marriage undermines girls’ survival, development prospects and participation in other developmental activities and that early marriage is also one of the main reasons why there are very few girls who complete primary school.<sup>729</sup>

Human Rights Watch and the International Federation for Human Rights describe the practices of early and forced marriages as “widespread”.<sup>730</sup> The UK Foreign and Commonwealth Office noted in June 2012 that it continued to receive reports of human rights abuses including forced marriages across South Sudan.<sup>731</sup> According to UNICEF, 40.1% of young women aged 15–19 are married or in a relationship, 6.9% of girls are married before their 15th birthday and 44.8% are married between 16 and 18 years of age.<sup>732</sup> The South Sudan Human Rights Commission reports that “With an average cow fetching around 1500 SSP, ‘selling of girls into marriage’ is an incentive to forced marriage and one of the only realistic sources of income in South Sudan where over 51% of the population live below the poverty line”.<sup>733</sup>

<sup>721</sup> Global Post, [For South Sudan’s women, the war hasn’t ended](#), 5 August 2012

<sup>722</sup> Amnesty International, [South Sudan: Lethal disarmament: Abuses linked to civilian disarmament in Pibor County, Jonglei State](#), 3 October 2012, *Rape and other incidences of sexual violence*

<sup>723</sup> IRIN, [Disarmament and rebellion in Jonglei](#), 11 September 2012

<sup>724</sup> Small Arms Survey, [Women’s security and the law](#), 24 February 2012

<sup>725</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011, Article 17

<sup>726</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Children*

<sup>727</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012

<sup>728</sup> UN News Service, [Investment in children must be a priority in South Sudan - UNICEF](#), 6 July 2012

<sup>729</sup> UNICEF, [A role model for girls against Child Marriage in Lakes State, South Sudan](#), 11 October 2012

<sup>730</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012;

Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, *The Right to Marry*

<sup>731</sup> UK Foreign and Commonwealth Office, [Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report - Quarterly Updates: South Sudan](#), 30 June 2012

<sup>732</sup> UNICEF, [Child Protection](#), undated current factsheet (accessed 5 December 2012)

<sup>733</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.2.4.1. *Gender based violence and Forced Marriage*

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Human Rights Watch describes that “a woman or girl may end up in prison for attempting to marry without the consent of her family, as well as for refusing to marry the man her family has chosen for her, or for running away from her husband after bride wealth has been paid”.<sup>734</sup> Following her visit to South Sudan the UN High Commissioner for Human Rights, Navi Pillay, reported that she was told that girls are sometimes killed for rejecting forced marriages and that civil society groups and women had described a dowry system that fuels the practice of early and forced marriage, in which neither the daughters nor the mothers usually have any say.<sup>735</sup> UNICEF reports the case of a girl whose uncles were trying to force her to marry but whose father gave her a choice and she said no to early marriage.<sup>736</sup> However, she was sent to live with another family member to seek refuge from her uncles.<sup>737</sup>

Human Rights Watch explains with regards to legal protection against forced marriage:

Women and girls are not sufficiently protected from this form of sexual violence; prosecutions against people who force them to wed against their will are rare. Besides a provision against “kidnapping or abducting a woman to compel her marriage,” the Penal Code does not criminalize forced marriage. [...] Human Rights Watch also met women who were imprisoned because they requested a divorce. Divorce is not widely accepted in South Sudanese society, and requires a woman’s family to return all or part of the bride wealth to the husband.<sup>738</sup>

In its June 2012 report on ‘Incidents of Inter-Communal Violence in Jonglei State’, the UN Mission to South Sudan (UNMISS) describes that “abduction is very often followed by forced marriage or assignment to captors and is a form of gender-based violence. Other reports suggest that following the abduction, the woman often becomes the victim of repeated incidents of rape. [...] Abducted girls can be either sold, usually with a price of cattle, or forced to marry, also in exchange for cattle, when they are as young as 12 years old”.<sup>739</sup> The same source further reports with regards to protection against forced marriages that:

The GRSS’ [Government of the Republic of South Sudan] reluctance to hold perpetrators accountable for abduction, rape, forced marriage, deprivation of liberty and other associated crimes is of serious concern. [...] The [South Sudan Police Service] SPSS and government authorities rarely recognise that abductions may lead to sexual offences, perhaps because of a perception that the “marriage” that usually follows and through which children are born supersedes the crime. In rare cases where an abducted woman or girl is able to escape and provide a statement to the police, the SSPS do not investigate the possibility of incidents of sexual violence, nor are they equipped and trained to do so. As a result, sexual offences associated with widespread abductions are poorly documented, if at all.

Despite forced marriage being an accepted cultural practice routinely upheld by customary courts, in violation of the TCSS [Transitional Constitution of the Republic of South Sudan of 2011], sexual relations that take place within this context and the marriage itself can constitute sexual and gender-based violence. But because these violations occur in the domestic sphere, these practices are to some extent normalised in dominant social perceptions.<sup>740</sup>

### 3.4.6 Vulnerability of children to violence

UNICEF summarises the child protection issues in South Sudan as follows:

Children in South Sudan continue to be at risk of many violations, stemming from the impact of the armed conflict that ravaged the country for more than 20 years. The civil war has destroyed the social fabric of

<sup>734</sup> Human Rights Watch, *“Prison Is Not For Me”*, 21 June 2012, *The Right to Marry*

<sup>735</sup> UN News Service, *South Sudan must sustain efforts to protect human rights, says UN official*, 11 May 2012,

<sup>736</sup> *ibid*

<sup>737</sup> *ibid*

<sup>738</sup> *ibid*

<sup>739</sup> UN Mission to South Sudan (UNMISS), *Incidents of Inter-Communal Violence in Jonglei State*, June 2012

<sup>740</sup> *ibid*



communities and many children have been left without the protection of caring adults. This is exposing them to high levels of violence, including gender based violence, exploitation, abuse and deprivation.<sup>741</sup>

The report of the UN Secretary-General on Children and armed conflict noted that in 2011, the country task forces on monitoring and reporting verified the killing of 104 children and the maiming of 78, while 306 reports of killing and maiming were received.<sup>742</sup> The Internal Displacement Monitoring Centre identifies the following serious threats to children's physical security:

- (1) inter-tribal violence, which has resulted in the deaths and abduction of children;
- (2) fighting between SPLA and dissident militias, which has led to forced recruitment and sexual violence; and
- (3) LRA attacks, which have resulted in the forced recruitment of boys for use as child soldiers and girls as sex slaves. Inter-tribal violence is the main cause of child abductions, with victims often used as combatants in conflict situations.

The UN has also reported attacks against schools and their occupation in Jonglei, Warrap, Lakes and Western Equatoria states.<sup>743</sup>

According to the report of the UN Secretary-General on Conflict related sexual violence covering the period between December 2010 and November 2011, rapes of girls were perpetrated by the South Sudan Liberation Army (SSLA), a rebel militia group then under the overall command of Peter Gadet in Mayom County (Unity State) in May 2011 during armed conflict against the SPLA.<sup>744</sup> It further reports that in May 2011, four girls (aged 11-15) — returnees who were travelling from northern to southern Sudan — were reportedly raped by Misseriya militia members who attacked their train in Northern Bahr el Ghazal State.<sup>745</sup> The UN Secretary-General documented that during July 2009 to February 2012, 27 cases of killings and 22 cases of maiming of children occurred in the context of LRA attacks on civilians or during clashes between LRA and UPDF [Uganda People's Defence Force], SPLA or "Home Guards".<sup>746</sup> 27 cases of sexual violence against girls by LRA elements were also reported, and the girls indicated that they had been raped by more than five persons every month.<sup>747</sup> The same source reports with regards to stigmatization of sexual violence that:

Stigmatization remains a major challenge for survivors of sexual violence perpetrated by LRA, especially for girls returning with babies; their families and communities often find it difficult to accept them. Families that take in such LRA victims are often accused by their community of supporting LRA and the girls or young women escaping LRA with babies are often seen as bringing bad luck./ [...]As a result of such stigmatization, cases of sexual violence are very difficult and sensitive to document.<sup>748</sup>

The U.S. State Department report similarly noted that "abuse, including sexual abuse, was widespread. Child rape was common but seldom reported due to fear among victims and their families of stigmatization".<sup>749</sup> Furthermore the South Sudan Human Rights Commission notes that:

According to customary law, girls who are raped are forced to marry the perpetrators of the crime and if that is not the case the violation is ignored or atoned if the perpetrator pays compensation amounting to the equivalent of bride price to the girl's family. This in effect encourages men to rape girls whom they want to

<sup>741</sup> UNICEF, [Child Protection](#), undated current factsheet (accessed 5 December 2012)

<sup>742</sup> UN Security Council, [Children and armed conflict, Report of the Secretary-General](#), 26 April 2012, paragraph 105

<sup>743</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012, Threats to children

<sup>744</sup> UN Security Council, [Conflict-related sexual violence, Report of the Secretary-General](#), 13 January 2012, paragraph 48

<sup>745</sup> *ibid*, paragraph 50

<sup>746</sup> UN Security Council, [Report of the Secretary-General on the situation of children and armed conflict affected by the Lord's Resistance Army](#), 25 May 2012, paragraph 25

<sup>747</sup> *ibid*, paragraph 31

<sup>748</sup> *ibid*, paragraph 27

<sup>749</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012

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force to marry them. Today therefore the cultural practice tends to discourage women from reporting rape for fear of having to marry the perpetrator and/or being generally stigmatized by society.<sup>750</sup>

A total of 602 children were reportedly abducted during 2011, of which 356 cases were verified by the UN.<sup>751</sup> Inter-tribal violence is reported as the main cause of child abductions in South Sudan.<sup>752</sup> UNICEF reports that “Child abduction is particularly common among some nomadic and pastoral communities, and remains one of the major reasons for inter-communal clashes”.<sup>753</sup> According to the Small Arms Survey, “Child abduction is prevalent throughout South Sudan, yet most non-Murle South Sudanese describe it as a ‘Murle problem’. There is, however, no evidence to suggest that abduction is more prevalent among the Murle”.<sup>754</sup> The same source notes that “Abduction of children and women by both the Murle and Lou Nuer has become so common that one cannot isolate a single perpetrating tribe. It is an extremely emotive issue for both communities, and is often a catalyst for retaliatory raids”.<sup>755</sup> According to the U.S. State Department, during 2011 rebel militia groups and ethnic groups abducted numerous children in the conflict zones of Jonglei, Unity, Warrap, Upper Nile, and Western Equatoria.<sup>756</sup> It was reported that 60 children had been abducted between January to May 2012 in Juba county alone, and in one incident in Likiliri Payam armed men attacked a school, abducting one girl and three boys and killing two other people.<sup>757</sup>

In November 2012 Médecins Sans Frontières reported that “While Jonglei state has a long history of intercommunal cattle-raiding, thousands of civilians, including women, and children as young as four months old, have been caught up in violent attacks since 2009, which usually occur during the dry season”.<sup>758</sup> It further notes that “A woman treated by MSF spoke of an attack in March this year: “They threw children in the fire. If the child can run, they will shoot them with the gun; if they are small and cannot run, they will kill them with a knife”.<sup>759</sup> Women and children made up more than 50 percent of people suffering from gunshot wounds treated by MSF after an attack in January 2012”.<sup>760</sup>

Sources also report on the impact that the disarmament campaign has had on children. Amnesty International carried out research in Pibor County in September 2012 and interviewed civilians directly affected by civilian disarmament, which found that:

[...] men, women and children were subjected to extrajudicial executions and other unlawful killing, torture and other cruel, inhuman or degrading treatment or punishment and unnecessary or excessive use of force by the SPLA and SSPS Auxiliary Force, including shootings, beatings, simulated drowning and rape. The organization also received reports of looting by soldiers. Some of the incidents reported to Amnesty International occurred during the first phase of disarmament, which was supposed to be voluntary.<sup>761</sup>

The U.S. State Department also reported that the practice of girl compensation, whereby the family of a victim of crime are compensated with a young girl from the perpetrator’s family, occurred in three counties of Eastern Equatoria State.<sup>762</sup> Reportedly, the girls were generally between the ages of 11 and 15, were

<sup>750</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.2.4.1. *Gender based violence and Forced Marriage*

<sup>751</sup> UN Security Council, [Children and armed conflict, Report of the Secretary-General](#), 26 April 2012, paragraph 107

<sup>752</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012, *Threats to children*

<sup>753</sup> UNICEF, [Child Protection](#), undated current factsheet (accessed 5 December 2012)

<sup>754</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012, *Abduction of women and children*

<sup>755</sup> *ibid*

<sup>756</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 6, *Children*

<sup>757</sup> Radio Miraya, [State MP: 60 children kidnapped in Juba](#), 10 May 2012

<sup>758</sup> MSF, [South Sudan: Displacement and Destruction of Health Facilities in Jonglei State](#), 27 November 2012

<sup>759</sup> *ibid*

<sup>760</sup> *ibid*

<sup>761</sup> Amnesty International, [South Sudan: Lethal disarmament: Abuses linked to civilian disarmament in Pibor County, Jonglei State](#), 3 October 2012, *Introduction*

<sup>762</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 6, *Children*

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often physically and sexually abused, did not attend school, and served as servants for the victim's family.<sup>763</sup>

For information on the treatment of juveniles in the justice system, see [4.3 Treatment of vulnerable persons within the justice system](#)

### 3.4.7 Access to education

The August 2012 Report of the UN High Commissioner for Human Rights notes that "A 15-year-old girl in South Sudan is said to have a higher chance of dying during pregnancy or childbirth than of finishing secondary school".<sup>764</sup> UNICEF describes that South Sudan's education indicators are amongst the worst in the world, but nevertheless demand for education is high, demonstrated through the increases in school enrolment over the past few years.<sup>765</sup> The World Bank reports that "The recent rapid growth after a long period of stagnation has resulted in a concentration of students in the early grades, a high proportion of overage students, repetition, and dropout".<sup>766</sup>

According to the World Bank, "South Sudan has an estimated 1 million out-of-school children, 925,000 of whom live in rural areas"<sup>767</sup>, whilst UNICEF puts the figure of children eligible for primary school who do not have access to education at 1,250,000.<sup>768</sup> UNICEF reports that 70 per cent of children between six and seventeen years of age have never been to school, and the completion rate in primary schools is barely ten per cent, one of the lowest in the world".<sup>769</sup> UNICEF further reports that access to pre-primary and secondary education is even worse than primary education, with only two per cent of pre-school aged children in early childhood development programmes and a mere 44,027 children in secondary schools, compared with 1.4 million in primary school.<sup>770</sup> In Unity State, it is reported that only four per cent of children attend school.<sup>771</sup>

The Internal Displacement Monitoring Centre identifies a number of obstacles to education including: the high numbers of displaced and returnees exceed the absorption capacity of pre-existing schools in an already overloaded and deficient education system; the occupation of schools by armed forces, IDPs, and returnees has resulted in significant damage to an already poor education infrastructure; the low teacher capacity; and language issues, as the language of instruction is English, which poses a problem for returnees from the north who speak Arabic.<sup>772</sup> Jessica Hjarand, education specialist at UNESCO reports that there are not enough schools, certainly not enough teachers and most of the teachers in South Sudan are primary school leavers, resulting in poor quality instruction.<sup>773</sup> UNICEF considers that the following challenges remain in implementing education interventions

Poor infrastructure complicates and increases the cost of supply delivery while less than 40 per cent of teachers are properly trained and qualified. A shortage of more than 25,000 classrooms leads to

<sup>763</sup> *ibid*

<sup>764</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 12

<sup>765</sup> UNICEF, [Basic Education and Gender Equality](#), undated current factsheet (accessed 5 December 2012)

<sup>766</sup> World Bank, [Education in the Republic of South Sudan: Status and challenges for a new system](#), 2012, Executive Summary

<sup>767</sup> *ibid*

<sup>768</sup> UNICEF, [Basic Education and Gender Equality](#), undated current factsheet (accessed 5 December 2012)

<sup>769</sup> UN News Service, [Investment in children must be a priority in South Sudan - UNICEF](#), 6 July 2012

<sup>770</sup> UNICEF, [Basic Education and Gender Equality](#), undated current factsheet (accessed 5 December 2012)

<sup>771</sup> Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 32

<sup>772</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012

<sup>773</sup> IRIN, [South Sudan struggles to meet demand for education](#), 4 September 2012

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overcrowding, and in a large number of counties recurrent emergencies and insecurity delay the distribution of educational materials to schools, and compromise attendance during the school year.<sup>774</sup>

The South Sudan Human Rights Commission reports that “Delays in salaries, lack of space, lack of security and the lack of latrines, potable drinking water, food, electricity and first aid and an established curriculum for schools all compound the level and access to education for many south Sudanese and is a determining factor in deterring many parents from sending their children to school”.<sup>775</sup>

The report of the UN Secretary-General on Children and armed conflict reported that the country task force also verified the use of 21 schools by SPLA, resulting in the disruption of schooling for approximately 10,935 children and that an additional 10 schools were damaged as a result of fighting among different armed groups.<sup>776</sup> School closures due to conflict and the resulting displacement or fear of further attacks have also been reported to prevent pupils from returning to school in Unity State.<sup>777</sup> Save the Children reports on the impact of disruption to education “The threat of recruitment increases with the intensity of the conflict - just as our ability to protect children is being undermined. Keeping children in school during conflict is one of the best ways to protect them and reduces the fear and uncertainty they face. Education gives children the chance of a future beyond conflict”.<sup>778</sup>

According to UNICEF, many existing schools are not conducive to learning.<sup>779</sup> Only 45 per cent of the 3,349 primary schools in South Sudan have access to safe water, and only 17 per cent have adequate latrines for both girls and boys and the qualified teacher-to-pupil ratio is 1:117.<sup>780</sup> In addition to an under-resourced education system, it is reported that “Younger pupils compete for spots that are available in primary classes with teenagers, who were denied educational opportunities during the country’s decades-long war. The majority of those classes are held in the open air or under trees. That means when the rainy season hits, the result is a six-month break until the storms pass”.<sup>781</sup>

Several sources describe that girls often lack equal access to education, with UNICEF noting that “girls, in particular, remain disadvantaged when it comes to education.”<sup>782</sup> It gives the net primary school enrolment rate as 51% for boys, but only 37% for girls.<sup>783</sup> The World Bank reports that “the out-of school children increasingly have a particular profile: poor, rural, female, and overage”.<sup>784</sup> However, it considers that “The widest disparities are associated with the urban-rural and rich-poor dimensions”.<sup>785</sup> Amongst the barriers to girls attending school, the U.S. State Department identifies the absence of separate bathrooms in some schools and that the majority of teachers are male.<sup>786</sup> According to the International Federation for Human Rights, girls commonly experience sexual harassment at school.<sup>787</sup> In relation to gender equality, the Under Secretary in the Ministry of General Education, Deng Deng Yai reported in September 2012 that:

<sup>774</sup> UNICEF, [Basic Education and Gender Equality](#), undated current factsheet (accessed 5 December 2012)

<sup>775</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.13 .*Rights to Education*

<sup>776</sup> UN Security Council, [Children and armed conflict, Report of the Secretary-General](#), 26 April 2012, *paragraph 106*

<sup>777</sup> Sudan Tribune, [Fear of bombings affects school attendance in Unity State](#), 18 May 2012

<sup>778</sup> Save the Children, [Children caught up in widening conflict in South Sudan face increasing risk of death, injury or recruitment by armed groups](#), 8 May 2012

<sup>779</sup> UNICEF, [Situation of women and children](#), undated current webpage (accessed 5 December 2012)

<sup>780</sup> *ibid*

<sup>781</sup> Inter Press Service, [Latrines Critical to Keeping Kids in South Sudan’s Schools](#), 4 April 2012

<sup>782</sup> UN News Service, [Investment in children must be a priority in South Sudan - UNICEF](#), 6 July 2012. See also:

U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Children*

<sup>783</sup> UNICEF, [Basic Education and Gender Equality](#), undated current factsheet (accessed 5 December 2012)

<sup>784</sup> World Bank, [Education in the Republic of South Sudan: Status and challenges for a new system](#), 2012, *Foreword*

<sup>785</sup> *ibid* , *Executive Summary*

<sup>786</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Children*

<sup>787</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, B. *Inter-ethnic clashes in Jonglei, 1. Massacres, abductions, rape and looting*

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The gap between boys and girls in term of enrolment, retention, progression is very huge and it is important for us to ensure that we bridge the gap and promote the gender equity and promoting gender equality or gender equity as a nation we have moral duty to address the issue of girl education, we also have legal duty because our constitution provide equal rights between man and woman, it also provide for gender equality to be promote through in the country, not only in education, but all aspect of life.<sup>788</sup>

The World Bank reports that school inputs are not distributed equally across states; this means that schools in some states receive far less school inputs than average for South Sudan, plus the distribution of resources across schools is also poor.<sup>789</sup> It gives the example that the average pupil-teacher ratio varies between 31 in Central Equatoria and 84 in Jonglei (excluding volunteer teachers, where the range is from 44 in Central Equatoria to 139 in Jonglei).<sup>790</sup>

### 3.4.8 Services for unaccompanied or separated minors

Limited information was found on government-run facilities or assistance available for unaccompanied or separated minors in South Sudan amongst the sources consulted.

According to UNICEF “thousands of children are orphans and lack appropriate care”.<sup>791</sup> With regards to state care, Save the Children reports that the government of Southern Sudan developed a draft policy on children without appropriate care with support from development partners which stipulates strategies such as foster care arrangements, adoption and interim care and support.<sup>792</sup> With regards to the challenges hindering the implementation of child protection interventions in South Sudan UNICEF identifies that:

[...] the limited number and capacity of professional social workers in nascent government services, with few based on the ground at state and county level, is a key constraint. Conflicts between community and ethnic groups continue to threaten children, while the lack of access to education, extreme poverty, a weak legal and judicial system, and an over-reliance on customary law practices makes children more vulnerable to abuse and exploitation. Violence and discrimination against women and girls, which is rooted in cultural norms, traditions and practices, and the destruction of traditional community-based protection mechanisms due to the civil war are all factors that continue to pose challenges in the implementation of child protection programmes.<sup>793</sup>

The South Sudan Human Rights Commission notes that “due to lack of adequate services to help them [orphans] many are forced into illicit behaviour in the streets and are exposed to prostitution, communicable diseases, HIV/AIDS and/or illegal detentions. Many children are also abducted and sold into cattle raiding or to other families”.<sup>794</sup>

The South Sudan Presbyterian Evangelical Church Orphan Children Trauma and Healing Center is reported to have been established in Bor town, Jonglei State in February 2012 to take care of children whose parents were killed during inter-tribal conflict clashes between the Lou Nuer and Murle communities.<sup>795</sup> No further details on the Centre were found.

Save the Children reports with regard to the situation for ‘children without appropriate care and children on the move’, that:

<sup>788</sup> Radio Miraya, [Ministry of Education calls for promotion of girl education](#), 23 September 2012

<sup>789</sup> World Bank, [Education in the Republic of South Sudan: Status and challenges for a new system](#), 2012, *Executive Summary*

<sup>790</sup> *ibid*

<sup>791</sup> UNICEF, [Situation of women and children](#), undated current webpage (accessed 5 December 2012)

<sup>792</sup> Save the Children, [South Sudan Country Profile](#), Updated June 2011

<sup>793</sup> UNICEF, [Child Protection](#), undated current factsheet (accessed 5 December 2012)

<sup>794</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.3.1. *Orphans and Vulnerable Children*

<sup>795</sup> Radio Miraya, [Jonglei floods affect 170 orphans](#), 21 May 2012

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Due to conflicts arising from tribal and north-south tensions, more children and women are being displaced, separated from their families and consequently left without care. Recently, children on the streets have increased due to massive population movement, separation and the high poverty level. Girls are the most vulnerable when separated, as they are vulnerable to sexual exploitation. The prolonged conflict in Sudan has left dozens of children orphaned, a contributing factor to the increased number of children on the street.<sup>796</sup>

UNICEF reports a similar situation with regards to unaccompanied or separated children, noting that “there are also increasing reports of children without appropriate family care working and living on the streets in major cities and towns; many of these children are at risk of getting into contact with the law”.<sup>797</sup> The U.S. State Department also reports that “Juba has reportedly seen a significant rise in child prostitution in recent years, as well as in numbers of street children and child laborers – two groups which are highly vulnerable to labor and sexual exploitation”.<sup>798</sup>

It appears from the sources consulted that internally displaced unaccompanied minors are generally supported by humanitarian agencies. In July 2012 the UN Secretary-General reported that international humanitarian agencies also assisted persons in Rumamier displaced from Unity State and that UN Children’s Fund partners in the area continued to register separated children and to conduct family tracing”.<sup>799</sup> The same source reported, that “Registration of separated children, the majority of whom reside in Yida refugee camp, continued, bringing the total number of registered separated children to 2,044. UNMISS and UNICEF worked with authorities in Jonglei to register and reunify 170 children with their families”.<sup>800</sup> Following an April 2012 research mission to Yida camp, which houses Sudanese refugees from Southern Kordofan and Blue Nile, Amnesty International reported that “Unaccompanied children and young persons in Yida camp live in compounds designated by the refugee council. Officials from the refugee council and staff from international NGOs and UN agencies in Yida all expressed concern regarding the conditions in which this group of people are living, especially unaccompanied girls”.<sup>801</sup> Children spoke to Amnesty International about the overcrowded living conditions and that they received inadequate food distributions, often eating once a day, and their ration cards were held by the head teachers.<sup>802</sup> Amnesty International further reported that girls and young women in the unaccompanied compounds faced the greatest levels of insecurity in Yida refugee camp, including rape and sexual harassment, aggravated by the fact that they do not have sufficiently safe and private personal hygiene facilities.<sup>803</sup> However in December 2012 UNHCR reported that “For unaccompanied children without family members in the camp, UNHCR identifies a foster family from the same village or community. In each scenario, UNHCR ensures that the children’s physical needs are met-in terms of water, shelter, food and more-and that they are provided a safe and secure emotional environment”.<sup>804</sup>

### 3.4.9 Child labour

In its 2011 profile on South Sudan, Save the Children reported that whilst child labour is prohibited under the Government of Southern Sudan Child Act of 2008, it is “a major problem facing children in southern

<sup>796</sup> Save the Children, [South Sudan Country Profile](#), Updated June 2011

<sup>797</sup> UNICEF, [Child Protection](#), undated current factsheet (accessed 5 December 2012)

<sup>798</sup> U.S. State Department, [Trafficking in Persons Report 2012 - South Sudan](#), 19 June 2012

<sup>799</sup> UN Security Council, [Report of the Secretary-General on the situation in Abyei](#), 25 July 2012

<sup>800</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012

<sup>801</sup> Amnesty International, [We can run away from bombs, but not from hunger; Sudan's refugees in South Sudan](#), 7 June 2012, *Unaccompanied children*

<sup>802</sup> *ibid*

<sup>803</sup> *ibid*

<sup>804</sup> UN High Commissioner for Refugees, [Helping young refugees in South Sudan find physical and emotional security](#), 5 December 2012

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Sudan, as traders often employ children with no wages at all. Children living and working on the streets are among the most affected”.<sup>805</sup> The 2011 U.S. State Department annual report explains that:

The minimum age for paid employment in strenuous work is 14, while the minimum age for “light work” is 12. Under the law strenuous work includes activities such as mining and quarrying, work in factories, graveyard shift work, or employment in prisons or the military. Light work is defined as work that does not harm the health or development of a child and does not affect the child’s school attendance or capacity to benefit from such.<sup>806</sup>

However, the same source reports that “The government did not enforce child labor laws” and that child labour was concentrated in the agricultural sector (the majority of which was subsistence farming) and cattle herding.<sup>807</sup> In September 2012 it was reported that police in Northern Bahr al Gazal state were forcing ‘idle’ youth to provide labour on police farms, although the age of the recruits was not specified.<sup>808</sup>

The 2012 U.S. State Department Trafficking in Persons report notes with regard to child labour that:

South Sudanese women and girls, particularly those from rural areas or those who are internally displaced, are vulnerable to forced labor as domestic servants in homes in Yei and Juba, and possibly throughout the country; most are believed to be working without contracts or government-enforced labor protections. Some of these women and girls are sexually abused by male occupants of the household or forced to engage in commercial sex acts. South Sudanese girls, some as young as 10 years old, engage in prostitution within the country – including in restaurants, hotels, and brothels – at times with the assistance of third parties, including law enforcement officials; the majority of victims are exploited in urban centers such as Juba, Torit, and Wau. Juba has reportedly seen a significant rise in child prostitution in recent years, as well as in numbers of street children and child laborers – two groups which are highly vulnerable to labor and sexual exploitation. Children working in construction, market vending, shoe shining, rock breaking, brick making, delivery cart pulling, and begging may be victims of forced labor.<sup>809</sup>

### 3.4.10 Forced recruitment/child soldiers

The 2008 Child Act establishes 18 as the minimum age for voluntary recruitment into the armed forces and requires the government to ensure that “no child be used or recruited to engage in any military or paramilitary activities, whether armed or unarmed, including, but not limited to work as sentries, informants, agents or spies, cooks, in transports, as laborers, for sexual purposes, or any other forms of work that do not serve the interests of the child”.<sup>810</sup> In March 2012, a revised Action Plan between the SPLA and the UN on the release of all children associated with armed forces in South Sudan was signed.<sup>811</sup> In March 2012, UN Special Representative for Children and Armed Conflict Radhika Coomaraswamy stated that 2,000 minors were still serving in the SPLA, having been integrated from rebel militia forces, who were expected to be demobilised.<sup>812</sup> In February 2012, 53 children from Renegade Militia Group in Western Bahr-El-Ghazal State had been demobilized, following former militia leader Maj. Gen. Hassan Deng’s joining of the SPLA.<sup>813</sup> During 2011, Unity State’s DDR Commission reportedly disarmed nearly 100 former child soldiers and elderly people from the military.<sup>814</sup>

<sup>805</sup> Save the Children, [South Sudan Country Profile](#), Updated June 2011

<sup>806</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 7 c. Prohibition of Child Labor and Minimum Age for Employment

<sup>807</sup> *ibid*

<sup>808</sup> Inter Press Service, [Forcing South Sudan’s Idle Youth into Farming](#), 5 September 2012

<sup>809</sup> U.S. State Department, [Trafficking in Persons Report 2012 - South Sudan](#), 19 June 2012

<sup>810</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 1g Child Soldiers

<sup>811</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraphs 59-61

<sup>812</sup> Inter Press Service, [2,000 child soldiers in South Sudan ranks: UN](#), 16 March 2012

<sup>813</sup> The Citizen (Juba), [DDRC, UNICEF Welcome Release of Child Soldiers](#), 5 February 2012

<sup>814</sup> Sudan Tribune, [Unity State to recommence disarming children and elderly from army](#), 9 July 2012

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According to the UN Secretary-General, between March 2012 and June 2012, 54 children who were enlisted in the SPLA were released and returned to their families, however “In relation to the recent border incidents, mobilization of new recruits has occurred, but so far, UNMISS has not been able to confirm reports of recruitment of children in some of the regional SPLA garrisons”.<sup>815</sup> IRIN reported in September 2012 that Nuer as well as Murle youths are being recruited into Yau Yau’s rebellion.<sup>816</sup> According to sources cited by IRIN including an international aid worker and Defence Minister Majak D’Agoot, the main reason for the youths joining Yau Yau is on account of how abusive the disarmament process is.<sup>817</sup>

The 2011 U.S. State Department Trafficking in Persons report notes with regard to forced recruitment of children in South Sudan that:

During the year, UN personnel continued to observe children wearing SPLA uniforms, carrying weapons, and serving at SPLA checkpoints or as bodyguards for senior commanders. In 2011, the South Sudan Police Service (SSPS) forcibly recruited adults and children in Unity State; some of these individuals, including children, were later transferred to the SPLA. Armed militia groups recruited children, at times through force, throughout the year. The Sudanese People’s Liberation Movement – North, a group that was formerly aligned with the SPLA and that reportedly still receives support from the SPLA/Sudan People’s Liberation Movement (SPLM), forcibly recruited and reportedly used child soldiers in Sudan in fighting against the Sudan Armed Forces and aligned militias. Boys and girls were identified in the ranks of rebel groups, including those allied to Peter Gadet and the late Gatluk Gai in Unity and Western Bahr el Ghazal states and David Yau Yau in Jonglei State; during the reporting period, some of these militias were integrated into the government’s armed forces. The Lord’s Resistance Army (LRA) continued to abduct South Sudanese children and harbor enslaved South Sudanese, Sudanese, Congolese, Central African, and Ugandan children in Western Equatoria and Western Bahr el-Ghazal states for use as cooks, porters, concubines, and combatants; some of these children are also taken back and forth across borders into Central African Republic or the Democratic Republic of the Congo. The UN reported that the LRA abducted 49 individuals during 25 attacks in South Sudan in 2011.<sup>818</sup>

According to the UN, it had “verified 352 cases of recruitment or use of children in 2011. Of these, 253 were associated with SPLA, while 99 were associated with armed groups loyal to commanders David YauYau, Peter Gatdet and the late Gatluk Gai. In addition, 272 boys were released to the South Sudan Disarmament, Demobilization and Reintegration Commission from various armed groups”.<sup>819</sup> The UN Secretary-General reported that during July 2009 to February 2012, the LRA committed 86 documented child abductions, the majority of which were abducted in Tambura county; most of the abductees were boys, suggesting that they were being abducted for military use by the armed group.<sup>820</sup>

There are also reports that north Sudanese rebels are using Yida refugee camp in South Sudan as recruitment grounds for troops including child soldiers. In October 2012 Anne Richard, US Assistant Secretary of State for the Bureau of Population, Refugees and Migration called on rebels fighting in Sudan's South Kordofan and Blue Nile states to end militarisation of the camp.<sup>821</sup> South Sudan did not respond to this claim, the first time a senior western official has stated that the SPLM-N are operating inside South Sudan, although the SPLM-N has denied recruiting child soldiers.<sup>822</sup> In March 2012 UNOCHA reported on a ‘recruitment drive’ by armed forces in the Abyei area, although it did not identify the ages of the targets.<sup>823</sup>

The 2011 U.S. State Department Trafficking in Persons report further notes that “The government continued to fail to hold members of its security forces accountable for the recruitment and use of children,

<sup>815</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraphs 59-61

<sup>816</sup> IRIN, [Disarmament and rebellion in Jonglei](#), 11 September 2012

<sup>817</sup> *ibid*

<sup>818</sup> U.S. State Department, [Trafficking in Persons Report 2012 - South Sudan](#), 19 June 2012

<sup>819</sup> UN Security Council, [Children and armed conflict, Report of the Secretary-General](#), 26 April 2012, paragraph 104

<sup>820</sup> UN Security Council, [Report of the Secretary-General on the situation of children and armed conflict affected by the Lord’s Resistance Army](#), 25 May 2012

<sup>821</sup> Agence France Presse, [Sudan rebels recruit children from S.Sudan refugee camp: US](#), 31 October 2012

<sup>822</sup> *ibid*

<sup>823</sup> UNOCHA, [Weekly Humanitarian Bulletin; 22 March 2012](#), 22 March 2012

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and this pervasive impunity thwarted progress toward ending the use of child soldiers in the SPLA and SPSS”.<sup>824</sup>

### 3.5 Sexual Orientation

#### 3.5.1 Domestic legal framework relating to LGBTI individuals

The South Sudan Penal Code Act of 2008 stipulates in Article 248 that:

Whoever, has carnal intercourse against the order of nature with any person and whoever allows any person to have such intercourse with him or her commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding ten years and may also be liable to a fine.<sup>825</sup>

In contrast the U.S. State Department stated in its 2011 annual human rights report that “The law prohibits sodomy, which is punishable by death” but further reported that “There were no reports that this law was enforced during the year”.<sup>826</sup>

The Transitional Constitution of the Republic of South Sudan does not guarantee equality on the basis of sexual orientation, but sets out in Article 14 that:

All persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status.<sup>827</sup>

Furthermore, Article 15 of the Transitional Constitution only stipulates the right to marry a person of the opposite sex: “Every person of marriageable age shall have the right to marry a person of the opposite sex and to found a family according to their respective family laws [...]”.<sup>828</sup>

#### 3.5.2 Treatment of LGBTI individuals

Prior to South Sudan’s independence the region’s President Salva Kiir Mayardit told Radio Netherlands Worldwide in July 2010 that “It [homosexuality] is not in our character [...] it is not there and if anybody wants to import it to Sudan [...] it will always be condemned by everybody”.<sup>829</sup> He further “promised democracy, equality and justice for all in Southern Sudan’ but made an exception for homosexuals saying that gay people would not be accepted”.<sup>830</sup> In November 2011 it was reported that MP Daniel Lokoroto from Yei River county said that “the law on same sex marriage should also be clear, to control gay activities in Central Equatoria [sic] State”.<sup>831</sup> He further stated that “We have a world problem now of gays and therefore our constitution in Central Equatoria and in the Republic of South Sudan provides only for marriage between members for opposite sex”.<sup>832</sup> He further stated that “a law on same sex marriages will give parliament the power to defend the citizens from gay activities in South Sudan”.<sup>833</sup> In April 2012 James

<sup>824</sup> U.S. State Department, [Trafficking in Persons Report 2012 - South Sudan](#), 19 June 2012

<sup>825</sup> [Penal Code Act 2008](#), 10 February 2009, Chapter XVIII, Article 248 (1)

<sup>826</sup> United States Department of State, [2011 Country Reports on Human Rights Practices - South Sudan](#), 24 May 2012, Section 6, *Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity*

<sup>827</sup> Laws of South Sudan, [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011, Part Two, Article 14

<sup>828</sup> *ibid*, Part Two, Article 15

<sup>829</sup> Sudan Tribune, [Homosexuality will not be tolerated, says south Sudan president](#), 31 July 2010

<sup>830</sup> *ibid*

<sup>831</sup> Radio Miraya, [MP calls for legal minimum age of marriage](#), 22 November 2011

<sup>832</sup> *ibid*

<sup>833</sup> *ibid*

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Mawut Lueth, a member of South Sudan’s governing Sudan People’s Liberation Movement (SPLM) reported that:

Our cultures condemns in the most serious terms same sex marriage, so also our religions, Christianity and Islam in particular. This is premised on the principle that the human race must guarantee the production and reproduction of human beings. Once a human being is born by a family and taken care of by society, he or she is under obligation to also constitute a natural family to produce other humans. It is by so doing that we are grateful to the family that gave us birth and society in general for ensuring our living.<sup>834</sup>

With regards to societal discrimination against LGBTI individuals, the 2011 annual human rights report published by the U.S. State Department reported that discrimination against homosexuals “were [sic] problems” and that “Societal discrimination against gay men and lesbians was widespread”.<sup>835</sup> In April 2012 the Sudan Tribune reported that the Sudanese youth group affiliated to the Sudan African national Union (SANU) rejected “importation of what they described as western culture that allows same sex marriage, saying that South Sudan is a nation with culture, values and beliefs”.<sup>836</sup> James Tut, a youth with the South Sudan Democratic Forum (SSDF) similarly reportedly said that “I am therefore in full agreement with the youth leadership that there will be no room for the same sex marriage in South Sudan”.<sup>837</sup> This was echoed by the Reverend Faustino Wel of the Anglican Church of Sudan who was quoted as saying “The South Sudan cannot afford to be part of the societies and people who wish to earn the anger of the creator and his lethal punishment. Our culture in diversity opens the doors for all and sundry, but gays and lesbians and others whose actions, thoughts and conscience are by it not progressive and are opposed to the Divine Will cannot be entertained”.<sup>838</sup> Already in 2006 the Archbishop of the Anglican Church of South Sudan Rt. Rev most Archbishop Abraham Mayom Athiaan reportedly told the newspaper Sudan Tribune that “We, the bishops together with our congregation of the Anglican church of the Sudan (ACS) strongly condemn the practice of homosexuality, [and] abortion which is being practiced in Episcopal Church of Sudan (ECS) leaderships”.<sup>839</sup>

According to the editor of LGBT Asylum News, Paul Canning, “Activities addressing HIV/Aids in South Sudan do not include the needs of LGBT or men-who-have-sex-with-men (MSM), and a need for research has been identified”.<sup>840</sup>

### 3.6 Freedom of Movement

#### 3.6.1 Domestic legal framework

The South Sudan Transitional Constitution provides for freedom of movement in South Sudan:

Freedom of Movement and Residence

27. (1) Every citizen shall have the right to freedom of movement and the liberty to choose his or her residence except for reasons of public health and safety as shall be regulated by law.

(2) Every citizen shall have the right to leave and or return to South Sudan.<sup>841</sup>

On 13<sup>th</sup> March 2012 representatives of the Sudan and South Sudan governments agreed the “four freedoms agreement” which set out that:

<sup>834</sup> Sudan Tribune, [South Sudan youth object to same-sex marriage](#), 27 April 2012

<sup>835</sup> United States Department of State, [2011 Country Reports on Human Rights Practices - South Sudan](#), 24 May 2012, Section 6, *Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity*

<sup>836</sup> Sudan Tribune, [South Sudan youth object to same-sex marriage](#), 27 April 2012

<sup>837</sup> *ibid*

<sup>838</sup> *ibid*

<sup>839</sup> LGBT Asylum News, [World’s newest country off to bad start on LGBT rights](#), 14 July 2011 [please note this article was written by Paul Canning, Editor of LGBT Asylum News]

<sup>840</sup> *ibid*

<sup>841</sup> [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011

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In accordance with the laws and regulations of each State, nationals of each State shall enjoy in the other State the following freedoms:

- (a) Freedom of residence;
- (b) Freedom of movement;
- (c) Freedom to undertake economic activity;
- (d) Freedom to acquire and dispose of property.<sup>842</sup>

However, the April 2012 signing ceremony was cancelled due to hostilities on the border in Heglig, and until the presidents signed, the agreement was not officially in force.<sup>843</sup> Negotiations ultimately concluded with the signing of nine agreements on 27 September 2012, including the ‘four freedoms’ which were ratified by South Sudan on 15 October: “an overall cooperation agreement and eight detailed agreements on security arrangements, oil, trade, banking, specific economic matters, pensions, border issues and the status of one country’s nationals in the other. The issues of the disputed and claimed border areas and the final status of the Abyei Area remain unresolved”.<sup>844</sup> The ratified ‘four freedoms’ agreement provides for “stronger legal protection for nationals of one State residing within the territory of the other, including the freedom of movement, work, residence and property ownership. The parties also agreed to enhance cooperation to provide nationals of each State with all documentation, including identification and work permits, necessary to facilitate integration”.<sup>845</sup>

### 3.6.2 Movement between South Sudan and Sudan

Refugees International explains that in September 2010, the Government of Southern Sudan launched the “Come Home to Choose” campaign and announced its intention to facilitate the return of roughly 1.5 million southerners living in the north before the January 2011 referendum.<sup>846</sup> Although International donors and aid agencies deemed the campaign to be politically motivated and did not endorse it, the IOM estimates that between 30 October 2010 and 8 March 2011, 253,682 people returned south, some 38,000 more people returned to Abyei, and another 5,000 to Southern Kordofan.<sup>847</sup> This number increased to 360,000 returnees between October 2010 to December 2011.<sup>848</sup> UNOCHA estimated the total number of returnees to South Sudan from Sudan in 2012 at 137,000.<sup>849</sup>

Refugees International reports that initially, the returns process was extremely chaotic and individual state governors did not notify agencies when convoys would be arriving which created severe bottlenecks at transit sites and way stations.<sup>850</sup> The Southern Sudan Relief and Rehabilitation Commission (SSRRC) has since assumed formal responsibility for the returns, however the process has still been beset by numerous difficulties, including running out of funding and security attacks on return routes.<sup>851</sup> The Internal Displacement Monitoring Centre reported in June 2012 that as a result of the ongoing fighting and insecurity in the Sudanese border states of Blue Nile and South Kordofan, the South Sudanese state of Upper Nile remains the only fully open transit corridor, and Renk the main transit site.<sup>852</sup> It further cites sources which report that in addition to security challenges, logistical challenges which have created

<sup>842</sup> National Legislative Bodies, [Framework Agreement on the Status of Nationals of the Other State and Related Matters between The Republic of the Sudan and The Republic of South Sudan](#), 13 March 2012

<sup>843</sup> Open Society Institute (OSI), [The Right to a Nationality and the Secession of South Sudan: A Commentary on the Impact of the New Laws](#), 2 July 2012, *The ‘Four Freedoms’ and the Situation of Southerners Resident in the North*

<sup>844</sup> United Nations, [Report of the Secretary-General on the Sudan and South Sudan](#), 26 November 2012, Paragraph 19

<sup>845</sup> *ibid*, Paragraph 27

<sup>846</sup> Refugees International, [Sudan: Overcoming Obstacles to Peace](#), 15 March 2012

<sup>847</sup> *ibid*

<sup>848</sup> UNOCHA, [Sudan Humanitarian Update: 4<sup>th</sup> Quarter 2011](#), 31 December 2011

<sup>849</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 26 November -2 December 2012

<sup>850</sup> Refugees International, [Sudan: Overcoming Obstacles to Peace](#), 15 March 2012

<sup>851</sup> *ibid*

<sup>852</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012, *Return movements*

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bottlenecks at points of departure in the north and at transit sites in the south include: “a shortage of river barges, the large amounts of luggage and personal property returnees bring with them, limitations in onward travel south overland during the rainy season, a lack of information as to where returnees wish to settle and confusion over the allocation of land for them”.<sup>853</sup> For further information on barriers to return to South Sudan, see section [3.2.2 Practical impediments to the acquisition and confirmation of nationality of South Sudan/Sudan, including outside of the country such as in Egypt and for returnees to South Sudan](#). Also see [4.5 Internal displacement / Situation of Returnees/ Situation of Refugees](#)

In July 2012 UNOCHA reported that reverse movements from South Sudan to Sudan continued to East Darfur due to a lack of basic services and viable livelihood opportunities in South Sudan.<sup>854</sup>

The UN Secretary-General reports that “By June 2012, more than 160,000 refugees from Southern Kordofan and Blue Nile had fled to South Sudan, triggering a large-scale humanitarian emergency. While South Sudan does not enforce an encampment policy, most of the refugees have moved away from the border to refugee settlements. A group of some 50,000, however, decided to remain in Yida, close to the border, and this has raised serious protection concerns”.<sup>855</sup> It was reported in November 2012 that according to UN agencies, due to the sustained fighting in Southern Kordofan and Blue Nile States, some 100 Sudanese refugees continue to arrive every day in South Sudan.<sup>856</sup> For further information on the situation of Sudanese refugees in South Sudan see section [4.5 Internal displacement/ Situation of Returnees/ Situation of Refugees](#).

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<sup>853</sup> *ibid*

<sup>854</sup> UNOCHA, [Weekly Humanitarian Bulletin Sudan](#), 23-29 July 2012

<sup>855</sup> United Nations, [Assistance to refugees, returnees and displaced persons in Africa; Report of the Secretary-General](#), 21 August 2012, paragraph 11

<sup>856</sup> United Nations, [Report of the Secretary-General on the Sudan and South Sudan](#), 26 November 2012, Paragraph 46

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### 3.7 Freedom of Religion

#### 3.7.1 Domestic legal framework

The Transitional Constitution of the Republic of South Sudan proclaims that South Sudan is a “multi-ethnic, multi-cultural, multi-lingual, multi-religious and multi-racial entity where such diversities peacefully co-exist”.<sup>857</sup> In Article 8 the Transitional Constitution guarantees that

All religions shall be treated equally and religion or religious beliefs shall not be used for divisive purposes.<sup>858</sup>

In Article 190 the Transitional Constitution prohibits the derogation of the “right of non-discrimination on the basis of [...] religious creed [...]” during a state of emergency.<sup>859</sup>

The Transitional Constitution provides in Article 23 the right to worship, the right to solicit and receive voluntary financial contributions, the right to own property for religious purposes, the right to write, issue and disseminate religious publications, the right to teach religion or beliefs, the right to train, appoint, and designate by succession religious leaders, and the right to observe religious holidays:

23. The following religious rights are guaranteed by this Constitution:

- (a) the right to worship or assemble in connection with any religion or belief and to establish and maintain places for these purposes;
- (b) the right to establish and maintain appropriate faith-based, charitable or humanitarian institutions;
- (c) the right to acquire, possess and own movable and/or immovable property and make, acquire and use the necessary articles and materials related to the rites or customs of religion or belief;
- (d) the right to write, issue and disseminate religious publications;
- (e) the right to teach religion or beliefs in places suitable for these purposes;
- (f) the right to solicit and receive voluntary financial and other contributions from individuals, private and public institutions;
- (g) the right to train, appoint, elect or designate by succession appropriate religious leaders called for by the requirements and standards of any religion or belief;
- (h) the right to observe days of rest, celebrate holidays and ceremonies in accordance with the precepts of religious beliefs; and
- (i) the right to communicate with individuals and communities in matters of religion and beliefs at national and international levels [...]<sup>860</sup>

The Transitional Constitution also guarantees the protection of religious sites in Article 38.<sup>861</sup>

Furthermore, Article 14 stipulates that no discrimination on the basis of religious beliefs shall occur, which in Article 29 has been particularly emphasised in relation to the right to education and in Article 33 concerning “Ethnic and Cultural Communities”:

14. All persons are equal before the law and are entitled to the equal protection of the law without discrimination as to race, ethnic origin, colour, sex, language, religious creed, political opinion, birth, locality or social status [...]

29. (1) Education is a right for every citizen and all levels of government shall provide access to education without discrimination as to religion, race, ethnicity, health status including HIV/AIDS, gender or disability [...]

33. Ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures. Members of such communities shall have the right to practice their beliefs, use their languages, observe their

<sup>857</sup> Laws of South Sudan, [The Transitional Constitution of the Republic of South Sudan, 2011](#), 9 July 2011, Part One, Article 1 (4)

<sup>858</sup> *ibid*, Part One, Article 8 (2)

<sup>859</sup> *ibid*, Part Thirteen, Article 190 (a)

<sup>860</sup> *ibid*, Part Two, Article 23

<sup>861</sup> *ibid*, Part Three, Chapter I, Article 38 (1) (e)

religions and raise their children within the context of their respective cultures and customs in accordance with this Constitution and the law.<sup>862</sup>

The Transitional Constitution also sets out that the Sudanese courts shall administer justice “irrespective of their [claimant/defendant] social, political or economic status, gender, religion or beliefs”<sup>863</sup> and in Article 139 stipulates that services provided by the Civil Service shall be governed “without bias or discrimination on the basis of religion, ethnicity, region, gender, health status or physical disability”.<sup>864</sup>

With regards to the 2011 Nationality Regulations, guideline 21 provides that

Any administrative or executive decision falling within the scope of these Regulations and the Act, shall not be based on arbitrary or discriminatory grounds such as race, colour, ethnic affiliation, sex, religion, political or other opinion, property, disability, health status, geographical origin, or belonging to a particular social group.<sup>865</sup>

The U.S. State Department in its 2011 Report on International Religious Freedom further notes that the South Sudanese government “does not require religious groups to register”.<sup>866</sup>

### 3.7.2 Discrimination based on religion

The U.S. State Department in its 2011 Report on International Religious Freedom finds that “The Transitional Constitution and other laws and policies protect religious freedom and, in practice, the government generally respected religious freedom”.<sup>867</sup> Freedom House similarly reported in its 2012 Freedom in the World report that “Religious freedom is guaranteed by the interim constitution and generally respected in practice”.<sup>868</sup>

In August 2012 President Salva Kiir, whilst meeting Muslims and Christians at an annual Ramadan dinner in Juba, reportedly “cautioned religious groups not to use their beliefs to promote their political ambitions” and added that “the country should remain united and not divide itself on any basis”.<sup>869</sup> Similarly, the advisor to the President, Tijok Haidar said that “South Sudan is a multi-religious country that grants every citizen freedom of worship”.<sup>870</sup> Previously in February 2012 a group of Sudanese living in Juba dismissed reports by the Sudanese government of Khartoum “that they are being ill-treated in South Sudan on grounds of their nationality and religion”.<sup>871</sup>

The U.S. State Department 2011 Report on International Religious Freedom further notes that “There were no reports of societal abuses or discrimination based on religious affiliation, belief, or practice”<sup>872</sup> and that since the Republic of South Sudan gained independence “religious freedom has significantly improved. Members of different faiths have become more open and tolerant of each other's religions”.<sup>873</sup>

<sup>862</sup> *ibid*, Part Two, Article 14 and Article 29 (1)

<sup>863</sup> *ibid*, Part Seven, Article 122 (5) (a)

<sup>864</sup> *ibid*, Part Nine, Chapter I, Article 139 (1) (d)

<sup>865</sup> Republic of South Sudan, [Nationality Regulations 2011](#), 29 December 2011, Chapter 1, Guideline 21

<sup>866</sup> U.S. Department of State, [2011 Report on International Religious Freedom - South Sudan](#), 30 July 2012, Section II, Legal/Policy Framework

<sup>867</sup> *ibid*

<sup>868</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>869</sup> Radio Miraya, [Kiir warns groups not to mix religion and politics](#), 16 August 2012

<sup>870</sup> Radio Miraya, [Muslims celebrate Eid Alfitir in South Sudan](#), 30 August 2012

<sup>871</sup> Radio Miraya, [Sudanese living in South Sudan dismiss allegations that are ill-treated](#), 7 February 2012

<sup>872</sup> U.S. Department of State, [2011 Report on International Religious Freedom - South Sudan](#), 30 July 2012, Executive

Summary

<sup>873</sup> *ibid*

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## 4. Other Human Rights Considerations

### 4.1 Administration of justice

#### 4.1.1 Traditional conflict resolution mechanisms and statutory law

The UN High Commissioner for Human Rights reports that South Sudan employs a plural legal system in which customary and statutory laws coexist.<sup>874</sup> With regards to the statutory system, Human Rights Watch notes that due to staff shortages, the absence of court infrastructure in rural areas, and insecurity in some parts of the country, there are statutory courts in only some of South Sudan's 79 counties, and none at the payam level, which means that most people rely on customary courts and do not appeal their decisions to the statutory courts.<sup>875</sup>

Reporting on customary law, the UN High Commissioner for Human Rights notes that:

Under article 5 (c) of the transitional Constitution of the Republic of South Sudan of 2011, "customs and traditions of the people" are recognized as one of the sources of law in South Sudan. The Constitution recognizes the application of customary law in courts, subject to the Constitution and the law, as stated in article 167(3). The application of customary laws imposes customs, traditions and norms that contravene human rights principles enshrined in the Bill of Rights of the transitional Constitution of South Sudan.<sup>876</sup>

The South Sudan Human Rights Commission notes that "when crimes are committed the people tend to favour the customary system of restorative justice rather than the retributive system which requires formal investigations, prosecution and punishment in accordance with the written laws. The result is that many crimes get ignored and go unpunished".<sup>877</sup> As reported by Human Rights Watch, traditional chiefs preside over customary courts, deciding cases according to the "customs, traditions, norms and ethics" of their respective communities".<sup>878</sup> It explains that whilst prison sentences were not historically among the sanctions imposed by customary courts, traditional chiefs now draw on elements of state justice, commonly imposing punitive penalties involving prison sentences, and citing provisions of the Penal Code.<sup>879</sup> It further notes that chiefs apply the Penal Code and impose corporal punishment without legal training and that customary courts sentence defendants without clear jurisdiction over criminal cases.<sup>880</sup>

#### 4.1.2 Rule of law and due process

The Report of the UN High Commissioner for Human Rights describes that due to the legacy of armed conflict and underdevelopment in South Sudan, the justice system is weak, ineffective and inadequate.<sup>881</sup>

According to FIDH, "The legacy of civil war, the guerilla reflexes, the absence of legal provisions on security forces' mandates, certain loopholes in the Code of Criminal Procedure Act (2008), and impunity, create conditions for unlawful behaviour by SPLA members, police officers and intelligence services, notably arbitrary arrests and detentions".<sup>882</sup> Human Rights Watch describes "persistent weaknesses" in all rule of

<sup>874</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 22

<sup>875</sup> Human Rights Watch, ["Prison Is Not For Me"](#), 21 June 2012, *I. Criminal Justice in the New Nation, Complexities of a Plural Legal System*

<sup>876</sup> *ibid*

<sup>877</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.11.4. *Traditional Court System*

<sup>878</sup> *ibid*

<sup>879</sup> *ibid*

<sup>880</sup> *ibid*, *Summary and Key Recommendations*

<sup>881</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 22

<sup>882</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012; 3. *Illegal arrests and detentions*

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law institutions, due to the shortage of skilled and highly trained civil servants and inadequate resources.<sup>883</sup> For example in 2011, 95 percent of the Police Service's budget was spent on salaries, leaving little funds for infrastructure and equipment, negatively impacting on their ability to carry out responsibilities such as completing investigations or taking detainees to court.<sup>884</sup> The August 2012 report of the UN High Commissioner for Human Rights reports that a shortage of judges, together with a lack of professional police and qualified lawyers, as well as lack of basic training, infrastructure, transport and equipment, severely affects the administration of justice.<sup>885</sup> As a result, arbitrary arrest and detention are widespread in South Sudan and many people are detained as a result of flawed arrests and prosecutions, or without any solid legal justification.<sup>886</sup> Furthermore, "Interference by military and political figures in the justice system sometimes leads to arbitrary arrest and detention, as the police often act on instruction or under threat rather than in accordance with the law".<sup>887</sup> The South Sudan Human Rights Commission notes that "Many judges especially at the county level are left on their own without supervision. They also have high case loads. With inadequate training they tend to misinterpret the law".<sup>888</sup>

Lengthy pre-trial detention is also reported to be a problem, with the U.S State Department noting that "Estimates of the number of pretrial detainees in prison ranged from one-third to two-thirds of the prison population. The country's lack of lawyers and judges contributed to lengthy pretrial detention".<sup>889</sup> According to Human Rights Watch, it is not unusual to wait over a year before going to trial.<sup>890</sup> It further notes that South Sudanese law does provide for release on bail or on execution of a personal bond but justice authorities rarely use it and its research suggests that most defendants are unaware that bail is a legal option and lack legal advice on how to apply for release.<sup>891</sup> IRIN notes that "hundreds of prisoners are desperate to get to court to be tried after being held for long periods on remand, sometimes with allegedly flimsy evidence".<sup>892</sup> Human Rights Watch reports that some prisoners are held on remand for years, some who have not even been accused of any crime and there are inmates detained as proxies in order to encourage appearance of a relative or friend, those who are detained for failure to pay civil debt, court fines, or compensation awards, and imprisoned for petty crimes and marital and sexual offences.<sup>893</sup> It further notes that in some cases the Prisons Service is unable to produce a single written document justifying the detention of an inmate or even confirming their name.<sup>894</sup> The 2011 annual report of the South Sudan Human Rights Commission similarly reports that "It is still the practice that many people are arrested, taken in and detained without being informed of the reasons or of crimes they are suspected to have committed as required by Article 19(4) of the Transitional Constitution".<sup>895</sup>

FIDH reports that the relative weakness of the judiciary, which is under-staffed and under-trained, leads to a lack of effective oversight over arrests and detentions.<sup>896</sup> Even though the Criminal Procedure Act state that "[T]he Public Prosecution Attorney (...) shall inspect places of custody and detention daily, check the arrests register and verify the validity of procedures and advise on the treatment of the arrested persons, in

<sup>883</sup> Human Rights Watch, ["Prison Is Not For Me"](#), 21 June 2012, *I. Criminal Justice in the New Nation*

<sup>884</sup> *ibid*

<sup>885</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 22

<sup>886</sup> *ibid*, paragraph 24

<sup>887</sup> *ibid*

<sup>888</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.11.3. *The Judiciary*

<sup>889</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 1 d. *Arrest Procedures and Treatment While in Detention*

<sup>890</sup> Human Rights Watch, ["Prison Is Not For Me"](#), 21 June 2012, *III. Gaps in the Right to Due Process*

<sup>891</sup> *ibid*

<sup>892</sup> IRIN, [South Sudan: Calls to end the death penalty, improve prison conditions](#), 5 November 2012

<sup>893</sup> Human Rights Watch, ["Prison Is Not For Me"](#), 21 June 2012, *Summary and Key Recommendations*

<sup>894</sup> *ibid*, *I. Criminal Justice in the New Nation*

<sup>895</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.4. *Right to Liberty and Fair Trial*

<sup>896</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012; 3. *Illegal arrests and detentions*

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accordance with the law, this rarely happens”.<sup>897</sup> FIDH also notes that the legal framework establishing the judiciary is fundamentally faulty in that it makes the judiciary directly answerable to the President of South Sudan, which is aggravated by the fact that the appointment process of members of the judiciary is also dominated by the President.<sup>898</sup> The UN High Commissioner for Human Rights also reports on the weak prosecutorial capacity and an insufficient number of judges which continues to result in “widespread violations of human rights in the administration of justice, including perennial trial delays, excessive remands, prolonged pretrial detention and overcrowded prisons”.<sup>899</sup> The U.S. State Department also noted that judicial corruption was a problem during 2011.<sup>900</sup>

Human Rights Watch reports that even once a trial has begun it may continue indefinitely with repeated adjournments, citing the example that a prisoner on remand was in “Wau prison for over five years and has made an astounding 17 unproductive trips to court –each time there is no plaintiff, no police officer or no judge, and on one occasion, none of the above was in court”.<sup>901</sup> Amnesty International reports that many trials are conducted in Arabic even if the defendant did not understand that language, and without an effective appeals review.<sup>902</sup>

Also see [2.4 Security forces and effectiveness in providing protection](#).

#### 4.1.3 Legal aid and access to legal representation

The UN High Commissioner for Human Rights notes that lawyers are not only expensive to retain, but too few in most areas.<sup>903</sup> An October 2012 report from UNDP notes that there are only an estimated 400 lawyers practicing in South Sudan.<sup>904</sup> Furthermore, most lawyers start law practice almost immediately after completion of law school, as the country lacks a professional training school.<sup>905</sup> FIDH describes the legal profession as “still weak and not self-regulating”.<sup>906</sup> UNDP is currently funding a paralegal training programme to bridge the large service delivery gap to enable people’s access to both formal and informal justice.<sup>907</sup> The UN High Commissioner for Human Rights describes access to legal aid as “limited” whilst Human Rights Watch reports that it is “almost totally absent”.<sup>908</sup> According to Talar Deng, legal adviser to President Salva Kiir, amongst the key problems in the justice system is the lack of legal aid.<sup>909</sup> Human Rights

<sup>897</sup> *ibid*

<sup>898</sup> *ibid*, E. *The Judiciary and Legal Profession*

<sup>899</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 23

<sup>900</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, e. *Denial of Fair Public Trial*

<sup>901</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, III. *Gaps in the Right to Due Process*

<sup>902</sup> UN Human Rights Council, Written statement\* submitted by Amnesty International, a non-governmental organization in special consultative status, [South Sudan: Strengthen human rights and accountability mechanisms](#), 21 September 2012, *Death penalty*

<sup>903</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 23

<sup>904</sup> UNDP, [Paralegals bring justice to women in South Sudan](#), 2 October 2012

<sup>905</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 48

<sup>906</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, *Conclusion - Transitional period: Time to Learn from the Past*

<sup>907</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 48

<sup>908</sup> *ibid*

Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, III. *Gaps in the Right to Due Process*

<sup>909</sup> IRIN, [South Sudan: Calls to end the death penalty, improve prison conditions](#), 5 November 2012

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Watch considers that “Given high illiteracy rates and low education levels, without legal aid, most prisoners are unable to follow the status of their case or to effectively participate in their trial”.<sup>910</sup>

#### 4.1.4 Death Penalty

In December 2012, South Sudan had its first opportunity to vote on a UN General Assembly resolution to establish a moratorium on executions with a view to abolishing the death penalty. Human Rights Watch reports that on 20 December 2012 along with 110 other nations, South Sudan voted in favour of the resolution.<sup>911</sup> Daniel Bekele, Africa director at Human Rights Watch stated “Now, to ensure that the global trend toward ending the death penalty becomes the norm, South Sudan should start at home, and immediately halt all executions”.<sup>912</sup>

FIDH explains that currently, according to the 2011 Transitional Constitution, no death penalty shall be imposed on a person under the age of eighteen, or a person who has attained the age of seventy, or on a pregnant woman.<sup>913</sup> It further notes that according to unofficial figures, confirmed by some human rights experts working in South Sudan, death sentences are carried out by hanging or shooting.<sup>914</sup> Amnesty International reports with regards to the death penalty that “South Sudan has continued to use the death penalty despite well-documented weaknesses in the country’s legal system, which prevent it from ensuring the basic legal rights of people accused of crimes. On August 28, two men were hanged in Juba prison. More than 200 prisoners are on death row, shackled and crowded into cramped and dirty cells”.<sup>915</sup> David Deng of the South Sudan Law Society (SLS), reports that without lawyers, no one knows whether innocent people are being sentenced to death and IRIN reports that no one has heard of a successful appeal against the death penalty.<sup>916</sup> Human Rights Watch similarly notes that “in view of the lack of well-trained police, prosecutors, and judges, and in the absence of a functioning system of legal aid, application of the death penalty is likely to be arbitrary and result in irreversible miscarriages of justice”.<sup>917</sup> According to Amnesty International, “Since 2006, South Sudan’s Ministry of Justice has provided legal aid in a total of only six cases. The vast majority of prisoners on death row were not represented by counsel, leaving many unable to adequately prepare their defense or to appeal convictions”.<sup>918</sup>

#### 4.2 Detention conditions

According to the FIDH, detention facilities are out-of-date, and most are not formally recognised by law as official places of detention.<sup>919</sup> An August report from the UN High Commissioner for Human Rights describes that “detention conditions across the country remain very poor, characterized by severely overcrowded and unhygienic cells and dilapidated infrastructures”.<sup>920</sup> The 2011 U.S. State Department report describes detention conditions in South Sudan as “harsh and life threatening”, and that prisons were overcrowded, health care and sanitation were inadequate, and basic medical supplies and equipment were

<sup>910</sup> Human Rights Watch, *“Prison Is Not For Me”*, 21 June 2012, III. *Gaps in the Right to Due Process*

<sup>911</sup> Human Rights Watch, *South Sudan: Heed Global Call to End Death Penalty*, 20 December 2012

<sup>912</sup> *ibid*

<sup>913</sup> International Federation for Human Rights (FIDH), *South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection*, 6 July 2012 Part II – *Legal and Institutional Human Rights Framework*

<sup>914</sup> *ibid*

<sup>915</sup> Amnesty International, *South Sudan: Place moratorium on death penalty*, 5 November 2012

<sup>916</sup> IRIN, *South Sudan: Calls to end the death penalty, improve prison conditions*, 5 November 2012

<sup>917</sup> Human Rights Watch, *South Sudan: Step Up Urgent Human Rights Reforms*, 5 July 2012

<sup>918</sup> Amnesty International, *South Sudan: Place moratorium on death penalty*, 5 November 2012

<sup>919</sup> International Federation for Human Rights (FIDH), *South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection*, 6 July 2012; 3. *Illegal arrests and detentions*

<sup>920</sup> UN Human Rights Council, *Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights*, 29 August 2012, paragraph 24

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lacking.<sup>921</sup> It notes that poor prison conditions, including malnutrition and lack of medical care, resulted in inmate deaths, although statistics were unavailable.<sup>922</sup> According to Human Rights Watch, in one major prison, 10 inmates died in 2011 alone, mostly of treatable illnesses.<sup>923</sup> The 2011 U.S. State Department report further notes that:

Some were uncovered spaces where detainees were unsheltered from the sun and chained to a wall, fence, or tree. Sanitary and medical facilities were poor or nonexistent. Detention centers had limited potable water. Detainees sometimes spent days outdoors but slept inside in areas that lacked adequate ventilation, temperature, and lighting.<sup>924</sup>

The 2011 annual report of South Sudan's Human Rights Commission found that:

The majority of the prisons lack proper sanitation and very few have clinics or first aid facilities. In some cases the prisons do not have clean water and many of the cells have poor ventilation which is compounded by too few cells and too many inmates crowding in them. Many of the prisons are old and decrepit and are in dire need of repair and/or restoration. In some cases there are no beds or bed sheets, and prisoners have to sleep on the bare floor. The quality of food is very poor and in all prisons prisoners are fed once a day.<sup>925</sup>

The March 2012 report of the UN Secretary-General on South Sudan states that "The lack of capacity in the judicial and prison institutions and insufficient resources, both human and material, particularly outside of State capitals, remains a major challenge".<sup>926</sup> According to the Small Arms Survey, the Prisons Service of South Sudan suffers from poor infrastructure, overcrowding, and unskilled prison officers.<sup>927</sup>

In June 2012 Human Rights Watch published the results of its research conducted into arbitrary detention and prison conditions in South Sudan between March 2011 and January 2012. It describes that:

The poor living conditions and treatment of prisoners in South Sudan compound the injustices related to how and why they are detained. Infrastructure is rudimentary and in some prisons, damaged or crumbling. Cells are severely overcrowded and lack sufficient ventilation. Without proper nutrition or hygiene, prisoners are vulnerable to illness and disease. When they fall sick, they rarely receive proper care. They are also routinely beaten and chained.<sup>928</sup>

Human Rights Watch notes that many inmates live in chains for years which are extremely uncomfortable:

A remand in Yei prison accused of murder said: "They [chains] get very hot, and they cause you to reduce in weight...You must also bathe with the chains on, [although] you cannot take off your pants." The irons frequently cause wounds around the ankles, which sometimes become infected. "These chains," protested a prison nurse, "are not fit for human beings." This practice not only contravenes international and domestic standards for the use of restraints, it also constitutes cruel and inhuman treatment.<sup>929</sup>

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<sup>921</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 1 c. Prison and Detention Center Conditions

<sup>922</sup> *ibid*

<sup>923</sup> Human Rights Watch, ["Prison Is Not For Me"](#), 21 June 2012, Summary and Key Recommendations

<sup>924</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, Section 1 c. Prison and Detention Center Conditions

<sup>925</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.11.2. The Prison Service

<sup>926</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 7 March 2012, paragraph 59

<sup>927</sup> Small Arms Survey, [Work in Progress: Security Force Development in South Sudan through February 2012](#), 27 June 2012, The Prisons Service

<sup>928</sup> Human Rights Watch, ["Prison Is Not For Me"](#), 21 June 2012, V. Poor Prison Conditions

<sup>929</sup> *ibid*

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### 4.2.1 Torture in detention

The UN High Commissioner for Human Rights reports that “state security agents enjoy what often seems to be complete impunity for human rights violations, including arbitrary arrest and detention, ill treatment of detainees, sexual and gender-based violence, and violations of the right to life”.<sup>930</sup> With regards to the practice of torture Amnesty International reports that “Security forces including the South Sudan Police Service (SSPS) harassed, arrested, tortured or otherwise ill-treated people, including UN and NGO staff”.<sup>931</sup> The U.S. State Department notes that whilst the Transitional Constitution prohibits such practices, government security forces tortured, beat, and harassed political opponents, journalists, and human rights workers during 2011 and police and SPLA personnel reportedly tortured and raped women.<sup>932</sup> It also reports that government forces tortured and abused civilians during 2011, often to extract information.<sup>933</sup> The 2011 annual report from the South Sudan Human Rights Commission describes that “Torture by security and law enforcement agencies is still quite common and routine. It seems to be an accepted system of dealing with suspected offenders irrespective of their social standing or status”.<sup>934</sup> According to Freedom House, in 2011 “there were frequent reports during the year of arbitrary arrest, torture, and long periods of pretrial detention in substandard facilities”.<sup>935</sup> In September 2012 the UK Foreign and Commonwealth Office reported that it continued to receive reports of human rights abuses across South Sudan, including prolonged illegal or arbitrary detention; and torture committed by members of the armed forces and that government institutions have not yet developed sufficient oversight functions to tackle reported cases of human rights abuses.<sup>936</sup>

Following its field research to South Sudan’s prisons, Human Rights Watch reported that “in South Sudan beating prisoners appears to be part of routine operating practices”.<sup>937</sup> It further reports that prisoners stated that both prison officials and other prisoners with disciplinary authority beat them with sticks, canes, or whips, with the most common sanction consisting of 5 to 10 lashes for fighting, quarrelling, or disobeying prison guards and that attempting escape, drinking alcohol, or smuggling contraband into the prison results in heavier punishments, sometimes along with periods of solitary confinement.<sup>938</sup> It further noted with regards to treatment in police custody that:

No fewer than 17 inmates in five different states told Human Rights Watch they were beaten or tortured in police custody before being transferred to prison. According to a medical officer at Juba prison, prisoners sometimes arrive, “with bruises all over their bodies. When we ask them what has happened, they tell us that they were tortured by the police.”

A 15- year-old who had spent two months in police custody, said that on multiple occasions, police tied him in a bag, kicked and beat him with sticks and guns, then cut his feet with razor-blades while ordering him to confess to murder. In one widely publicized case, police officers in Juba tortured and inserted stones and glass bottles into the vagina of a woman accused of theft, causing a miscarriage and damage to her uterus.<sup>939</sup>

Also see [2.4.4 State violence against civilians and accountability of offenders within the military and police force](#).

<sup>930</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 25

<sup>931</sup> Amnesty International, [2012 Annual Report: South Sudan](#), 24 May 2012

<sup>932</sup> U.S. State Department, [Country Reports on Human Rights Practices](#), 24 May 2012, Section 1 c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

<sup>933</sup> *ibid*, g. Use of Excessive Force and Other Abuses in Internal Conflicts

<sup>934</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.6 Torture

<sup>935</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>936</sup> UK Foreign and Commonwealth Office, [Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report - Quarterly Updates: South Sudan](#), 30 September 2012

<sup>937</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, V. Poor Prison Conditions

<sup>938</sup> *ibid*

<sup>939</sup> *ibid*, I. Criminal Justice in the New Nation

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### 4.3 Treatment of vulnerable persons within the justice system

Domestic law allows imprisonment only from age 16, but Human Rights Watch reports that it met inmates as young as 13 who are sometimes given long sentences for petty offenses such as theft.<sup>940</sup> The 2011 U.S. State Department report notes that “The Prisons Directorate of Southern Sudan generally provided separate cells for men and women; however, juveniles sometimes were not held separately from adults, and pretrial detainees were not held separately from convicted prisoners. Children, especially infants, were often held with adult female prisoners”.<sup>941</sup> According to Freedom House, “Children and the mentally ill were routinely detained with adult prisoners”.<sup>942</sup> Human Rights Watch reported that as of November 2011, one-hundred and sixty-three boys and five girls were incarcerated in South Sudan, all with adults.<sup>943</sup>

In an assessment of the state of juvenile justice in South Sudan, UNICEF found that it lacked key protective systems, while those that were present did not function properly.<sup>944</sup> According to Hellen Murshale Boro, the Gender and Social Development Minister in South Sudan’s Central state “The Judiciary component on child protection is not active. There are no children prisons or court, no specialists on child protection and no institution for social workers in the country. Unless something is done, we may not achieve or plans on child protection”.<sup>945</sup> Human Rights Watch reports that there are social workers and probation officers who play a positive role in overseeing and advocating on behalf of children in conflict with the law but that there are too few of them and the lack of actual programs or facilities for children limits their ability to reduce the number of children living in detention.<sup>946</sup> It further notes that children are subject to the same long periods of pre-trial detention as adults and that children convicted in South Sudan’s justice system will almost invariably end up in prison.<sup>947</sup> The South Sudan Human Rights Commission describes that:

Children especially boys are sometimes put into prison for crimes they did not commit and more often are not charged with any particular crime. Children are unable to access legal aid, and many children are kept in detention longer than that stipulated in the law. Parents of the accused are usually to pay for a fine, however, children of poor parents and orphans may not be able to pay therefore many children remain in detention. Children have also been put in prison for their own alleged protection from revenge attacks in cases where they have witnessed a serious crime or have been thought to be associated with the perpetrator of the crime.<sup>948</sup>

The UN High Commissioner for Human Rights reports that detained children are not offered rehabilitation programmes or sufficient educational opportunities in prison.<sup>949</sup> According to Human Rights Watch, “In South Sudan, services for incarcerated children and the conditions of their detention do not conform to international or domestic law, and as a result, the future may be bleak for many of the children who enter the prison system”.<sup>950</sup> It also reports on the lack of education, constrained family visits and that holding children together with adults exposes children to risks of violence, exploitation, and physical or sexual abuse.<sup>951</sup>

<sup>940</sup> *ibid*, *Summary and Key Recommendations*

<sup>941</sup> U.S. State Department, [County Reports on Human Rights Practices](#), 24 May 2012, *Section 1 c. Prison and Detention Center Conditions*

<sup>942</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>943</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, *Children in Conflict with the Law*

<sup>944</sup> Sudan Tribune, [UNICEF, Gender ministry to develop child protection strategy](#), 16 February 2012

<sup>945</sup> *ibid*

<sup>946</sup> *ibid*

<sup>947</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, *Children in Conflict with the Law*

<sup>948</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.3.5. *Children and Justice*

<sup>949</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, *paragraph 24*

<sup>950</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, *Children in Conflict with the Law*

<sup>951</sup> *ibid*

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The UN High Commissioner for Human Rights notes that in the absence of any psychiatric institutions in the country, people who show signs of mental instability are often sent to prison.<sup>952</sup> Human Rights Watch explains that many individuals in prison due to actual or perceived mental disabilities were initially brought to the authorities by their own families, who felt unable to provide for their care.<sup>953</sup> Having reviewed the prison files of 51 out of 64 individuals detained as “lunatics” at Juba Central Prison, it found that only three files showed any indication that the individual in question may have committed any crime.<sup>954</sup> Human Rights Watch further reports that some people with mental disabilities are imprisoned without any procedure at all, that there are case files that are incomplete, missing, or never assembled and that when judges order the detention of a person with a mental disability, they very rarely set a date for release or for the renewal of the detention order.<sup>955</sup> George Wani, who is in charge of Juba Teaching Hospital reports that the sanatorium of Juba is inside the prison where the situation is very bad, with patients almost permanently shackled to the floor, but he says the 50 or so mentally ill patients currently inside the capital's prison have nowhere else to go.<sup>956</sup> Reportedly the Minister of Justice described the living conditions of inmates with mental disabilities as “awful” and admitted that they “cannot be said to meet human rights standards”.<sup>957</sup> Human Rights Watch describes that:

In Juba prison, male inmates with mental disabilities are housed together in a section of the male ward. In one room, some are chained to the floor day and night, naked, and soiled in their own excrement. In another, over 40 inmates stay together at night, although they are free to roam the prison compound during the day. With no bedding, they sleep on bare concrete floors.<sup>958</sup>

#### 4.4 Access to health care and social services

IRIN notes that following the signing of the 2005 CPA, aid agencies arrived in southern Sudan to provide the bulk of health and education services and that since independence in 2011, “the fledgling government has been attempting to build a state from scratch, leaving health services largely provisional and mental health programmes all but non-existent”.<sup>959</sup> According to UNDP reporting one year after independence, the health sector has seen little improvement, with aid agencies, rather than the government, still providing the majority of services.<sup>960</sup> The Centre for Strategic and International Studies explains that the political deadlock over oil transport fees, together with a serious deterioration in the humanitarian situation, reinforced the government’s dependence on international donors for providing primary health care and emergency assistance.<sup>961</sup>

IRIN reporting on access to healthcare notes that:

Decades of war and a lack of development have left a majority of South Sudan’s population without access to any form of healthcare, resulting in some of the world’s worst health indicators. In a country where only one in four people has access to medical facilities, virtually everyone qualifies as “hard to reach”, and those attempting to expand healthcare access face daunting challenges.

<sup>952</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 24

<sup>953</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, IV. “Prison is not for Me”, *People with Mental Disabilities*

<sup>954</sup> *ibid*

<sup>955</sup> *ibid*

<sup>956</sup> IRIN, [South Sudan: Urgent need for mental healthcare](#), 30 August 2012

<sup>957</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, IV. “Prison is not for Me”, *People with Mental Disabilities*

<sup>958</sup> *ibid*

<sup>959</sup> IRIN, [South Sudan: Urgent need for mental healthcare](#), 30 August 2012

<sup>960</sup> IRIN, [South Sudan one year on from independence](#), 9 July 2012

<sup>961</sup> Centre for Strategic and International Studies, [The State of Public Health in South Sudan: Critical Condition](#), November 2012, *South Sudan: A Problematic Partner*

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In the isolated, mountainous Boma District, in Jonglei State, rains cut off vehicular transport for eight months of the year. The only way in is by foot or on a weekly UN flight that takes place only when the rains have let up enough to allow aircraft to land.<sup>962</sup>

The 2011 South Sudan Human Rights Commission report notes that:

The health system patently lacks adequate number of doctors and other health personnel, equipment. The private hospitals are generally of a better quality but even these lack key equipment, space, beds, drugs, gloves washing facilities. With an average of 300 SSP hospital admission fees to be paid to stay in a hospital bed overnight, many of these private clinics are totally inaccessible to the average South Sudanese.<sup>963</sup>

The Internal Displacement Monitoring Centre notes that “Internal displacement has strained the scarce resources and overwhelmed the coping mechanisms of host communities, who themselves have limited access to health care, water and sanitation, and education services”.<sup>964</sup> Reporting on the impact of violence on healthcare MSF notes that:

Recurring violence and the resulting population displacements have required emergency interventions to cover peoples’ urgent needs, including health, food, water and sanitation, household items and shelter. These emergencies come against a backdrop of recurring outbreaks and malnutrition, natural catastrophes such as flooding in August-September 2012, an extremely low baseline in basic services, and high logistics constraints for aid actors. In addition, with poor capacity on the part of the Ministry of Health and with many donors and non-governmental organisations (NGOs) focusing on transition and development, the emergency response in Jonglei has been placed on the shoulders of the few humanitarian organisations maintaining emergency capacity in South Sudan.<sup>965</sup>

MSF reports that “South Sudan has some of the world’s worst health and development indicators, with a life expectancy of 42 years and three-quarters of the population unable to access healthcare”.<sup>966</sup> The Centre for Strategic and International Studies reports that South Sudan’s dire health outcomes are closely linked to a lack of access to health care:

South Sudan has a total of 1,147 functioning health facilities serving a population believed to be in excess of 10 million. This number includes just 37 hospitals. More than half of the population lives more than a three-mile walk from the nearest Primary Health Care Unit (PHCU), the most basic health facility. The per capita number of outpatient visits to health facilities is just 0.2 each year.

Buildings are ill-equipped and unhygienic, often consisting of no more than a one-room structure with thatched roof and dirt floor.<sup>967</sup>

IRIN cites the UNDP as stating that nearly 30 percent of the population still has no access to primary health care and that as austerity measures introduced as a result of the lost oil revenue take effect, state hospitals will struggle to buy medicines.<sup>968</sup> There are very few health structures and qualified medical staff on the ground, as well as significant geographic barriers to accessing even the most basic healthcare.<sup>969</sup> For example the ICRC notes that it supports the only referral hospital for Unity, Jonglei and Upper Nile states, Malakal Teaching Hospital which has a vast catchment area of approximately three million inhabitants.<sup>970</sup> The largest hospital is Juba Teaching Hospital which only has 580 beds and due to overcrowding, has

<sup>962</sup> IRIN, [Getting healthcare to hard-to-reach areas](#), 28 November 2012

<sup>963</sup> SSHRC, [2011 Annual Report](#), January-December 2011, 3.12. *Right to Health*

<sup>964</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012

<sup>965</sup> MSF, [South Sudan's Hidden Crisis](#), 26 November 2012, *The urgent need for greater emergency response capacity*

<sup>966</sup> *ibid*, *Executive summary*

<sup>967</sup> Centre for Strategic and International Studies, [The State of Public Health in South Sudan: Critical Condition](#), November 2012, *South Sudan's Health Emergency*

<sup>968</sup> IRIN, [South Sudan one year on from independence](#), 9 July 2012

<sup>969</sup> MSF, [South Sudan's Hidden Crisis](#), 26 November 2012, *Executive summary*

<sup>970</sup> ICRC, [South Sudan: desperate struggle for health care in world's newest nation](#), 6 July 2012

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patients lying on the floor.<sup>971</sup> The Small Arms Survey reports that in Jonglei, health services are scarce and in many cases limited to clinics run by NGOs such as MSF and the International Medical Corps.<sup>972</sup> It further reports that infrastructure in Jonglei is underdeveloped, even by South Sudan's standards, and that the lack of roads makes commerce and travel difficult and costly, resulting in poor services in the most isolated areas.<sup>973</sup>

In a July 2012 statement, the ICRC reported that

According to the Ministry of Health, South Sudan has about 120 medical doctors and just over 100 registered nurses for an estimated population of nearly nine million people. This falls far below the doctor-patient ratio in neighbouring Kenya, for instance, where there are 14 doctors per 100,000 people, 10 times the ratio of South Sudan, according to World Health Organization statistics from 2006. Vulnerable groups like women, children and the wounded are particularly at risk.<sup>974</sup>

The Centre for Strategic and International Studies describes a "chronic shortage of health professionals at all levels, from nurse and midwives to lab technicians, doctors and surgeons. There are 1.5 doctors and 2 nurses for every 100,000 citizens. The personnel gap is partially filled by less qualified staff, such as community health workers and home health providers, but they do not have the ability to deal with anything beyond the most routine cases".<sup>975</sup>

Reporting on the prevalence of disease, the ICRC notes that:

In addition, the country is prone to diseases, with meningitis, measles, yellow fever, and whooping cough endemic in many areas. Preventable diseases such as malaria and acute respiratory infections are the leading causes of ill health. River blindness, sleeping sickness, and cholera are also common.<sup>976</sup>

According to Caroline Delany, a health specialist with the Canadian International Development Agency (CIDA) "More women die in child birth, per capita, in South Sudan, than in any country in the world".<sup>977</sup> The Small Arms Survey reports that "One in seven South Sudanese women will die in pregnancy or childbirth, often because of infections (from puerperal fever and retained placenta), haemorrhaging, or obstructed births, with a lack of access to healthcare facilities playing a large role in their deaths".<sup>978</sup> Reportedly there are only 8 midwives in the country, 3 of which are at Juba hospital, and the lack of professional midwives working alongside traditional birth attendants and community midwives causes needless deaths.<sup>979</sup> UNFPA is supplying kits for mothers, surgical instruments and life-saving drugs, but according to a midwife at Juba hospital, "We need scissors for delivery, and browns for packing. We don't have even cottons in the ward; gauze-we don't have".<sup>980</sup>

<sup>971</sup> IRIN, [South Sudan one year on from independence](#), 9 July 2012

<sup>972</sup> Small Arms Survey, [My neighbour, my enemy; Inter-tribal violence in Jonglei; Sudan Issue Brief 21](#), October 2012, *Root causes of inter-tribal conflict in Jonglei state*

<sup>973</sup> *ibid*

<sup>974</sup> ICRC, [South Sudan: desperate struggle for health care in world's newest nation](#), 6 July 2012

<sup>975</sup> Centre for Strategic and International Studies, [The State of Public Health in South Sudan: Critical Condition](#), November 2012, *South Sudan's Health Emergency*

<sup>976</sup> ICRC, [South Sudan: desperate struggle for health care in world's newest nation](#), 6 July 2012

<sup>977</sup> IRIN, [South Sudan: The biggest threat to a woman's life](#), 20 July 2012

<sup>978</sup> Small Arms Survey, [Women's Security in South Sudan: Threats in the Home](#), 17 January 2012

<sup>979</sup> IRIN, [South Sudan: The biggest threat to a woman's life](#), 20 July 2012

<sup>980</sup> *ibid*

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#### 4.4.1 Access to treatment for HIV/AIDS

According to an August 2012 UN High Commissioner for Human Rights report, “indicators worryingly suggest that HIV is on the increase”.<sup>981</sup> The July 2012 report of the UN Secretary-General on South Sudan notes that:

The HIV epidemic in South Sudan is categorized as a generalized low epidemic, with a prevalence rate of 3.06 per cent at the end of 2011. In line with Security Council resolution 1983 (2011), an HIV/AIDS Task Force, comprised of UNMISS, UNAIDS, the South Sudan HIV/AIDS Commission, and Government of the Republic of South Sudan Organized Forces was established to support implementation of HIV/AIDS capacity-building within UNMISS and the Government. Voluntary confidential counselling and testing services were provided to 2,069 (2,027 males and 42 females) SPLA soldiers and civilians throughout South Sudan. The Mission also graduated 53 HIV/AIDS peer educators.<sup>982</sup>

UNOCHA reporting in December 2012 on the results of an assessment on HIV in humanitarian settings carried out in Unity, Upper Nile and Western Equatoria states noted that “Aid agencies are concerned that inadequate supplies of condoms, a shortage of HIV prevention and support services, high stigma and discrimination, a culture of violence especially against women, and low levels of awareness within refugee, returnee and displaced settlements put 80-97 per cent of adults in these communities at risk of contracting HIV in the assessed state”.<sup>983</sup>

According to 2011 statistics from the WHO, 3,442 people are currently receiving anti-retroviral (AVR) treatment in South Sudan.<sup>984</sup> No statistics were available on the number of people living with HIV.<sup>985</sup>

A November report from the Centre for Strategic and International Studies noted that the main provider of anti-retroviral therapy in South Sudan, the Global Fund to Fight AIDS, Tuberculosis and Malaria, suspended new grant making in 2011, meaning that newly diagnosed patients would not have access to the drugs.<sup>986</sup> According to Lole Laila Lole, Chairperson of the Network of People Living with HIV-AIDS reporting in December 2012, approximately six thousand people living with HIV-AIDS in South Sudan lack drugs and more than one hundred HIV/AIDS patients have died due lack of anti-retroviral drugs in health facilities around the country.<sup>987</sup>

#### 4.4.2 Access to mental health care

IRIN notes that according to the South Sudan Medical Journal, depression, post-traumatic stress disorder (PTSD), anxiety and substance abuse are major mental health issues affecting the country and the most recent data from a 2007 survey of 1,242 adults in Juba found that 36 percent of respondents met symptom criteria for PTSD and half met symptom criteria for depression.<sup>988</sup>

IRIN cites the Deputy Minister of Health Yatta Yori Lugor as stating with regards to the mental health care system in South Sudan that “The situation is very rudimentary in terms of mental health, but there are so many people suffering because of post-war trauma and because of frustrations that some people may find

<sup>981</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights; Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 32

<sup>982</sup> UN Security Council, [Report of the Secretary-General on South Sudan](#), 26 June 2012, paragraph 90

<sup>983</sup> UNOCHA, [South Sudan: Weekly Humanitarian Bulletin 3-9 December 2012](#), 9 December 2012

<sup>984</sup> WHO, [South Sudan statistics](#), 2011

<sup>985</sup> *ibid*

<sup>986</sup> Centre for Strategic and International Studies, [The State of Public Health in South Sudan: Critical Condition](#), November 2012

<sup>987</sup> Radio Miraya, [Six thousand in need of ARVs](#), 1 December 2012

<sup>988</sup> IRIN, [South Sudan: Urgent need for mental healthcare](#), 30 August 2012

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themselves in and also because of some people that take drugs".<sup>989</sup> Lugor further reports that "There are so many people who are affected by mental health problems, and if you go about in [the capital] Juba, you will see a lot of them roaming the streets".<sup>990</sup> Lugor explains that due to the lack of understanding about mental illness, poor communication infrastructure and very few roads means that mental, emotional and behavioural disorders are often reported to traditional healers or the police rather than health clinics.<sup>991</sup> See section [4.3 Treatment of vulnerable persons within the justice system](#) for further information on the detention of persons living with mental illness. Juba Teaching Hospital is the only public medical facility in the country that treats mental illness and its mental health ward has just 12 beds.<sup>992</sup> According to George Wani who is in charge of the hospital, it has no psychiatric drugs, and even sedatives are hard to come by and South Sudan has had no psychiatrists since the only one left to work in Tanzania.<sup>993</sup>

The director of Juba's military hospital, Peter Ajak Bullen states that mental health issues in the army are overwhelming as so many soldiers have been traumatised and according to IRIN, the military hospital only has three staff members trained in psychology who carry out basic counseling.<sup>994</sup>

IRIN further reports that mental health services are extremely hard to come by in camps for refugees and internally displaced people.<sup>995</sup> In December 2012 child psychologist Myriam Oteiza visited Yida refugee settlement to explore the mental health and psychosocial needs of refugees.<sup>996</sup> She expressed particular concern about the most vulnerable, including unaccompanied children, older people, refugees living with disability and single mothers.<sup>997</sup>

#### 4.5 Internal displacement/Situation of Returnees/ Situation of Refugees

##### *Internal displacement*

The Internal Displacement Monitoring Centre identifies five groups of internally displaced persons in South Sudan which have occurred in different stages and as a result of a number of causes:

- (1) those displaced by fighting between the Sudan Armed Forces (SAF) and SPLA in Abyei in May 2011 (while Abyei remains under dispute, IDPs are included in UN figures for South Sudan);
- (2) those displaced by fighting between SPLA and new dissident militia groups within South Sudan;
- (3) those displaced by inter-tribal conflicts;
- (4) those displaced by the Lord's Resistance Army (LRA); and
- (5) those displaced by floods and the impacts of the 2011 drought and delayed onset of the rains in February 2012.<sup>998</sup>

The June 2012 Internal Displacement Monitoring Centre report further notes that "Internal displacement has strained the scarce resources and overwhelmed the coping mechanisms of host communities, who themselves have limited access to health care, water and sanitation, and education services".<sup>999</sup> The same source documents IDPs' access to social services, food and water, water sanitation and hygiene (WASH),

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<sup>989</sup> *ibid*

<sup>990</sup> *ibid*

<sup>991</sup> *ibid*

<sup>992</sup> *ibid*

<sup>993</sup> *ibid*

<sup>994</sup> *ibid*

<sup>995</sup> *ibid*

<sup>996</sup> UN High Commissioner for Refugees, [Helping young refugees in South Sudan find physical and emotional security](#), 5 December 2012

<sup>997</sup> *ibid*

<sup>998</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012, *Causes of displacement*

<sup>999</sup> *ibid*, *Basic Necessities of Life*

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shelter and housing, medical care and sanitation, nutrition, land and property, education, work and livelihood opportunities and coping strategies.<sup>1000</sup>

For further information on those displaced by fighting in Abyei, see [2.1.1.1 Disputed state of Abyei](#).

For further information on those displaced by clashes between dissident militia groups and inter-tribal conflicts, see [2.2 Violence by armed opposition groups](#) and [2.3 Inter-communal violence](#), particularly [2.3.4 Effects on general population](#)

### Those displaced by floods

In October 2012 UNOCHA reported that due to seasonal rains and flooding, humanitarian access in affected areas remained a challenge, due to weak infrastructure compounded by the heavy rains.<sup>1001</sup> UNOCHA reported by December 2012, the rains had subsided and flood waters began to recede.<sup>1002</sup> Reporting on the impact of the floods it notes that:

Over 313,000 people in 44 of the country's 79 counties were affected by floods this rainy season, between June and November. The rains hit heavier than in 2011, with more than three times the number of people impacted. Jonglei was the worst affected state where floods displaced over 220,000 people, destroyed crops, houses and basic infrastructure, including roads.<sup>1003</sup>

Reporting on the response to the flooding, UNOCHA noted in October 2012 that:

Physical access remained the key challenge to relief organizations assisting those in need, with many roads impassable due to the heavy rains. The Logistics Cluster continued to provide support to as many of the required responses as possible, but due to the volume of requests for assistance, UNMISS was asked to provide additional air support. In accordance with humanitarian principles, such requests are always only sought as a last resort.<sup>1004</sup>

### Situation of refugees in South Sudan

UNHCR reports that there are four camps in South Sudan's Upper Nile State housing more than 110,000 refugees and 3 camps in Unity State hosting around 63,000 refugees, most of which are in Yida refugee settlement, from Blue Nile and South Kordofan States in Sudan.<sup>1005</sup> It also reports that there are over 91,000 Sudanese refugees registered in Ethiopia.<sup>1006</sup> The Jesuit Refugee Service reported in August 2012 that as a result of conflict in Upper Nile and Unity states over the disputed border zone between Sudan and South Sudan, and tribal clashes in parts of South Sudan, many South Sudanese are again being forced into displacement and returning for a second time to Kakuma refugee camp in Kenya.<sup>1007</sup>

In August 2012 UNHCR expressed concern at the "alarming health and nutrition situation" of the estimated 170,000 Sudanese refugees in South Sudan, particularly among children under the age of five and in the two camps of Yida and Yusul Batil where the mortality rate is above the emergency threshold.<sup>1008</sup> According

<sup>1000</sup> Ibid

<sup>1001</sup> UNOCHA, [South Sudan Weekly Humanitarian Bulletin, 8-14 October 2012](#), 14 October 2012

<sup>1002</sup> UNOCHA, [South Sudan Humanitarian Update](#), 3-9 December 2012

<sup>1003</sup> Ibid

<sup>1004</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 22-28 October 2012

<sup>1005</sup> UNHCR, [Registered Sudanese Refugee Population in Ethiopia and South Sudan](#), 24 October 2012

<sup>1006</sup> Ibid

<sup>1007</sup> Jesuit Refugee Service, [Second time in Kakuma camp](#), 30 August 2012

<sup>1008</sup> UN High Commissioner for Refugees, [UNHCR describes alarming health and nutrition situation in South Sudan camps](#), 24 August 2012

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to MSF, many of the refugees walked for weeks, arriving in extremely weakened conditions.<sup>1009</sup> MSF further reported in July 2012 that in Jamam camp in Upper Nile State, people were dying of preventable diseases because of "horrific living conditions" and that latrines had overflowed, contaminating water sources, due to heavy rains.<sup>1010</sup> In June 2012 Amnesty International published its research into the situation of Sudan's refugees in South Sudan in which it documented both the human rights abuses they faced due to conflict in Southern Kordofan and Blue Nile states and also the humanitarian challenges in South Sudan's refugee camps including "severe water shortages and insufficient food rations, lack of access to education, inadequate protection from the risk of sexual and gender based violence, and the presence of armed elements in the camps, further compromising their relative safety".<sup>1011</sup>

The Centre for Strategic and International Studies reports in November 2012 with regards to the situation in the Upper Nile and Unity States refugee camps that:

The remote locations of the camps complicated efforts to deliver emergency assistance, and seasonal rains soon made them virtually inaccessible by land. The squalid, rain-soaked conditions were perfect vectors for the spread of waterborne disease. [...] Disease and severe malnutrition combined to create health conditions described by several veteran aid workers as the worst they had encountered in the world.<sup>1012</sup>

Aid agencies reported in September 2012 that the provision of water and food had improved in Upper Nile's camps but that flooding, disease and an influx of additional refugees posed new threats.<sup>1013</sup> Reporting on the situation in Yusuf Batil camp in Upper Nile State, the ICRC noted that "conditions are dire and survival remains a struggle. Owing to the lack of clean water, people are drinking contaminated surface water. Children are especially vulnerable to death from water-borne diseases such as diarrhea".<sup>1014</sup> Human Rights Watch noted in a December 2012 report that the lack of livelihood options for female-headed households makes women more vulnerable to sexual exploitation and abuse and that "the risk of attack while outside the camp is one of the gravest safety and security concerns faced by female refugees".<sup>1015</sup> The same source reports that the overriding protection concern in Yida is its proximity to the border which at 11km is far short of the 50 km international standard.<sup>1016</sup>

Following a November 2012 visit to Yida, UN High Commissioner for Refugees António Guterres expressed concern about the welfare of the 60,000 civilians living there noting that "This is the most threatening situation I have ever seen in a refugee camp. Not only because it is close to a war zone, but because of access – all things have to be brought in by plane".<sup>1017</sup> He further reported that new arrivals are dehydrated, malnourished, exhausted most of which are women and children, with almost 70 per cent of those in Yida under 18 years of age.<sup>1018</sup> UNHCR has been looking at new sites in safer areas where it will be easier to provide aid and basic services, including health care and education but many are reluctant to move.<sup>1019</sup>

<sup>1009</sup> MSF, [Health Catastrophe in South Sudan Refugee Camps](#), 2 August 2012

<sup>1010</sup> MSF, [South Sudan: Jamam refugee camp under water](#), 5 July 2012

<sup>1011</sup> Amnesty International, [We can run away from bombs, but not from hunger; Sudan's refugees in South Sudan](#), 7 June 2012, *Introduction*

<sup>1012</sup> Centre for Strategic and International Studies, [The State of Public Health in South Sudan: Critical Condition](#), November 2012, *South Sudan's Health Emergency*

<sup>1013</sup> IRIN, [South Sudan: As refugee numbers swell, disease puts pressure on relief efforts](#), 21 September 2012

<sup>1014</sup> International Committee of the Red Cross (ICRC), [South Sudan: water shortages hit crisis point in refugee camps](#), 20 September 2012

<sup>1015</sup> Human Rights Watch, [Under Siege; Indiscriminate Bombing and Abuses in Sudan's Southern Kordofan and Blue Nile States](#), 12 December 2012, *Refugee Camp Conditions for Women and Girls*

<sup>1016</sup> *ibid*, *Yida Refugee Camp Concerns*

<sup>1017</sup> UN High Commissioner for Refugees, [UNHCR chief visits South Sudan to spotlight "forgotten refugee crisis"](#), 23 November 2012

<sup>1018</sup> *ibid*

<sup>1019</sup> *ibid*

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In October 2012, a senior US official stated that the rebel SPLM-N were using Yida refugee camp as a recruitment ground of soldiers, including child soldiers.<sup>1020</sup> This was however denied by the SPLM-N.<sup>1021</sup> As of late November 2012, UNOHCA reported that refugee camps in Upper Nile State hosted 110,000 Sudanese refugees from South Kordofan and Blue Nile States and that humanitarian partners were alarmed about increasing reports of the presence of armed elements in these refugee sites and that new refugee arrivals were being screened and any person suspected to be a combatant referred to the Protection Unit and denied registration.<sup>1022</sup> UNHCR reported in September 2012 that a search for weapons in the settlement had led to cases of arbitrary detention and abuse of refugees.<sup>1023</sup>

### Situation of returnees to South Sudan

In March 2012 IRIN reported that return to South Sudan “is often the beginning of yet another chapter of struggle and destitution”.<sup>1024</sup> The UK Foreign and Commonwealth Office reports that of the approximately 350,000 returnees to South Sudan, the majority were residing in refugee camps close to the border “in extremely poor conditions, where food shortages, violence against women and the militarisation of refugees were rife”.<sup>1025</sup> According to the Centre for Strategic and International Studies, many returnees were destitute and required emergency assistance that the Government of South Sudan was unable to provide.<sup>1026</sup>

The Internal Displacement Monitoring Centre notes that “IDPs and returnees need assistance with basic necessities, including food, water and sanitation, shelter, and medical care”.<sup>1027</sup> It further notes that returnees (and IDPs) are particularly vulnerable to mines as they are less familiar with their surroundings, are at risk of gender-based violence in transit areas, particularly unmarried women and in areas where there are no separate sanitation facilities for women.<sup>1028</sup>

IRIN explains that whilst land is offered as an incentive to return to South Sudan, the process to acquire the land is complicated and that in the absence of clear national land policy guidelines, decisions are often ultimately made on an ad-hoc basis by local chiefs.<sup>1029</sup> As the government of South Sudan only owns a limited amount of land following the SPLM’s decision in 2005 to hand the land back to the people, it now faces the challenging task of negotiating land ownership with host communities.<sup>1030</sup> The same source further reports that “In some areas, returnees have been asked to prove their historical ties to a place before they are allocated land there. For those who may have been away for 30 years, providing such documentation is impossible”.<sup>1031</sup> UNOCHA reported in November 2012 that “Land allocation remains a challenging issue for returnees settling in new areas”, for example:

Almost 250 returnees in Kwajok wishing for land there remain camped at the bus station since July. State authorities contend that these returnees are not from Kwajok and should proceed to other counties in

<sup>1020</sup> Agence France Presse, [Sudan rebels recruit children from S.Sudan refugee camp: US](#), 31 October 2012

<sup>1021</sup> *ibid*

<sup>1022</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 19-25 November 2012

<sup>1023</sup> UNHCR, [Hundreds flee fresh air and ground attacks and cross to South Sudan](#), 25 September 2012

<sup>1024</sup> IRIN, [South Sudan: World’s newest state offers little for thousands of returnees](#), 21 March 2012

<sup>1025</sup> UK Foreign and Commonwealth Office, [Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report -Quarterly Updates: South Sudan](#), 31 March 2012

<sup>1026</sup> Centre for Strategic and International Studies, [The State of Public Health in South Sudan: Critical Condition](#), November 2012, [South Sudan’s Health Emergency](#)

<sup>1027</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence: A profile of the internal displacement situation](#), 26 June 2012

<sup>1028</sup> *ibid*

<sup>1029</sup> IRIN, [South Sudan: World’s newest state offers little for thousands of returnees](#), 21 March 2012

<sup>1030</sup> IRIN, [Thousands still stranded despite airlifts](#), 14 June 2012

<sup>1031</sup> *ibid*

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accordance with state policy. In Wau in Western Bahr el Ghazal, demarcation of land plots for 47 returnee families staying at the transit site will start at the end of the rainy season, according to local authorities.<sup>1032</sup>

IRIN notes that whilst it was hoped that most returnees would go to rural areas and take up farming, the vast majority are now expected to settle in urban areas, spurring the growth of slums and taxing public services.<sup>1033</sup> UNOCHA further reports that “Many returnees are attracted to urban areas due to the better availability of services, creating challenges for local authorities to balance the need to provide land to returnees, the rights of local landowners, the high demand for land in urban areas, and the need to limit the pull factor to the overstretched services in urban areas.”<sup>1034</sup> Tensions have been reported in Upper Nile State’s Maban County where returnees report difficulty reintegrating with local communities, in particular due to the strain on the county from the massive refugee influx from Sudan’s Blue Nile State.<sup>1035</sup> The Internal Displacement Monitoring Centre also reported that returnees may not be able to access land due to lack of ties to the region, or because limited resources prevent them from buying land ownership certificates and that returnees have had to renounce their land claims after receiving threats from soldiers or ex-combatants occupying their plots.<sup>1036</sup>

UNOCHA reported in November 2012 with regard to the response for those returnees stranded and in transit that:

Humanitarian partners in Northern Bahr el Ghazal have a well-established system to provide arriving returnees with immediate support. Vulnerable returnees arriving to Aweil by air during the week received food for one month, clean water, hygiene kits, immunization, and household items. Temporary accommodation was provided in two tents at the railway station, and medical care, nutrition screening, and onward transport for those who required it. Information on conditions in places of final destination, including basic services such as education facilities, was also provided. In other locations, partners are working on resolving reports of water shortages in the Cueibet returnee settlement area in Lakes State, where one borehole is shared among returnees and the host community. Temporary learning spaces are being built in a number of returnee settlements in Yirol East and West. Services are being upgraded at a proposed new way station in Wau.<sup>1037</sup>

UNOCHA reporting on the situation for those returnees airlifted from Kosti to Juba in May 2012 that the first movement from the Juba transit site to the final destination site only began in November 2012.<sup>1038</sup> Returnees at Abu Camp in Rumbek, Lakes State have raised concern about their security, reporting attacks by gunmen who forced them to hand over their property.<sup>1039</sup>

<sup>1032</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 5-11 November 2012

<sup>1033</sup> IRIN, [Thousands still stranded despite airlifts](#), 14 June 2012

<sup>1034</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 17-23 September 2012

<sup>1035</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 2- 8 July 2012

<sup>1036</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012

<sup>1037</sup> UNOCHA, [Humanitarian Bulletin South Sudan](#), 5-11 November 2012

<sup>1038</sup> *ibid*

<sup>1039</sup> Radio Miraya, [Returnees at Abu report attacks by gunmen](#), 13 October 2012

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#### 4.6 Humanitarian access and role of human rights groups and aid organizations within South Sudan

Freedom House describes domestic civil society organisations as remaining at “an early stage of development”.<sup>1040</sup> The 2011 UK Foreign and Commonwealth report notes that “There is no legal protection for human rights defenders, although civil society organisations are supporting the SSHRC [South Sudan Human Rights Commission] in pushing for legislation. Poor communications limit organisations’ abilities to monitor and report the treatment of human rights defenders and violations”.<sup>1041</sup> According to FIDH reporting on the situation of human rights defenders:

One of the main overarching issues around the situation of human rights defenders is that the legacy of repression and systematic violation of human rights inherited from Sudan still pervades Southern Sudan. The legacy of war and serious conflict is still strong as well, which encourages a culture of intolerance to criticism by those in authority, or those with a track record of fighting for independence. The situation is made worse by the absence of laws that define the power of the intelligence services to arrest civilians, and the detention of civilians by the military and quasi-military institutions. As a result, there have been some attacks and threats to human rights defenders that send a strong message that authorities need to reaffirm South Sudan’s commitment towards protecting human rights defenders against unwarranted attacks and threats.<sup>1042</sup>

In November 2012, a UN official who was carrying out an investigation into the human rights situation in South Sudan was expelled.<sup>1043</sup> Reportedly, a government spokesman Barnaba Marial Benjamin stated that the official had been “reporting on human rights issues that she could not verify and has been publishing without justifications”.<sup>1044</sup> UN High Commissioner for Human Rights Navi Pillay “noted that the reasoning given by the authorities when they announced the staff member in question had 48 hours to leave the country, accusing her of misinforming the international community about human rights abuses, was “utterly unsatisfactory and unacceptable,” and appeared to relate to the staff member’s core work as a human rights officer”.<sup>1045</sup>

FIDH reports that the activities of the South Sudan Human Rights Society for Advocacy (SSHRSA) includes protesting the marginalisation of civil society in the constitutional making process, and putting direct pressure on the President to appoint representatives of civil society to the constitutional review committee.<sup>1046</sup> Biel Boutros Biel, coordinator of the SSHRSA reported to FIDH that he and other human rights defenders are often given labels in order to foster ill feelings, disaffection and hatred against them. Human rights defenders are often referred to as “Khartoum agents”, “members of the opposition”, or “rebel sympathisers”.<sup>1047</sup>

The UN High Commissioner for Human Rights notes that human rights defenders in South Sudan face intimidation and arrest in the conduct of their activities and reports with regards to civil society organisations in South Sudan that:

<sup>1040</sup> Freedom House, [Freedom in the World 2012 - South Sudan](#), 2 August 2012

<sup>1041</sup> Foreign and Commonwealth Office, [Human Rights and Democracy: The 2011 Foreign and Commonwealth Report](#), April 2012

<sup>1042</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, 2.2. *Operating environment for human rights defenders*

<sup>1043</sup> BBC News, [South Sudan expels UN human rights investigator](#), 4 November 2012

<sup>1044</sup> *ibid*

<sup>1045</sup> OHCHR, [Navi Pillay Urges South Sudan To Reverse Expulsion Of United Nations Human Rights Officer](#), 9 November 2012

<sup>1046</sup> International Federation for Human Rights (FIDH), [South Sudan: First anniversary of Independence; Time to Act for Peace and Human Rights Protection](#), 6 July 2012, 2.2. *Operating environment for human rights defenders*

<sup>1047</sup> *ibid*

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Partly owing to fear of harassment and intimidation, civil society organizations have not been able to play an effective role in raising awareness about human rights in South Sudan. This is compounded by the fact that the majority of such organizations lack the training, expertise and resources necessary to contribute meaningfully to the process of democratization and to the promotion and protection of human rights. A key challenge is to provide the necessary support to effectively strengthen the capacity of civil society to monitor and report on human rights and to engage in advocacy with the Government.<sup>1048</sup>

According to UNDP, aid agencies rather than the government provides the majority of services.<sup>1049</sup> The European Commission reports that all of the persons fleeing South Kordofan and Blue Nile States into South Sudan are dependent on humanitarian assistance.<sup>1050</sup> According to sources cited by the Internal Displacement Monitoring Centre, humanitarian access is restricted by ongoing violence which exposes vulnerable populations and humanitarian workers to violence and destruction of property.<sup>1051</sup>

With regards to access for humanitarian organisations, the Congressional Research Service reports that “Logistical challenges constrain the delivery of relief for those who have fled, primarily to remote refugee camps across the border in South Sudan. The harassment of aid workers is a problem in both Sudans, further hindering aid responses”.<sup>1052</sup> It further notes with regard to South Sudan that:

Access to much of South Sudan is severely constrained during the rainy season, given the poor state of roads. As a result, humanitarian operations there are among the most expensive in the world. Communities throughout the country have been affected by recent flooding. The lack of all-weather roads to the camps where refugees from Southern Kordofan and Blue Nile have concentrated has forced aid agencies to airlift relief at significant expense. [...]

Insecurity in parts of the country periodically impedes access to other populations that have been internally displaced.<sup>1053</sup>

In October 2012 UNOCHA reported that due to seasonal rains and flooding, humanitarian access in affected areas remained a challenge, due to weak infrastructure compounded by heavy rains.<sup>1054</sup> 43 of 79 counties in the 10 states of South Sudan were reported to be affected with the hardest hit areas including Jonglei, Lakes, Northern Bahr el Ghazal, Unity and Upper Nile states.<sup>1055</sup> Reporting on the situation in Abyei, Amnesty International notes with regard to humanitarian access that:

UN aid agencies and international humanitarian organizations have also expressed concern at continued incidents of harassment at the hands of SPLA soldiers on major routes in South Sudan, with soldiers commandeering organizations’ vehicles, demanding to be transported and looting their property. Such incidents have caused delays to humanitarian operations and loss of supplies and funds, and have negatively impacted the safety and security of staff. Ultimately, such incidents hinder the ability of humanitarian organizations to provide desperately needed relief to displaced and other vulnerable groups.<sup>1056</sup>

<sup>1048</sup> UN Human Rights Council, [Technical assistance and capacity-building for South Sudan in the field of human rights: Report of the United Nations High Commissioner for Human Rights](#), 29 August 2012, paragraph 28

<sup>1049</sup> IRIN, [South Sudan one year on from independence](#), 9 July 2012

<sup>1050</sup> European Commission Humanitarian Aid Department, [EU scales up humanitarian aid for Sudan and South Sudan by €30 million](#), 12 December 2012

<sup>1051</sup> Internal Displacement Monitoring Centre, [New displacement adds to critical humanitarian situation in the country since independence; A profile of the internal displacement situation](#), 26 June 2012

<sup>1052</sup> Congressional Research Service, [Sudan and South Sudan: Current Issues for Congress and U.S. Policy](#), 5 October 2012, Summary

<sup>1053</sup> *ibid* [Humanitarian Access in South Sudan](#)

<sup>1054</sup> UNOCHA, [South Sudan Weekly Humanitarian Bulletin, 8-14 October 2012](#), 14 October 2012

<sup>1055</sup> *ibid*

<sup>1056</sup> Amnesty International, [Destruction and desolation in Abyei](#), 20 December 2012, *Dire conditions and bleak prospects for the displaced population*

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MSF reports that it provides the only health services in Pibor county in Jonglei state.<sup>1057</sup> In October 2012 MSF was considering suspending this service due to the escalation in violence, which would have left residents without healthcare as the nearest other facility is 150km away.<sup>1058</sup> MSF was already forced to suspend operations in the two nearby towns of Lekwongole and Gumuruk, after violence forced its locally recruited staff and residents to flee, leaving 90,000 without access to healthcare.<sup>1059</sup>

Reporting on the inter-communal violence in Jonglei State, MSF notes that “In 2011 and 2012, MSF health centres in Jonglei were targeted by armed groups. As the health and humanitarian needs of the population increased, MSF’s ability to provide healthcare to the population reduced. The repeated destruction of health facilities, medical stocks and the evacuation of staff for security reasons led to MSF having to temporarily reduce or halt medical activities”.<sup>1060</sup>

#### 4.7 Treatment of persons suspected of being involved in witchcraft

According to David Sylvester, medical director of Nimule hospital, people's lack of experience with healthcare means they seek other explanations for diseases such as sleeping sickness, as they are liable to blame symptoms on witchcraft and only seek medical attention as a last resort.<sup>1061</sup> Human Rights Watch reports that due to societal misconceptions, many do not see mental disabilities as treatable, or consider them as attributable to curses or witchcraft.<sup>1062</sup> This, together with proper medication being beyond the reach of many, causes families to feel unable to provide for the care of their relatives, and to place the care of their relatives in the hands of the state.<sup>1063</sup> Human Rights Watch further considers that “With no mental health facility and with irregular supplies of medicine, the government is also ill-equipped to provide proper care”.<sup>1064</sup> See section [4.3 Treatment of vulnerable persons within the justice system](#) for further information on the treatment of persons with mental disabilities in state care.

In September 2012, Radio Miraya reported that six family members were being held at a police station in Central Equatoria State after they were chased away from their home by villagers for allegedly practicing witchcraft and causing death and bad fortune.<sup>1065</sup> According to the Chief Inspector for Kajo-Keji County, the six were being held at Kajo Keji police station for their safety and while investigations continued.<sup>1066</sup> He told the radio station that “Definitely we are going to take them to court. We are investigating both sides. So its [*sic*] the court which is going to judge and see. If there is some proof well and good, then those accused have to be sentenced; if there is no proof, then those complainants have to be sentenced with some appropriate judgment. It is because we want these practices to stop in the area”.<sup>1067</sup> Also in Kajo Keji, in January 2012 a police officer was being held for killing a wildlife officer, allegedly on suspicion of witchcraft and poisoning.<sup>1068</sup>

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<sup>1057</sup> IRIN, [Médecins Sans Frontières may suspend operations in South Sudan’s Pibor over escalating violence](#), 1 October 2012

<sup>1058</sup> *ibid*

<sup>1059</sup> *ibid*

<sup>1060</sup> MSF, [South Sudan's Hidden Crisis](#), 26 November 2012, *Healthcare itself under attack*

<sup>1061</sup> IRIN, [High hopes for defeating “neglected” diseases](#), 23 February 2012

<sup>1062</sup> Human Rights Watch, [“Prison Is Not For Me”](#), 21 June 2012, IV. “Prison is not for Me”, *People with Mental Disabilities*

<sup>1063</sup> *ibid*

<sup>1064</sup> *ibid*

<sup>1065</sup> Radio Miraya, [Police protect family after claims of witchcraft](#), 17 September 2012

<sup>1066</sup> *ibid*

<sup>1067</sup> *ibid*

<sup>1068</sup> Radio Miraya, [Suspected witchcraft lead to Kajo-Keji killing](#), 6 January 2012

*This document is intended to be used as a tool to help to identify relevant COI and the COI referred to in this report can be considered by decision makers in assessing asylum applications and appeals. However, this document should not be submitted in full or in isolation as evidence to refugee decision making authorities.*