



***CONFLICT-RELATED SEXUAL VIOLENCE  
IN NORTHERN UNITY***

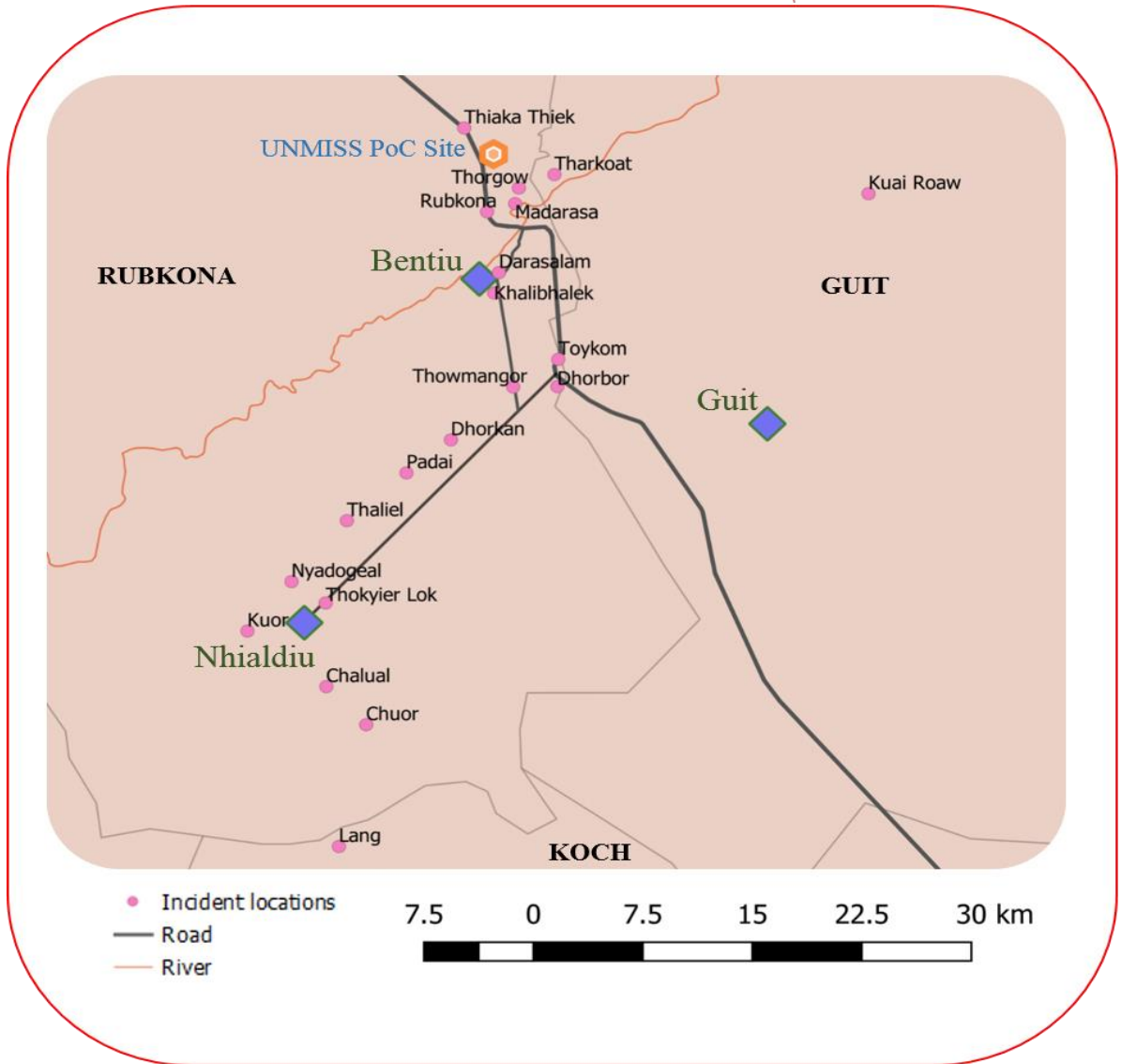
***September - December 2018***

**15 February 2019**

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# Map of incidents



## I. Executive summary

1. This report is jointly published by the United Nations Mission in South Sudan (UNMISS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), pursuant to United Nations Security Council Resolution 2406 (2018).<sup>1</sup> The report contains the findings of an investigation conducted by the UNMISS Human Rights Division (HRD) from 4 to 24 December 2018, following reports of a high number of cases of sexual violence in areas in northern Unity.<sup>2</sup>
2. Since the beginning of the armed conflict in South Sudan in December 2013, civilians have borne the brunt of violence, particularly women and girls, who have repeatedly been subject to sexual violence including rape, gang rape and sexual slavery. Unity has been one of the hotspots of this violence.<sup>3</sup> Despite the signing of the Revitalized Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS) on 12 September 2018—and an overall reduction in the levels of violence in Unity—conflict-related sexual violence in northern Unity has persisted.
3. While sexual violence is endemic in northern Unity, reports of a sudden and significant increase in cases in late November 2018 prompted UNMISS to immediately engage with political authorities and security services, and to increase protection patrols to the affected areas. At the same time, HRD launched the above-mentioned investigation to establish the facts and to identify those individuals that may bear responsibility for the attacks.
4. HRD’s investigation determined that at least 134 cases of rape or gang rape,<sup>4</sup> and 41 cases of other forms of sexual and physical violence (including one case of unlawful killing, as well as flogging, beatings, sexual molestation<sup>5</sup> and forced nudity), occurred between September and December 2018.<sup>6</sup> Of these 175 cases, 111 victims were women, while 64 were girls (some of whom were as young as eight). Victims were attacked on roads and footpaths near Guit and Nhialdiu as they were traveling to (or returning from) Bentiu, or after leaving the Bentiu Protection of Civilians (PoC) site in search of firewood and other essential items in locations such as Madarasa, Tharkoat and Thorgow (located between 4 and 6 kilometres from the PoC site).<sup>7</sup> All of the victims interviewed by HRD were members of the Nuer community, as were the majority of the alleged perpetrators in these cases.

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<sup>1</sup> According to United Nations Security Council Resolution 2406 (2018), UNMISS is mandated to monitor, investigate, verify, and report immediately, publicly, and regularly on abuses and violations of human rights and violations of international humanitarian law, including those involving all forms of sexual and gender-based violence in armed conflict. The direct provision of medical and psychosocial support to survivors of sexual violence is not included in this mandate, and therefore these aspects of the humanitarian response are outside the scope of this report.

<sup>2</sup> Northern Unity consists of two states, Northern Liech and Ruweng, which were created under Establishment Order 36/2015. This investigation was carried out in Northern Liech state, which is divided into four counties: Guit, Koch, Mayom and Rubkona.

<sup>3</sup> Since 2014, UNMISS and OHCHR have reported extensively on conflict-related sexual violence committed against women and girls in Unity. See UNMISS & OHCHR, *Conflict in South Sudan: A Human Rights Report*, 8 May 2014 ; UNMISS & OHCHR, *Flash Human Rights Report on the Escalation of Fighting in Greater Upper Nile*, April/May 2015, 30 June 2015; UNMISS & OHCHR, *The State of Human Rights in the Protected Conflict in South Sudan*, December 2015; UNMISS & OHCHR, *Report on Indiscriminate Attacks Against Civilians in Southern Unity*, April-May 2018, July 2018 [hereinafter “Southern Unity report”] (all reports available at: <https://unmiss.unmissions.org/human-rights-reports>).

<sup>4</sup> This number is likely under-representative of the full scale of sexual violence, given the difficulties encountered in accessing some survivors. See *infra* Section II (“Methodology”) for a full description of these challenges.

<sup>5</sup> Sexual assault not including rape.

<sup>6</sup> HRD interviewed 49 survivors of these attacks from locations in Guit, Koch and Rubkona counties and the Bentiu PoC site.

<sup>7</sup> It should be noted that humanitarian agencies provide food, water and other essential services to displaced families living within the Bentiu PoC site (as well as host communities), and that UNMISS provides regular protection patrols for groups of women and girls leaving the site to collect firewood.

5. As a result of its investigation, UNMISS HRD has reasonable grounds to believe these attacks were carried out primarily by armed elements of the pro-Taban Deng Sudan People's Liberation Army in Opposition (SPLA-IO (TD)) and the Government's South Sudan People's Defence Forces (SSPDF).<sup>8</sup> A few cases were committed by elements of the pro-Riek Machar SPLA-IO (SPLA-IO (RM)). Youth militias<sup>9</sup> affiliated with SPLA-IO (TD) are believed to have been involved in the perpetration of a significant number of cases as well.
6. While not part of a high-intensity military operation, as was documented in southern Unity between April and May 2018, these attacks suggest a certain level of organization by various armed actors operating in Guit, Koch and Rubkona counties, particularly along the Bentiu-Guit and Bentiu-Nhialdiu roads<sup>10</sup>, in perpetrating sexual violence. In general, women and girls were attacked on their way to collect food and other essential commodities in Bentiu, as well as firewood and sand used in the construction of homes or *tukuls*.
7. HRD has identified multiple factors contributing to the increase in attacks against women and girls in northern Unity. The large number of fighters on "standby" mode awaiting implementation of transitional security arrangements provided for in R-ARCSS, including disengagement, withdrawal, separation and cantonment of forces, coupled with the presence of armed youth militias throughout the area, has increased the risk of sexual violence for women and girls travelling on roads and footpaths in areas of northern Unity. The lack of accountability (in terms of both direct and command responsibility) is also a major driver of these attacks. Indeed, impunity has contributed to the normalization of violence against women and girls, further entrenching structural power imbalances in society that underpin gender inequality.
8. A relevant example is the lack of accountability with regard to an SPLA-IO (TD) major-general previously identified in an OHCHR/UNMISS report as one of three individuals potentially bearing responsibility for gross human rights violations and violations of international humanitarian law committed in southern Unity between April and May 2018.<sup>11</sup> While UNMISS brought these allegations to the attention of South Sudanese authorities, this individual was recently integrated into SSPDF<sup>12</sup> ranks as a lieutenant-general. He also appears to maintain authority and command over the SPLA-IO (TD) elements currently deployed in Guit and Rubkona counties who are allegedly involved in cases of sexual violence documented in this report.
9. These factors, coupled with the long distances many women and girls often have to travel through high-risk, conflict-affected areas in search of food and other essential commodities in Bentiu town

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<sup>8</sup> The question of the integration of SPLA-IO (TD) elements into SSPDF in Unity, which began in 2017, was still pending in September 2018. *See, e.g.*, <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/20978/categoryId/6/Integration-Of-SPLA-IO-Forces-Underway-In-Unity-State.aspx>; <https://www.nyamile.com/2018/09/26/integration-of-fvp-taban-dengs-forces-kicks-off-in-unity-state/>.

<sup>9</sup> Historically and culturally, Nuer society organizes the defence and protection of families, villages, cattle camps according to self-defence groups (militias) which can be mobilized rapidly to defend a common interest, often cattle or land-based resources or to attack another group to extend access to resources. Individuals can take part in these self-defence groups after the *Gaar* initiation, which marks the transition in social status from adolescence to manhood (traditionally around 16 to 18 years old). *Gaar* consists of cutting six marks across the individual's forehead. *See* Wal Duany, *Neither Palaces nor Prisons: The Constitution of Order Among the Nuer*, Ph.D. dissertation (Indiana University, June 1992).

<sup>10</sup> N.B The distance from Bentiu to Guit is approximately 20 kilometres, while the distance from Bentiu to Nhialdiu is approximately 42 kilometres.

<sup>11</sup> UNMISS & OHCHR, Southern Unity report, *supra* note 3.

<sup>12</sup> According to a reliable source of information, he was integrated within SSPDF in September 2018, alongside a few other SPLA-IO (TD) commanders. *Confidential meeting*, Rubkona, December 2018.

and other locations in northern Unity have increased their vulnerability to sexual violence. The perpetrators take advantage of this situation to carry out premeditated attacks along the routes taken by women and girls, emboldened by the knowledge that they are unlikely to be held accountable, in part, to a lack of command and control by military forces, as well as the effective absence of rule of law in the area.

10. UNMISS and OHCHR urge the committee established by President Salva Kiir on 19 December 2018 to carry out a prompt, effective and impartial investigation into allegations of sexual and other forms of violence committed between September and December 2018 in northern Unity, and to identify the perpetrators of these attacks.<sup>13</sup>
11. UNMISS and OHCHR also urge the competent prosecutorial and judicial authorities to investigate, prosecute and try all individuals bearing responsibility for violations and abuses of international human rights law, as well as violations of international humanitarian law, committed in northern Unity between September and December 2018, as well as in southern Unity between April and May 2018, including those in positions of command and control.
12. Additionally, UNMISS and OHCHR encourage SPLA-IO (TD), the Government of South Sudan, and SPLA-IO (RM) to implement commitments made during peace celebrations on 31 October 2018, in particular the commitment to bring SSPDF, armed opposition and militia elements on board to support implementation of R-ARCSS. UNMISS and OHCHR further exhort all parties to comply with provisions of R-ARCSS prohibiting acts and forms of sexual and gender-based violence including sexual exploitation and harassment.<sup>14</sup>
13. Furthermore, UNMISS and OHCHR urge the international community to continue supporting local and international humanitarian organizations to provide timely and adequate medical and psychosocial assistance for the survivors of conflict-related sexual violence. UNMISS and OHCHR also call upon the Government of South Sudan to ensure that these organizations can conduct their work without fear of reprisal and with unobstructed access to victims.

## II. Methodology

14. In order to determine, verify and corroborate the violations and abuses documented in this report, HRD increased its staff capacity in northern Unity from 4 to 24 December 2018 to support the investigation. Human rights officers interviewed more than 100 individuals in the preparation of this report, including 49 survivors of sexual violence that occurred during the reporting period, as well as secondary sources including service providers, local and national administrative authorities, and other relevant actors. HRD met survivors living in the Bentiu PoC site, as well as survivors and eyewitnesses from 22 different locations within Guit, Koch and Rubkona counties (including Nhialdiu *payam*<sup>15</sup>), and conducted eight site visits and patrols along the Bentiu-Guit and Bentiu-Nhialdiu roads, where many cases of sexual violence were documented during the reporting period. Additionally, human rights officers conducted interviews with SSPDF officers, active members of the SPLA-IO (RM) and SPLA-IO (TD) forces, and local state authorities, as well as medical and humanitarian professionals. HRD also assessed relevant materials, such as documentary evidence,

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<sup>13</sup> Noting the commitments made in the Joint Communiqué of the Republic of South Sudan and the United Nations on addressing conflict-related sexual violence, signed by Salva Kiir on 11 October 2014, in line with Security Council Resolution 2106 (2013).

<sup>14</sup> Noting the commitments made in the Communiqué on preventing conflict-related sexual violence in South Sudan, signed by Riek Machar as Chairman of the SPLM/A-IO on 18 December 2014.

<sup>15</sup> A *payam* is an administrative sub-division, below the level of county, in South Sudan.

to determine whether violations and abuses, including those that may amount to international crimes, were committed.

15. HRD encountered several challenges in the course of its investigation. Many of the survivors returned to their respective villages shortly after being assaulted or receiving medical treatment in Bentiu and Nhialdiu, making it difficult to reach them, particularly as these villages are generally inaccessible by vehicle and lack telecommunications networks, and also due to the ongoing volatility of the security situation. The survivors HRD interviewed wished to share their experiences in the hope that the perpetrators may be brought to justice. However, their experiences most likely represent only a partial approximation of the actual scale of these attacks.
16. HRD employed a *reasonable grounds to believe* standard of proof in making factual determinations on violations, abuses, incidents and patterns of conduct. Information presented in this report was gathered in accordance with the human rights monitoring and investigations methodology developed by OHCHR. Human rights officers ensured that all appropriate protocols were applied prior to, during and after interviews, for the protection of survivors. In cases where survivors had not received medical or psychosocial support, human rights officers referred them to appropriate service providers. HRD took into consideration factors such as stigma and survivors' risk of marginalization, which, alongside the very nature of such crimes, often make further corroboration of incidents of sexual violence particularly difficult. Instead, HRD thoroughly assessed details of the survivor's account, evaluating it in light of any other information about the incident, and the degree to which the incident followed patterns consistent with other similar incidents. HRD established a number of common characteristics of these incidents, based on the locations where they occurred, the alleged perpetrators and their *modus operandi*.

### **III. Contextual background**

#### *National context*

17. On 12 September 2018, the Government of the Republic of South Sudan, SPLA-IO (TD) and opposition armed groups, including SPLA-IO (RM), the Sudan People's Liberation Movement (SPLM/former detainees), and the South Sudanese Opposition Alliance, signed R-ARCSS. This agreement, which was facilitated by the Intergovernmental Authority on Development (IGAD), arose from the 2015 ARCSS, which was waylaid by the resumption of conflict in July 2016.
18. The security arrangements framework, central to R-ARCSS, provides, *inter alia*, for a permanent ceasefire including the disengagement and separation of the armed forces of the signatory parties, withdrawal of allied troops and opening of humanitarian corridors. It also provides for the assembly and cantonment of these forces within 30 days of the signature of R-ARCSS, to enable registration of personnel, weapons and equipment accountability, screening, re-organization and/or disarmament and demobilization. Furthermore, the transitional security arrangements prohibit acts and forms of sexual and gender-based violence including sexual exploitation and harassment. In September 2018, in anticipation of a tentative integration into Government security forces, armed groups began to move their elements toward assembly points, but also bolstered their ranks through the forced recruitment of adults and children in several key areas (including around Bentiu and in proximity to the SPLA-IO (TD) stronghold in Guit county).
19. R-ARCSS also provides for power-sharing arrangements at both national and local levels. These include the reinstatement of the chairperson of SPLA-IO (RM), Riek Machar, as First Vice-President, with four associated vice-presidents, to enhance national representation of a greater proportion of South Sudan's population.

20. The signing of R-ARCSS was followed by national peace celebrations in Juba on 31 October 2018. Major national and regional actors, including Riek Machar (who was in Juba for the first time since the outbreak of conflict in July 2016), gave public addresses in support of peace and reconciliation. On that occasion, President Salva Kiir made the following statement, which is all the more critical given the ongoing plight of women and girls in Unity:

*Dr. Riek and I have the responsibility to tell our soldiers to cease fighting and to go back to their barracks or camps. We have done so and we will continue to do so. There may still be rogue elements somewhere in the bush that will continue to cause harm and it will be our responsibility to look for them with a view of bringing them on board to support the implementation of this agreement. The ceasefire among Gelweng, White Army, and other community-based militias rests with the communities and the Government will work collaboratively with them. We will pursue nationwide disarmament because guns are very dangerous and pose a direct threat to peace and tranquility.*

### **Local context**

21. Between April and May 2018, armed youths and SPLA-IO (TD) elements from northern Unity (Guit, Koch and Rubkona counties) associated with SSPDF Division IV launched a major offensive to clear opposition-held areas in Mayendit and Leer (southern Unity). During this offensive, violations and abuses of international human rights and international humanitarian law, in many cases amounting to war crimes, were committed.<sup>16</sup>
22. There has been an overall decline in the number of violent incidents throughout Unity since September 2018. This is likely attributable to a number of factors, including the signing of R-ARCSS, the proactive political engagement of the United Nations with local and national authorities and military commanders, and the deployment of additional peacekeepers in Leer and Mayendit (both located in southern Unity), as well as the rainy season. However, tensions between armed actors remain high. Outside the scope of R-ARCSS, other issues, such as oil revenue and access to grazing lands, remain contentious, and some national and regional actors are likely continuing to pursue agendas for their own gain.
23. In Unity, security arrangements provided for in R-ARCSS have notably prompted SPLA-IO (TD) to first incite or force adults and children to join its ranks<sup>17</sup> and to then move its elements towards specific assembly areas, such as Tong (Rubkona county) and Rubkway (Mayendit county), ahead of a tentative registration and integration into Government security forces. This integration appears not to have been completed, as only a few SPLA-IO (TD) commanders have reportedly been integrated into SSPDF to date.
24. The volatility of this context, coupled with the lack of accountability for human rights violations and abuses committed throughout Unity, likely reinforces the belief of fighters and local armed youths that they can act with impunity, and increases the likelihood of further cycles of violations and abuses.

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<sup>16</sup> UNMISS & OHCHR, Southern Unity report, *supra* note 3.

<sup>17</sup> Between September and October 2018, in northern Unity, HRD documented incidents of forced recruitment by SPLA-IO (TD) elements involving more than 50 civilians



#### IV. Main findings

25. In the weeks leading up to and following the signing of R-ARCSS, there was a lull in clashes between Government forces and armed groups and, coincidentally, a decrease in the number of human rights violations and abuses and violations of international humanitarian law documented throughout the region. This period fell in the midst of the rainy season, which likely reduced the operational capacities of SSPDF and armed groups and therefore contributed to a reduction in violence.
26. During this period, HRD nevertheless continued to document persistent levels of conflict-related sexual violence and other forms of violence against women and girls. This violence has become normalized and has continued despite the suspension of most military offensives.

#### *Scale and scope of violence against women and girls*

27. HRD documented 55 incidents of violence against women and girls, involving 175 victims, that occurred between September and December 2018. Of these 175 victims, 134 were survivors of rape or gang rape, while 41 were victims of other forms of sexual and physical violence including one case of unlawful killing, as well as flogging, beating, sexual molestation and forced nudity. Of the 134 female survivors of rape or gang rape, 50 were girls between the ages of 8 and 17. There was a marked increase in reported sexual violence during periods in November and December.<sup>18</sup> With regard to the scope of this violence, HRD's investigation found that the areas surrounding the towns of Bentiu and Rubkona accounted for the highest number of victims (98), followed by areas surrounding Nhialdiu town (48), Guit town (16) and Koch town (13).

#### **KEY FINDINGS** *September-December 2018*

- 55 incidents of violence involving 175 victims (111 women and 64 girls)
- 134 cases of rape or gang rape (84 women and 50 girls)
- 41 cases of other forms of violence, including one case of unlawful killing (27 women and 14 girls)

#### *Profile of victims*

28. According to the information gathered, 111 of the victims were women and 64 were girls. All were members of the Nuer community, which is the predominant community in the affected areas. In at least one incident, which occurred on 25 November near Nhialdiu, four young women and girls were separated from a group of nine women and girls to be raped, with assailants stating that they “[*didn't*] need old women but want[*ed*] young girls.”
29. Pregnant women and nursing mothers were also victims of sexual violence. In one incident alone on 17 December, in Lang, five women were gang-raped. Four of them were pregnant at the time of the attack, including one woman who was seven months pregnant, and another nearly nine months pregnant. In an incident on 21 November near Thaliel, a woman who was two months pregnant suffered a miscarriage after being gang-raped by three men.

<sup>18</sup> The overall figures documented are likely under-representative of the scale and scope of the situation, as sexual violence is generally under-reported in the context of South Sudan. Indeed, on 30 November 2018, *Médecins Sans Frontières* (MSF) reported having treated 125 women and girls who were allegedly victims of rape and gang rape between 19 and 29 November 2018 (<https://prezly.msf.org.uk/south-sudan-125-women-and-girls-seek-emergency-assistance-at-msfs-bentiu-clinic-after-horrific-sexual-violence>).

30. No incidents of sexual violence against men and boys were documented. In an incident on 17 November not far from Khalibalek, the assailants reportedly told the two female victims that if they had been male, they would have been killed instead of being raped, because “*your people killed our people.*”

### ***Nexus to travel on public roads and footpaths***

31. Findings of the investigation established that all victims were attacked while travelling outside of their home villages or at some distance from the Bentiu PoC site. The destruction of livelihoods, as well as the forced displacement resulting from recurrent military offensives throughout Unity, have worsened food insecurity and rendered access to food and other commodities extremely limited. In South Sudan’s highly patriarchal society, the tasks of gathering food and collecting firewood generally fall to women and girls, as, according to deeply-entrenched social norms, they are assigned responsibility for cooking family meals.
32. Local community leaders from Guit, Koch and Nhialdiu cited food shortages as the primary reason for women and girls to travel outside of villages to buy food and other commodities, as well as to attend food distribution or registration in Bentiu. Distribution was not possible in the villages themselves at the time, due to the impassibility of hazardous roads during the rainy season and the security risks encountered by humanitarian agencies.
33. While survivors interviewed by HRD stated that they feared being subjected to sexual violence when moving outside of their villages or the PoC site, in most cases they felt that they had no choice

*“We women do not have a choice. There is no alternative for us. If we go by the main road, we are raped. If we go by the bush, we are raped. I was raped among others in the same area repeatedly on three different occasions. We avoided the road because we heard horrible stories that women and girls are grabbed while passing through and are raped, but the same happened to us. **There is no escape - we are all raped.**”*

*-Thirty-year-old survivor from Koch County*

but to leave these areas of relative safety in order to support their families. Human rights officers encountered a feeling of resignation amongst survivors, and a sense of normalization surrounding the risk of being subjected to sexual violence.

34. In this context, several survivors recounted having been raped multiple times, in separate incidents over the previous three to four months. In one case, a group of five women from one village was raped on three separate occasions in October, November and December, each time around the same location near Lang, as they were traveling together to or

from food distribution sites in Bentiu. They observed that with each attack, the number of assailants increased significantly, from four in the first attack, to eight in the second and reaching 12 in the last incident. This appears to indicate an increased level of organization amongst the assailants.

35. Survivors were also targeted in similar or common locations, including specific points along main roads known to be places where travelers rest, near military barracks or checkpoints, or in areas where women and girls frequently travel to collect firewood or sand (used in the construction of homes or *tukuls*). Human rights officers identified four main high-risk locations—Darasalam, Padai, Tharkoat and Thowmangor—where women and girls were beaten and raped on multiple occasions during the reporting period.

36. Accounts gathered by HRD indicate that some survivors had attempted to modify their journeys in anticipation of potential attacks. For instance, after a series of attacks, some residents of Guit, Koch and Nhialdiu travelling towards Bentiu began to move in larger groups or took alternate routes perceived to be safer to reach their destinations (such as footpaths that passed closer to villages). On the other hand, those travelling from the PoC site to areas near Tharkoat and Thorgow were attacked primarily in fixed locations while collecting firewood or sand—leaving them no option of an alternate route.
37. The coping mechanism of “safety in numbers” did not necessarily prevent attacks. In several cases documented during the investigation, survivors traveling in larger groups were beaten or subjected to sexual violence by a larger group of assailants. When men and boys accompanied women and girls, they were also severely beaten. Assailants also seem to have identified the alternate routes chosen by survivors to avoid areas of main roads where previous attacks had been reported.

### *Deliberate and predatory attacks*

38. Through its investigation, HRD was able to establish several common characteristics in the acts of sexual violence committed against women and girls in northern Unity, notably a similar *modus operandi* and a high level of brutality.

39. The *modus operandi* and conduct of the attackers documented during the investigation were characterized by predatory behaviour bearing indications of a certain degree of planning or premeditation. Depending on location, these attacks

*“After we all were raped, the armed men wanted to take my daughter with them, so I cried wildly and begged them not to do so. As a result, one of them hit me very badly at my back using the butt of his rifle. I fell to the ground and covered my daughter with my body, trying not to allow the armed men to take her. Before they left us, some of them threw punches and kicks on me for not allowing them to take my daughter. **Those armed men were just like my sons, but they were so cruel. They do not have mercy.**”*

*-Fifty-year-old survivor from Koch County, who was gang-raped along with her 25-year-old daughter, near Thaliel*

were perpetrated either by armed young men wearing civilian clothing or by individuals wearing military/military-style attire, including various forms of military-style fatigues (e.g., brown, green and khaki camouflage). In many instances, survivors were also raped or gang-raped by groups of men in civilian clothing mixed with individuals in military uniforms. HRD’s investigation revealed that women and girls were more likely to be beaten and raped or gang-raped by SSPDF and SPLA-IO (TD) elements in areas near Bentiu where these forces have a presence (such as Madarasa, Tharkoat, and Thorgow), and by armed youths wearing civilian clothing in areas farther away from Bentiu on the Bentiu-Guit and Bentiu-Nhialdiu roads.

40. However, irrespective of the status of the assailants (individuals in civilian attire and/or elements in military uniform), all tended to attack in groups, carrying military-grade weapons (such as AK-47s), as well as smaller firearms, large wooden sticks, cable wires, and switches fashioned from tree branches. According to survivors’ accounts, in many cases, assailants masked or covered their faces with scarves. They typically ambushed victims on more than one occasion in the same locations, and forced them away from main roads and footpaths to more isolated areas. In a few cases, survivors reported being taken to what appeared to be military encampments, where they were held for several hours before being released.

41. Survivors’ accounts describe a high level of brutality on the part of the perpetrators. The vast majority (more than 87 per cent) of rape survivors were assaulted by more than one perpetrator and

were often raped repeatedly for several hours. On 17 November, for instance, two women were ambushed not far from Khalibalek as they were returning from Bentiu to Nhialdiu, tied to trees with ropes for approximately eight hours, without access to food or water, and raped multiple times by two assailants. In another case that occurred near Koch in early December, a 29-year-old woman was gang-raped by two armed men after witnessing them shoot and kill her 50-year-old mother, who had attempted to flee.

42. Survivors also described other forms of violence. In many instances, women and girls were severely beaten, including with rifle butts, sticks and cable wires, if they attempted to resist their assailants or after they were raped. The ruthlessness of the attackers appears to be a consistent feature of sexual violence documented during this investigation.

*“We only had our underwear when we were found by the [UNMISS] patrol team. I was so exhausted and was in pain from the beating and rape that I did not manage to stand up. The next thing I knew was the fact that I was already at the hospital.”*

*-Thirteen-year-old survivor*

43. Additionally, accounts of survivors indicate the intent of some assailants to punish and terrorize them. In an incident on 2 November, a group of eight women and girls left the PoC site to collect firewood approximately 5 kilometres away in Tharkoat, where they were confronted by a group of approximately 10 armed men in civilian and military clothing. They were forced to sit on the ground, beaten with sticks, and called “rebel wives.” The survivors were later found and supported by UNMISS peacekeepers.

44. Many survivors, often robbed of all possessions (including food, ration cards, money, clothing and shoes)

were subjected to additional humiliation by being forced to strip naked or down to their undergarments, and left to return home in this condition. While the removal of their clothes may have been an intentional act of humiliation, the destruction or theft of ration cards may be considered as punishment or an intent to deprive the survivors of access to food, as these cards are biometric and therefore can only be used by the cardholder. It should also be noted that the theft or destruction of these cards forces survivors to travel again to Bentiu to obtain a replacement, placing them at further risk of sexual violence.

### ***Alleged perpetrators***

45. Based in part on the areas of influence and control of various armed elements, as well as the location of various checkpoints, barracks and encampments, HRD has reasonable grounds to believe that at least four categories of actors were likely involved in the violations and abuses documented in this report: SPLA-IO (TD) elements; SSPDF elements; youth militia/proxy armed elements; and, in a few cases, SPLA-IO (RM) elements. It is also important to note that SPLA-IO (TD) has used local youth militias in the area as proxy armed forces throughout the conflict.

#### ***a. SPLA-IO (TD) elements***

46. Following the decision, in May 2018, of First Vice-President Taban Deng to dissolve his faction of SPLA-IO and integrate with Government forces, his elements were announced to have been integrated into SSPDF in September 2018.<sup>19</sup> However, this integration appears not to have been completed during the reporting period.

<sup>19</sup> <https://www.nyamile.com/2018/09/26/integration-of-fvp-taban-dengs-forces-kicks-off-in-unity-state/>

47. According to information gathered during the investigation, in September 2018, all SPLA-IO (TD) forces were reportedly called to their headquarters in Guit and briefed about the planned integration process. During the same period, HRD documented the forced recruitment of adults and children in Rubkona by SPLA-IO (TD) forces seeking to bolster their ranks. To date, only a handful of commanders have been integrated, and most elements remain under the control of SPLA-IO (TD), continuing to operate as discrete entities, conducting separate patrols in their respective zones of influence and maintaining distinct chains of command.
48. The movement of SPLA-IO (TD) elements towards assembly points ahead of their tentative integration into the SSPDF, as well as the forced recruitment attributed to them, generated tensions and posed significant risks for the protection of civilians, as a substantial number of armed elements began to conglomerate in specific areas without adequate support, as provided for in R-ARCSS. This may have contributed to the increase of sexual violence during this period, considering their areas of deployment in Guit and Rubkona counties.
49. The SPLA-IO (TD) largely control Guit county, where it is estimated that more than 1,000 troops are based at headquarters in Kuerguini. They also operate a military barracks in Matjang, where more than 70 elements are stationed, who reportedly operate a checkpoint in nearby Tharkoat (where HRD's investigation found that 40 women and girls were raped, and 20 were subjected to other forms of violence). These forces are reportedly under the command and control of a lieutenant-general [G1].
50. While reportedly given the rank of lieutenant-general within SSPDF, G1 appears to have maintained authority over the SPLA-IO (TD) forces deployed in Guit and Rubkona. According to multiple sources, although G1 was integrated into SSPDF and appointed to a national-level position, he has reportedly continued to spend time at the SPLA-IO (TD) headquarters in Kuerguini. Two other commanders under the command of G1 have also been identified by HRD's investigation. HRD has previously identified G1 as one of three individuals who may bear responsibility for serious human rights violations and abuses in southern Unity between April and May 2018, including the use of rape as a weapon of war against women and girls.<sup>20</sup>

***b. SSPDF elements***

51. The overall command of SSPDF in Unity is headed by a major-general, based at the Division IV headquarters in Rubkona. According to information gathered by HRD, SSPDF Division IV also has elements deployed in several locations in Guit, Koch and Rubkona counties. HRD was informed of the names of the commanders in charge of these respective deployments.
52. Corroborated accounts by survivors indicate that SSPDF elements in uniform were involved in attacks against women and girls, particularly in areas such as Darasalam, Madarasa and Thorgow.<sup>21</sup> Situated at distances ranging from less than 1 kilometre to 6 kilometres from the SSPDF Division IV headquarters in Rubkona, these locations are considered to be under the control of, and are regularly patrolled by, SSPDF elements who are occasionally associated with SPLA-IO (TD) and/or armed youths. Other corroborated accounts indicated that SSPDF elements in uniform were also involved in attacks against women and girls in Tharkoat. In these attacks, survivors reported that assailants spoke Dinka or broken Nuer (indicating that they were most likely not from the area, which is almost exclusively populated by members of the Nuer community); wore SSPDF uniforms (or similar attire), including some with stars indicating military rank; and in some cases, used

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<sup>20</sup> UNMISS & OHCHR, Southern Unity report, *supra* note 3.

<sup>21</sup> HRD's investigation found that a collective total of 16 women and girls were raped in these locations.

pistols, which are generally reserved for officers within the SSPDF. Assaultants in these cases also castigated survivors for leaving the PoC site and for attempting to take “Government” property, or called them “rebel wives.” Collectively, these factors strongly indicate the involvement of SSPDF in certain cases.

53. According to Government officials interviewed by HRD, SSPDF elements are not always dressed in military uniforms while on active deployment, including when their patrol shifts have ended. Therefore, assaultants in civilian clothes could not be discounted as possible SSPDF elements in certain cases, where other identifying criteria (such as language and location of attack) were present.

*c. Armed youth militias/proxy armed forces*

54. Survivors’ accounts have clearly identified the presence of armed youths amongst their attackers. The proliferation of weapons in Unity, combined with a lack of employment opportunities and weak to non-existent rule of law, fosters criminal behavior amongst the civilian population. According to local politicians interviewed by HRD, armed youths could easily be recruited and utilized by any spoiler to carry out criminal activities and fuel insecurity and destabilization. Additionally, in a climate of impunity and lawlessness, armed youths have little respect for laws, principles and customs, perpetuating a cycle of violence affecting individuals in the most vulnerable situations in society.
55. Throughout the conflict in South Sudan, all three major parties have used proxy armed elements, including (clan-based) youth militias, to support their offensives. In northern Unity, SPLA-IO (TD) is known to have engaged in this practice. These armed youths are most often based locally and live amongst the civilian population when they are mobilized. They are provided with weapons, but generally not with uniforms or any significant military training. They do not receive any salary per se and are left to find their own remuneration through looting and pillaging.

*d. SPLA-IO (RM) elements*

56. SPLA-IO (RM) elements also have a presence in some of the areas where a few incidents occurred, particularly around Nhialdiu. According to local sources, they reportedly control Chuor (Rubkona county).
57. On 29 December 2018, 13 alleged SPLA-IO (RM) elements were reportedly apprehended by a group of other SPLA-IO (RM) elements in connection with the rape of four women near Thowmangor, and handed over to their commanding officer in Tockloca. Several civilian and military sources confirmed to HRD that, following the signature of R-ARCSS, the movement of SSPDF and SPLA-IO (RM) elements between territories under their respective control increased significantly, with SPLA-IO (RM) elements reportedly visiting Nhialdiu on a regular basis.

**V. Response of the Government of South Sudan**

*SSPDF – patrols and deployment*

58. During a meeting of the Human Rights Forum in Bentiu in late November, HRD expressed concern about the growing insecurity and associated violence in the area of the Nhialdiu junction posing a risk to civilians. The Head of the South Sudan National Police Service (SSNPS) in Bentiu and the SSPDF Division IV Commander acknowledged the situation, and assured HRD that they would

increase patrols in the area. On 1 December, SSPDF deployed a company-sized force from Division IV in Bentiu to the Toykom area to increase patrols on the Bentiu—Guit road. These forces established two new checkpoints at the so-called “warehouse” area (4 kilometres south of Bentiu) and Toykom/Kilo Saba (7 kilometres south-east of Bentiu) on 7 and 9 December, respectively. Human rights officers observed that elements at these checkpoints were armed, but several of them were dressed partially or fully in civilian clothing (similarly to the armed youth militia elements).

### ***Investigations***

59. Following a public statement on 30 November by *Médecins Sans Frontières* (MSF) about a significant increase in sexual violence reported to its clinic in Bentiu, local authorities in northern Unity and the Government of South Sudan established two committees to investigate the situation. On 11 December, local authorities in Unity informed HRD that the Governor of Northern Liech state had established an investigative committee including the local ministers of health and gender. This committee has reportedly concluded its investigation, but has not published its findings.
60. On 15 December, the Minister of Gender, Child and Social Welfare led a national-level committee to investigate the allegations of sexual violence in northern Unity. On 19 December, she presented the findings of her mission to the President of South Sudan, concluding that these allegations were “*unfounded and baseless*.”<sup>22</sup> On the same day, the President issued Republican Order no. 25/2018, establishing a national committee to investigate the allegations and provide recommendations to prevent the recurrence of sexual violence in the affected area. This committee reportedly has greater investigative powers than the preceding national committee chaired by the Minister of Gender, Child and Social Welfare, and is comprised, *inter alia*, of representatives of the Ministry of Interior, the Ministry of Defence and Veterans’ Affairs, the National Security Services, and the Relief and Rehabilitation Commission (RRC).<sup>23</sup>
61. On 21 December, the Security Services in Bentiu restricted the travel of MSF personnel working in the Bentiu area until the completion of the new national investigation. This restriction was reportedly lifted on 23 January when the investigation committee returned to Juba.

## **VI. Response of UNMISS**

62. Upon receiving initial reports of the increase in sexual violence, UNMISS immediately engaged with political authorities and security services, and increased military patrols to Guit and Nhialdiu to provide a protective presence for civilians in the area. The Mission’s engineering company also cleared foliage along roads and footpaths in the affected areas to make it more difficult for attackers to conceal their presence.
63. At the same time, HRD launched investigations to establish the facts and identify individuals that may bear responsibility for the violations and abuses committed during the reporting period. UNMISS and other United Nations officials, including the Secretary-General, issued public statements condemning the sexual violence, and calling for a prompt investigation and accountability for those responsible.<sup>24</sup> The Mission has also been working to address the issue of impunity by facilitating the deployment and work of a mobile court in Bentiu.

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<sup>22</sup> As reported on social media by the South Sudan Presidential Press Unit (<https://www.facebook.com/pg/PPUJ1/posts/>) and reported in print and online media (*see, e.g.*, <https://www.nyamile.com/2018/12/20/government-team-claims-bentiu-rape-cases-unfounded-and-baseless/>).

<sup>23</sup> As of 14 February 2019, the committee had not yet released the findings of its investigation.

<sup>24</sup> Press release, *UNMISS condemns brutal sexual assaults on women and girls near Bentiu*, 3 December 2018, <https://unmiss.unmissions.org/unmiss-condemns-brutal-sexual-assaults-women-and-girls-near-bentiu>.

64. Additionally, UNMISS has held meetings with national and local authorities to remind them of their primary responsibility to protect civilians and uphold international human rights and humanitarian law, to urge them to take immediate action to protect women and girls in the area, and to hold the perpetrators to account.
65. During meetings with local authorities in Bentiu, HRD reiterated its support for capacity-building activities to sensitize SSPDF and other relevant actors on conflict-related sexual violence and related human rights topics. To support implementation of the SSPDF action plan to combat conflict-related sexual violence, between 4 and 6 December, HRD organized a workshop for 44 senior SSPDF officers (including one woman) to enhance the prevention of conflict-related sexual violence and response measures. During the closing ceremony of the programme, all participants signed a “commander’s undertaking” to address conflict-related sexual violence within SSPDF, committing individually and in their capacities as unit commanders to prevent it, to protect women and girls, to take immediate measures to suspend alleged perpetrators from active duty, and to facilitate accountability for such crimes. Each brigade and battalion also committed to developing and implementing a three-month activity plan in follow-up to the training, which HRD will continue to monitor.
66. In an effort to overcome the absence of justice sector institutions in Bentiu specifically, UNMISS has supported the establishment of a mobile court—comprised of a High Court judge, a magistrate judge, two prosecutors, two defence counsel, and a senior police investigator—to travel to Bentiu to hear cases involving serious crimes, including sexual violence) in the PoC site. UNMISS is present throughout all stages of these trials to monitor them and to provide technical support to judicial authorities, as appropriate, so that South Sudanese substantive and procedural laws, including the constitutionally-protected due process rights of the accused, are respected.
67. In December 2018 and January 2019, UNMISS facilitated the operation of the mobile court to try cases against 27 individuals, 14 of whom were convicted of offences including murder or culpable homicide, rape, and armed robbery.<sup>25</sup> Among them were a former SPLA-IO (TD) element convicted in connection with one of the cases documented in this report (arrested within the PoC site after being recognized by a survivor living there) and sentenced to 12 years in prison. At least two SSPDF elements were also convicted on charges of rape in connection with incidents that occurred in the Bentiu PoC site, and were sentenced to terms of imprisonment of six and 10 years, respectively. While the mobile court has thus far been limited to considering cases related to the PoC site in Bentiu, the longer-term intention is to work with United Nations partners and local judicial authorities to support mobile courts to prosecute crimes more generally throughout the country.
68. UNMISS also provides support for institutions and civil society organizations promoting awareness of sexual violence and advocating for an end to impunity, and regularly conducts training on the prevention of sexual and gender-based violence amongst organized forces, including military and police, women’s and youth groups, as well as civil society and communities more broadly. The Mission is working with the national justice sector to build its existing capacity, including through the establishment of a special court with jurisdiction over crimes of sexual and gender-based violence, and by strengthening existing survivor support and referral networks.

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<sup>25</sup> Individuals were either acquitted or had charges dismissed in 11 cases, while proceedings were adjourned in two cases to the next session of the court.



## **VII. Conclusion and recommendations**

69. As outlined in the present report, despite the signature of R-ARCSS, HRD continued to document widespread sexual violence against women and girls by elements affiliated with various armed groups in northern Unity. Between September and December 2018, HRD corroborated 134 cases of rape or gang rape and 41 cases of other forms of sexual and physical violence including one case of unlawful killing, as well as flogging, beatings, sexual molestation and forced nudity—numbers which are likely under-representative of the full scale of the crisis.
70. The findings of HRD’s investigation indicate that these attacks were consistently premeditated and carried out with a degree of organization by various armed actors operating in these areas. Despite the advent of a relative stability, the high number of armed elements and proliferation of firearms in the area, as well as a prevailing culture of impunity, have coalesced with other contextual factors (such as food insecurity and patriarchal expectations of women’s roles and functions in society) to create an environment in which conflict-related sexual violence is a normalized experience for women and girls in northern Unity.
71. The Government of South Sudan is duty-bound under international human rights law to take adequate measures to protect women and girls, to promptly and thoroughly investigate allegations and to hold the perpetrators accountable through fair trials. Additionally, all parties to the armed conflict are obligated to respect international humanitarian law, as well as the provisions of R-ARCSS prohibiting the abuse of civilians, including acts and forms of sexual and gender-based violence, sexual exploitation and harassment. Accordingly, UNMISS and OHCHR make the following recommendations:

### ***Implementation of R-ARCSS***

- a. UNMISS and OHCHR encourage SPLA-IO (TD), the Government of South Sudan, SPLA-IO (RM) and other relevant authorities to implement commitments made during peace celebrations on 31 October 2018, in particular the commitment to bring SSDPF, armed opposition and militia elements on board to support implementation of R-ARCSS; UNMISS and OHCHR further exhort all parties to comply with the provisions of R-ARCSS prohibiting “acts and forms of sexual and gender-based violence including sexual exploitation and harassment” (ch. II, art. 2.1.10.2); and
- b. Call on the signatory parties to swiftly implement the security arrangements provided for in R-ARCSS, as delays in the implementation of these provisions increase the risk of human rights violations and abuses, as well as violations of international humanitarian law.

### ***Accountability***

- c. UNMISS and OHCHR urge the committee established by President Salva Kiir under Republican Order no. 25/2018 to carry out a prompt, independent, impartial and thorough investigation into allegations of sexual and other forms of violence committed between 12 September and 24 December 2018 and identify individuals that may bear responsibility for these attacks; and the Government of South Sudan, SPLA-IO (TD) and SPLA-IO (RM) to appropriately hold perpetrators within their respective forces to account;
- d. Urge the competent prosecutorial and judicial authorities to investigate, prosecute and try all individuals bearing responsibility, including those in positions of command and control, for violations and abuses of international human rights law, and violations of international

humanitarian law, committed in northern Unity between September and December 2018, as well as in southern Unity between April and May 2018; and

- e. Call on the Government of South Sudan to implement its stated commitment to sign the Memorandum of Understanding on the Hybrid Court with the African Union as a meaningful step towards the establishment of this Court, to promote accountability for serious human rights violations and abuses, including conflict-related sexual violence.

***Support to service providers***

- f. UNMISS and OHCHR encourage the international community to continue supporting local and international humanitarian and women's organizations to provide timely and adequate medical and psychosocial assistance for survivors of sexual violence, and to empower survivors and build resilience by providing long-term rehabilitation support; and
- g. Urge the Government of South Sudan to ensure that humanitarian organizations can conduct their work without fear of reprisal and with unobstructed access to victims.

## Annex

### Legal framework

#### a) *International human rights law*

72. The Republic of South Sudan is a State party to the African Charter on Human and Peoples' Rights and seven international human rights treaties.<sup>26</sup> International human rights law applies both in times of peace and armed conflict. South Sudan is also bound by provisions of international human rights law that have attained the status of customary law. Under this framework, the Republic of South Sudan is legally bound to respect, protect, promote and fulfil the human rights of all persons within its territory or under its jurisdiction or control.<sup>27</sup> Accordingly, South Sudan has the obligation to prevent all acts of rape and other forms of sexual violence, torture and inhuman or degrading treatment, and abductions, as well as looting of civilian property, to take effective measures to prevent and promptly investigate violations and abuses of international human rights law and violations of international humanitarian law, and to ensure accountability for the perpetrators of these acts.
73. Additionally, under international human rights law, South Sudan is responsible for the wrongful conduct of individuals or groups not formally integrated into its defence or security forces when the latter are under its direction or effective control. The same body of law binds South Sudan to take necessary action to prevent, protect against, and respond through the provision of effective remedies to violence against women and children, whether perpetrated by private or public actors. It should be noted that SSPDF, SPLA-IO (TD), and SPLA-IO (RM) have been listed by the United Nations for committing sexual violence in conflict and grave violations against children, including abduction and rape.<sup>28</sup>

#### b) *International humanitarian law*

74. International humanitarian law applies to the non-international armed conflict in South Sudan.<sup>29</sup> The temporal scope of international humanitarian law ends when a peaceful settlement is achieved, which, in practice, means not only the end of active hostilities but also the end of related military operations of a belligerent nature in circumstances in which the likelihood of their resumption can reasonably be excluded. The current peace in South Sudan remains fragile, with many of the components of the pre-transitional phase as provided for in the R-ARCSS yet to be implemented. The continued presence of distinct zones by parties to the armed conflict, including SPLA-IO (TD) in Guit County, maintenance of separate headquarters, and occasional small clashes between Government and allied forces (SPLA-IO (TD)) on the one hand, and SPLA-IO (RM) on the other, indicate that the situation remains prone to spoilers and a resumption of hostilities. In these circumstances, international humanitarian law may be considered to continue to apply.

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<sup>26</sup> The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and its Optional Protocol; and the Convention on the Rights of the Child (CRC). The Optional Protocol to the CRC on Involvement of Children in the Armed Conflicts and the Optional Protocol to the CRC on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography entered into force for South Sudan on 27 October 2018.

<sup>27</sup> See, e.g., CAT art. 21 and General Comment no.4, para. 10(ff); CEDAW General Comment no. 32, para. 7.

<sup>28</sup> *Report of the Secretary-General on conflict-related sexual violence*, U.N. Doc. S/2018/250 (18 March 2018), available at: <http://undocs.org/en/S/2018/250>.

<sup>29</sup> The Republic of South Sudan is also a State party to the four Geneva Conventions of 1949, and the two Additional Protocols of 1977.

75. All parties to an armed conflict must abide by the relevant rules of customary international law applicable in non-international armed conflicts, including the principles of distinction, proportionality and precaution. All persons taking no active part in hostilities should be treated humanely. Rape and other forms of sexual violence; torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment; arbitrary deprivation of liberty; and pillage are prohibited.
76. States are responsible for all violations of international humanitarian law committed by their armed forces or those acting under their direction or control. Under international law, the Government of South Sudan is obligated to investigate serious violations of international humanitarian law, and to ensure full reparation for loss or injury caused by the State or those acting under its control or direction.

**c) *International criminal law***

77. Under international criminal law, individuals can be held criminally responsible (through both individual and command modes of liability) for war crimes and crimes against humanity. While not a State party to the Rome Statute of the International Criminal Court, South Sudan is obligated in accordance with peremptory norms of international law to prosecute the perpetrators of any such acts committed on its territory, including bearers of command responsibility.
78. ARCSS (August 2015) and R-ARCSS (September 2018) envision the establishment of a Hybrid Court, which according to its draft statute will have jurisdiction over war crimes and crimes against humanity, as well as other serious crimes under international law. The Hybrid Court on South Sudan, once established, has primacy over national jurisdictions to prosecute individuals, both civilian and military, who have reportedly committed these crimes. To date, the Government of South Sudan has not signed the Memorandum of Understanding with the African Union for the establishment of this court.<sup>30</sup> On 15 October 2018, the Transitional National Legislative Assembly ratified R-ARCSS, incorporating it into domestic law. Additionally, on 24 January 2019, the National Constitutional Amendment Committee submitted a draft bill to the Ministry of Justice and Constitutional Affairs to incorporate R-ARCSS into the Transitional Constitution of 2011.<sup>31</sup>
79. In many cases, acts documented in this report may constitute war crimes and crimes against humanity under international criminal law.

**d) *Domestic law***

80. Certain conduct amounting to serious violations of international human rights or humanitarian law, including rape, also constitutes a crime under South Sudanese domestic law. The right to physical integrity is protected by the Constitution and the Penal Code Act of 2008. Additionally, in 2012, South Sudan incorporated the provisions of the four Geneva Conventions and their Additional Protocols into domestic law; accordingly, South Sudanese courts are empowered to prosecute breaches of Common Article III of the Geneva Conventions, including for war crimes. Moreover, domestic military law provides for the criminal prosecution of acts committed by members of SSPDF against civilians. In September 2018, 10 SSPDF elements were convicted and sentenced to

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<sup>30</sup> The Republic of South Sudan is not a State party to the Rome Statute of the International Criminal Court. Therefore, in accordance with art. 13 of the Rome Statute, the Court may only exercise jurisdiction over international crimes committed in South Sudan if the Security Council, acting under Chapter VII of the Charter of the United Nations, refers the situation to the Prosecutor of the Court.

<sup>31</sup> In accordance with R-ARCSS arts. 8.1-8.2.

terms of imprisonment ranging from seven years to life imprisonment for charges including the rapes of five humanitarian workers at the Terrain Hotel in Juba, in July 2016.

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