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Fourth report

Submission by

CEASEFIRE CENTRE FOR CIVILIAN RIGHTS

AND

COMMUNITY EMPOWERMENT FOR PROGRESS ORGANIZATION

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Acronyms

AU - African Union

CEDAW - Convention on the Elimination of Discrimination Against Women

COHA - Cessation of Hostilities Agreement

GRSS - Government of the Republic of South Sudan

HCSS - Hybrid Court for South Sudan

IGAD – Intergovernmental Authority on Development

ICJ - The International Commission of Jurists

Kampala Convention - Convention for the Protection and Assistance of Internally Displaced Persons in Africa

POCs - Protection of Civilian sites

R-ARCSS - Revitalised Agreement on the Resolution of the Conflict in South Sudan

RTGoNU - Revitalised Transitional Government of National Unity

SPLA - Sudan People's Liberation Army

SPLA-IO - Sudan People's Liberation Army in Opposition

UNCRC - United Nations Convention on the Rights of the Child

UNMISS - United Nations Mission in South Sudan

I - Introduction

This is a joint submission from the CEASEFIRE Centre for Civilian Rights (CEASEFIRE) and the Community Empowerment for Progress Organisation (CEPO) in response to a call for information by the UN Commission on Human Rights in South Sudan (CHRSS). The submission is based on monitoring information gathered by the CEASEFIRE-CEPO project¹ on early warning of identity-based violence in South Sudan and on secondary sources.

In previous reports and statements the Commission has expressed an interest in the link between the conflict in South Sudan and the country's political economy, including the misappropriation of natural resources, the diversion of revenues to elites including members of the Government of South Sudan, and a lack of transparency and independent oversight in fiscal governance. The Commission is currently calling for information relevant to 'economic crimes', including, but not limited to: bribery and corruption; money laundering; corporate fraud; environmental crimes; development-induced population displacement; cattle-raiding. The Commission has further welcomed any information highlighting the nexus between the utilization of resources and on-going conflict, including human rights violations in South Sudan.

The **CEASEFIRE Centre for Civilian Rights** is an international initiative to develop civilian-led monitoring of violations of international humanitarian law or human rights; to secure accountability and reparation for those violations; and to develop the practice of civilian rights. CEASEFIRE is currently working in a number of conflict-affected jurisdictions, including Iraq, Syria, Yemen and South Sudan. CEASEFIRE is registered in the UK as a charity, no. 1160083.

Community Empowerment for Progress Organisation (CEPO) is a South Sudanese civil society organisation based in Juba with a country-wide network of activists that works to develop South Sudanese society and civil society. CEPO's activities include community engagement, peacebuilding, conflict mitigation, democratic transformation, defending and strengthening human rights and the rule of law, developing viable livelihoods and humanitarian work.

CEASEFIRE and CEPO are running a joint project to strengthen the ability of civil society to implement a system of early warning and preventive advocacy on identity-based violence. The project is developing a network of civil society activists across the country to track organised identity-based violence and facilitate timely and effective action by local, national and international actors to prevent or mitigate it. The project complements the IGAD/South Sudan Peace and Reconciliation Committee Conflict Early Warning and Early Response (CEWER).

II - Background and Framework

More than a year after the September 2018 signing of the Revitalised Agreement on the Resolution of the Conflict in South Sudan (R-ARCSS), the second peace agreement intended to put an end to South

¹ This project is supported by UKAID – Department for International Development. The contents of this submission are the sole responsibility of the submitting organisations and can under no circumstances be regarded as reflecting the position of UK DFID.

Sudan's now six-year long civil war, delays and the failure of critical elements of the peace process have cast its future and the prospects for effective transitional justice into doubt.

Clashes between armed groups have continued, albeit at a lower level than previous years, as factions have manoeuvred to improve their positions on the ground, with significant effects on civilians across the country in terms of loss of life, property, sexual violence and forced displacement.

This submission focuses on the connections between serious and ongoing human rights abuses committed against civilians during the conflict and the utilisation of economic resources. It considers the ways in which, far from being an exception, the violence is an extension of the competition for economic resources that has characterised South Sudanese politics since before the war, and highlights the need for greater understanding of the economic drivers of the conflict and for effective reparations measures to address the economic impact of the conflict on the lives of civilians.²

South Sudan is bound by international humanitarian law (IHL) and by international and regional human rights instruments. It is a party to the Geneva Conventions of 1949 and their two Additional Protocols, including Additional Protocol II relating to the Protection of Victims of Non-International Armed Conflict. It is a party to the Convention on the Elimination of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (UNCRC) and its two optional protocols on children in armed conflict and on the sale of children, child prostitution and child pornography, and to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³ Furthermore, in June 2019 the members of the South Sudan Transitional National Legislative Assembly (TNLA) voted unanimously to ratify the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and their respective First Optional Protocols without reservations.

South Sudan has ratified African Union conventions, including the African Charter on Human and Peoples' Rights and its Protocol on the Rights of Women in Africa.⁴ It has also recently ratified the Convention for the Protection and Assistance of Internally Displaced Persons in Africa, also known as the Kampala Convention.⁵

² <https://undocs.org/S/2017/979>, para 41, p.17, accessed on 30 December 2019.

³ https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=SS&nv=4 and https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en accessed 10 December 2019.

⁴ <https://www.achpr.org/statepartiestotheafricancharter> accessed on 10 December 2019.

⁵ <https://au.int/sites/default/files/treaties/36846-sl-AFRICAN%20UNION%20CONVENTION%20FOR%20THE%20PROTECTION%20AND%20ASSISTANCE%20OF%20INTERNALLY%20DISPLACED%20PERSONS%20IN%20AFRICA%20%28KAMPALA%20CONVENTION%29.pdf> accessed on 10 December 2019.

States Parties shall seek lasting solutions to the problem of displacement by promoting and creating satisfactory conditions for voluntary return, local integration or relocation on a sustainable basis and in circumstances of safety and dignity.

AU Convention for the Protection and Assistance of Internally Displaced Persons in Africa, Article 11(1)

The situation in South Sudan is a non-international armed conflict. Parties to the conflict are bound by the Geneva Conventions and customary international humanitarian law for the duration of the conflict, which given the continuation of organised violence and the active presence of armed groups not party to the peace agreement, cannot be considered to have been brought to an end by the 21 December 2017 Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access (Cessation of Hostilities Agreement - CoHA)⁶ or the 12 September 2018 Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS).⁷

In signing the CoHA, the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement/Army in Opposition (SPLM-IO) committed to refrain from recruitment and enlistment, including from Protection of Civilian sites (PoCs) and refugee camps, and the recruitment and enlistment of children;⁸ to refrain from all attacks, inside and outside South Sudan, on the civilian population including killings, abductions and robberies and sexual and gender-based violence;⁹ to protect civilians from any form of attacks by other armed actors not part of the CoHA operating within South Sudan and to cooperate with the United Nations Mission in South Sudan (UNMISS) in the discharge of its mandate to protect civilians.¹⁰ These commitments were reaffirmed by the Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) signed in Addis Ababa on 12 September 2018.¹¹

⁶ Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access, http://ctsamm.org/wp-content/uploads/2019/06/December-2017-COH-AGREEMENT_Revitalization.pdf accessed on 10.12.2019 at 1pm.

⁷ <https://igad.int/programs/115-south-sudan-office/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan> accessed 10 December 2019.

⁸ Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access, Article Three, Sections 2e and f, http://ctsamm.org/wp-content/uploads/2019/06/December-2017-COH-AGREEMENT_Revitalization.pdf accessed on 10 December 2019.

⁹ Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access, Article Five, Sections 5a and b, http://ctsamm.org/wp-content/uploads/2019/06/December-2017-COH-AGREEMENT_Revitalization.pdf accessed on 10 December 2019.

¹⁰ Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access, Article Six, Sections 1 and 2, http://ctsamm.org/wp-content/uploads/2019/06/December-2017-COH-AGREEMENT_Revitalization.pdf accessed on 10 December 2019.

¹¹ R-ARCSS, Section 2.1.1, <https://igad.int/programs/115-south-sudan-office/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan> accessed 10 December 2019.

As signatories to the R-ARCSS, the GRSS and the SPLM/A-IO further undertook to demilitarise civilian areas, including livelihood areas;¹² ensure refugees and internally displaced persons are able to return to their places of origin and/or live in areas of their choice in safety and dignity and are afforded physical, legal and psychological protection.¹³ Through the R-ARCSS, they also agreed that the judiciary should be independent, affirmed the rule of law, and agreed that efforts will be made to build the capacity of the judiciary, its personnel and infrastructure.¹⁴

Under Chapter V of the R-ARCSS, parties also agreed to the establishment of institutions of transitional justice: a Commission for Truth, Reconciliation and Healing; a Hybrid Court; and a Compensation and Reparation Authority. However, the commitment of the Government of South Sudan to transitional justice and the Hybrid Court in particular has been called into question by the US\$3.7 million the government reportedly paid to a US-based lobbying company to 'delay and ultimately block the establishment of the hybrid court'.¹⁵

A – Legal Framework

South Sudan is a presidential republic with a hybrid judicial system that includes both statutory and customary courts.¹⁶ The International Commission of Jurists (ICJ) reported that despite clear provisions in the constitution and in law, the principle of the independence and impartiality of the judiciary is not respected in practice.¹⁷ Further, standards of jurisprudence are weak and inconsistent: the legal profession is inadequately regulated,¹⁸ and though South Sudan's legal system works in English, the majority of the country's judges and lawyers were trained in Arabic in Sudan, which poses obvious difficulties in establishing legal precedents and common standards across the profession.¹⁹ The legal system is also massively under-resourced -- judges in the military courts trying to prosecute perpetrators

¹² R-ARCSS, Section 2.2.3.1 <https://igad.int/programs/115-south-sudan-office/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan> accessed 10 December 2019.

¹³ R-ARCSS Section 3.1.1.2, <https://igad.int/programs/115-south-sudan-office/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan> accessed 10 December 2019.

¹⁴ R-ARCSS Sections 1.17.1-2, <https://igad.int/programs/115-south-sudan-office/1950-signed-revitalized-agreement-on-the-resolution-of-the-conflict-in-south-sudan> accessed 10 December 2019.

¹⁵ South Sudan hires U.S. lobbyists to help block war crimes court-contract, Reuters, 29/04/2019. <https://uk.reuters.com/article/uk-southsudan-justice/south-sudan-hires-u-s-lobbyists-to-help-block-war-crimes-court-contract-idUKKCN1S51YW> accessed 1 December 2019

¹⁶ UPDATE: An Overview of the Legal System of South Sudan, Globallex, School NYU Law School, September 2018. https://www.nyulawglobal.org/globalex/South_Sudan1.html#section4, accessed 30 September 2019.

¹⁷ South Sudan, International Commission of Jurists, 10 June 2014. <https://www.icj.org/cijlcountryprofiles/south-sudan/> accessed on 1 October 2019.

¹⁸ UPDATE: An Overview of the Legal System of South Sudan, Globallex, School NYU Law School, September 2018, Section 5. https://www.nyulawglobal.org/globalex/South_Sudan1.html#section5, accessed 30 September 2019.

¹⁹ UPDATE: An Overview of the Legal System of South Sudan, Globallex, School NYU Law School, September 2018. https://www.nyulawglobal.org/globalex/South_Sudan1.html#section4, accessed 30 September 2019.

reportedly do not even have ink and paper to print their judgements²⁰ -- and is at least in some areas critically understaffed, which has caused a significant backlog of unresolved cases.²¹

South Sudan also has a parallel justice system in the form of customary courts that enforce customary law at the local level.²² These customary courts are administered by traditional authorities in South Sudan, categorised by the 2009 Local Government Act as either kingdoms ('self existing traditional systems') and chiefdoms (established formally by the Local Government Act 2009 in each county and town council outside of pre-existing kingdoms).²³ Though these courts are formally subordinate to the statutory courts and there is a clear separation of competency between the two systems, the inadequacies in the statutory court system outlined in the previous paragraph and the fact that customary courts are administered by local government structures means in practice there are serious concerns as to the consistency and effectiveness of the oversight and regulation statutory courts can exercise over customary courts, and over the coherence of the South Sudanese legal system as a whole.²⁴

B - 'Economic crimes' and crimes under international law

Economic and financial crimes, including bribery, corruption, money-laundering and environmental crimes, are generally prosecuted – if at all – at domestic level under national law, although in recent years their suppression has also been subject to increased international cooperation and mutual legal assistance.

The gravest crimes under international law, including war crimes and crimes against humanity (as codified in the Rome Statute of the International Criminal Court) may also include an economic aspect. Of particular relevance to non-international armed conflict are the war crimes of pillage, ordering displacement of the civilian population, and destruction or seizure of property²⁵, all of which have characterized the conflict in South Sudan, as well as the crimes against humanity of forcible population

²⁰ Panel: Full-Scale War Looms in South Sudan One Year After Peace Accord Signed, VOA 16/09.2019.

<https://www.voanews.com/africa/panel-full-scale-war-looms-south-sudan-one-year-after-peace-accord-signed> accessed 1 October 2019.

²¹ Waat County officials decry lack of judges, Radio Tamazuj, 30/09/2019.

<https://radiotamazuj.org/en/news/rticle/waat-county-officials-decry-lack-of-judges> accessed 1 October 2019.

²² South Sudan Government: The Local Government Act 2009, Sections 112, 1b. See

<http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/The-Local-Government-Act-2009.pdf> accessed 2 October 2019.

²³ South Sudan Government: The Local Government Act 2009, Sections 112-114.

<http://southsudanhumanitarianproject.com/wp-content/uploads/sites/21/formidable/The-Local-Government-Act-2009.pdf> accessed 2 October 2019.

²⁴ UPDATE: An Overview of the Legal System of South Sudan, Globallex, School NYU Law School, September 2018, Section 6.5. https://www.nyulawglobal.org/globalex/South_Sudan1.html Section 5, accessed 30 September 2019. Land Governance in South Sudan: Policies for Peace and Development, World Bank Report No. 86958-SS, May, 2014, paragraph 131.

<http://documents.worldbank.org/curated/en/421901468336313987/text/869580WPOP14370nance0in0South0Sudan.txt> accessed 3 October 2019.

²⁵ Rome Statute, Art. 8(e)(v),(viii) and (xii).

transfer and other inhumane acts intentionally causing great suffering, or serious injury to body or to mental or physical health.²⁶

Although South Sudan is not a party to the Rome Statute, the Revitalized Agreement on the Resolution of the Conflict in South Sudan provides for the establishment of a Hybrid Court for South Sudan which would have jurisdiction over international crimes including genocide, crimes against humanity and war crimes, as well as other serious crimes under international law and relevant laws of the Republic of South Sudan including gender-based crimes and sexual violence.

More widely, the economic aspect of international crimes may be reflected in prosecutions of those who aid, abet or otherwise assist in the commission of such crimes (eg. through financing or otherwise providing the means) or in a prosecutorial assessment of the impact of such crimes, which may include the social, economic and environmental damage inflicted on affected communities. The ICC Office of the Prosecutor has stated that it will give particular consideration to prosecuting Rome Statute crimes 'that are committed by means of, or that result in, inter alia, the destruction of the environment, the illegal exploitation of natural resources or the illegal dispossession of land'.²⁷

III – Violations against the civilian population related to the use of resources

The CEASEFIRE-CEPO early warning project in South Sudan uses a network of community-based monitors to record instances of conflict-related violence. Since the conclusion of the revitalized peace agreement there has generally been an improvement in the security situation in the country, although low-level exactions on the civilian population by soldiers and armed groups and violent incidents are still common. In an interview with CEASEFIRE in June 2019, the acting Chair of the Reconstituted Joint Monitoring and Evaluation Commission said that in his opinion the ceasefire was largely holding, and that the violence that had persisted was mainly related to cattle-rustling.

A - Cattle-raiding

Cattle raids and retaliatory attacks on communities should not be underestimated, and formed the most prevalent form of armed violence recorded by CEPO monitors in 2019.

Ceasefire and CEPO's joint monitoring project²⁸ recorded 24 serious incidents in 2019 in ten states related to cattle raiding that resulted in the loss of life. The states worst affected by this violence were Bieh, Boma, Eastern Lakes and Tonj States. The other states affected included Gok, Jonglei, Ruweng, Unity, Wau and Western Lakes States. At least 203 people were killed and 190 injured during these incidents, though the number of injured is likely to have been significantly underreported.

²⁶ Rome Statute, Art. 7.1(d) and (k).

²⁷ Office of the Prosecutor, International Criminal Court, 'Policy Paper on Case Selection and Prioritization', 15 September 2016.

²⁸ <http://cepo-southsudan.org/mapping-conflict-violence-in-south-sudan> accessed on 31 December 2019.

Some incidents were relatively small and involved the theft of small numbers of cattle (15-25) but most incidents of theft involved hundreds. Two incidents involved the theft of thousands of cattle, the first of 7,000 cattle from Bieh state in a raid that killed four and injured five in February, and tens of thousands of cattle in Boma state in May, in a raid that killed 17 wounded ten and in which 43 women and 61 children were reported missing.

Several incidents did not involve the theft of any cattle but were revenge attacks on those believed to have been perpetrators or related to the perpetrators of cattle theft and associated killings. Officials also noted in some cases that those who had their cattle stolen were pursuing those who were believed to have taken them.

Several local government officials said that violence associated with cattle raiding was so bad because the justice system was inadequate, and noted that raiding was especially bad across state and county lines. In August, it was reported that the government of Eastern Lakes state was setting up a special court to deal with issues of communal violence in the state to try to resolve violent disputes between the Atuot, Ciet and Aliab clans in the region.

Cattle-related violence may also in some cases be related to the political/military elite in Juba. Members of South Sudan's elite have reportedly invested some of their wealth in cattle and armed their relatives to protect their investments. This influx of wealth and arms may be related to the upsurge of fighting in grazing lands since 2005. As one youth explained in 2012: 'I am given guns by my uncle in Juba to guard his cattle. I am proud to guard his cattle. Yet, of course, if the cattle are raided or I lose any of his cattle to illness, I must get more cows. He cannot accept that his herd gets smaller. So I raid more cattle for him and he helps me with ammunition when he can'.²⁹

B - Attacks and forced displacement of the civilian population

Attacks on the civilian population have been a modus operandi for all sides in the South Sudan conflict, including the SPLA, NSS, SPLA-IO and other armed opposition groups. A long-serving member of CTSAMVM staff noted to CEASEFIRE that the conflict had been characterized less by clashes between the parties than by parallel attacks on undefended communities perceived as belonging to, or supporting, another party. Such attacks were marked by pillage, destruction of property, killings, sexual violence and forced displacement. Together with the terror induced in the population, the burning of homes and destruction of means of production resulted in communities being left with no option but to flee.

The mass displacement of civilian populations has been driven by serious human rights abuses. To give but a single example, the Human Rights Division of the United Nations Mission in South Sudan (UNMISS) reported that in the Central Equatoria region between September 2018 and April 2019 armed groups committed 95 separate violations, killing 104 civilians, wounding another 35 and abducting 187. The number of women and girls raped or subjected to sexual violence was almost as many as the number of civilians killed, and the number of those taken captive includes women and girls taken as 'wives' by commanders or raped and beaten by multiple fighters. This violence led directly to the displacement of

²⁹ p.242, Naomi Pendle, 'They Are Now Community Police': Negotiating the Boundaries and Nature of the Government in South Sudan through the Identity of Militarised Cattle-keepers', pp.410-434 in *International Journal on Minority and Group Rights* 22 (2015). https://brill.com/view/journals/ijgr/22/3/article-p410_6.xml accessed on 31 December 2019.

more than 56,000 civilians within South Sudan and 20,000 into Uganda and the Democratic Republic of Congo.³⁰

C – Land as a conflict resource

In understanding the critical nexus between conflict, human rights abuses and resource use in South Sudan's civil war, the competition to control land is key. Land has been described as South Sudan's second greatest resource after oil.³¹ Much of the fighting in the war has been conducted by local groups acting at the instigation of, or as proxies for, the leaders of the various factions. These groups have been primarily motivated by local grievances³² and fight for control of local resources, of which one of the most important is land - and the power and resources that control of land can bring.

In South Sudan, control of land brings power and resources when it can be translated into control over the local administrative apparatus. Control over a state administration or even a local county means not only control over administrative and decision-making processes and local resources like taxes, but also access to and influence over the flow of resources from central government and the international humanitarian community, and can even translate into control over humanitarian aid to vulnerable civilians displaced by conflict.³³

Competition to control local government played an important role in local politics before the civil war,³⁴ and has played a significant role in the struggle to control land since. It has also played a major role in the forcible mass displacement of civilians. The sheer scale of conflict-driven mass displacement is an indication of the centrality of the competition for land as a resource in the South Sudanese civil war. Almost four million people³⁵ – slightly less than a third of the entire South Sudanese population of 12.7 million³⁶ - have been forcibly displaced or driven into seeking refuge abroad since the outbreak of the war. This violence-driven mass displacement has not been an incidental feature of the war, but a key feature. The Chair of the UN Commission on Human Rights in South Sudan has deemed it 'a pattern of ethnic cleansing and population engineering.'³⁷

³⁰ https://unmiss.unmissions.org/sites/default/files/press_release_central_equatoria_-_final.pdf accessed on 18 December 2019.

³¹ De Waal, Alex, 'When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan', *African Affairs*, 113/452, July 2014, p359, <https://doi.org/10.1093/afraf/adu028> accessed 16 December 2019.

³² Daniel Akech Thiong, "How the politics of fear generated chaos in South Sudan," *African Affairs*, 117/469, 613-635, October 2018, <https://academic.oup.com/afraf/article-abstract/117/469/613/5056448?redirectedFrom=fulltext> accessed on 10 December 2019.

³³ Joshua Craze, *Displaced and immiserated: The Shilluk of Upper Nile in South Sudan's civil war 2014-2019*, September 2019, Human Security Baseline Assessment, Small Arms Survey, pp. 28, 55.

<http://www.smallarmssurveysudan.org/fileadmin/docs/reports/HSBA-Report-South-Sudan-Shilluk.pdf> accessed on 21 December 2019.

³⁴ *Ibid*, pp.22, 24.

³⁵ <https://www.unhcr.org/uk/south-sudan-emergency.html> accessed on 17/12/2019 at 10am.

³⁶ http://data.un.org/CountryProfile.aspx/_Images/CountryProfile.aspx?crName=South%20Sudan accessed on 17 December 2019.

³⁷ Yasmin Sooka, 2017. 'Speech of the Chair of the Commission on Human Rights in South Sudan to the Human Rights Council.' 14 March, 2017.

Despite provisions in the R-ARCSS and the Kampala Convention (cited above) that stipulate displaced persons should be able to return to their places of origin and be afforded security if they choose to do so, the vast majority of those displaced internally or forced to seek asylum abroad during the civil war have not returned to their homes. Up to 195,000 of the more than 200,000 who fled to UNMISS POC camps have not returned to their homes,³⁸ preferring to remain in the dire living conditions of the camps.³⁹ The reason for this is clear: they fear for their lives.⁴⁰

The struggle over land has motivated armed groups to kill civilians and employ sexual violence to drive the mass displacement of civilian populations, and the logic that motivated those abuses has prevented the vast majority of the displaced from returning home in safety, while those responsible for the violations that drove them off their land and away from their homes are free to enjoy the spoils of war.

In the context of the South Sudanese civil war, land is more than booty: land is a conflict resource, the continued possession of which by those responsible for dispossessing and displacing its rightful owners is a major impediment to a just and viable resolution to the conflict. Those who have claimed land by force have little incentive to engage constructively in the peace process if that means they might lose what amounts to their spoils of war. The nexus between resources, serious human rights violations and ongoing conflict in South Sudan's conflict has played out most fully – and catastrophically – over the struggle for land, and as the violators remain in possession of that land it is intrinsically connected to the continuation of the conflict.

The following section illustrates the relationship between the competition for land as a resource, violence and ongoing human rights abuses as it has played out in former Upper Nile state.

Case study: The forcible mass displacement of the Shilluk in South Sudan's former Upper Nile province

Fighting broke out in former Upper Nile State early in the war. While initially it took the form of a political struggle between pro and anti-government forces, by 2015 the conflict had become communitarian, pitting rival ethnic militias with localist agendas against each other.

Historically the area around the White Nile in former Upper Nile province was inhabited by both the Padang Dinka and the Shilluk, and shared usage of land between cultivators and pastoralists was common. When the civil war broke out in late 2013, a large Shilluk force known as the Agwelek was in the area, waiting to be integrated into the SPLA. They made common cause with the GRSS against the

<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21374&LangID=E> accessed on 23 December 2019.

³⁸ p.195, Jair Van Der Lijn, "III. Protection of Civilians: The case of South Sudan," pp.195-203 in <https://www.sipri.org/sites/default/files/SIPRIYB17c05sIII.pdf> accessed on 19 December 2019, <http://www.lse.ac.uk/international-development/Assets/Documents/ccs-research-unit/Conflict-Research-Programme/crp-memos/POCS-in-SS-Feb-2019.pdf> accessed on 17 December 2019.

³⁹ <https://www.msf.org/protection-civilians-sites-south-sudan> accessed on 19 December 2019.

⁴⁰ <https://theglobepost.com/2019/03/13/south-sudanese-returning-home/> accessed on 20 December 2019

See also <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21374&LangID=E> accessed on 28 December 2019.

SPLA-IO, but this was no more than alliance of convenience. Meanwhile, the government actively encouraged the creation of local Padang Dinka militias under the umbrella of the SPLA.⁴¹

In late 2014 and early 2015, as SPLA-IO forces in Upper Nile State were routed by Padang Dinka and Shilluk militias operating under the umbrella of the SPLA, communitarian agendas came to the fore and tension between the former allies erupted into violence. On 15 May 2015 the Agwelek broke ties with the SPLA. One of the reasons for his was the GRSS's acquiescence in a Padang Dinka project to claim Shilluk territory.⁴² This was not the central government using local rivalries to further its own ends but rather the reverse, as Padang Dinka in the Upper Nile exploited their usefulness to the central government to further long-standing local objectives.⁴³

In the initial fighting in May and June 2015 between the SPLA and the SPLA-IO (with their new allies the Agwelek), both fired on civilians at the Malakal Protection of Civilians (POC) site. As the fighting turned against the Agwelek and SPLA-IO, Shilluk civilians were increasingly targeted to drive them from the east bank of the White Nile, then further west into Sudan. Before civilians were systematically targeted, Padang Dinka forces purged local police and SPLA units of Shilluk personnel.⁴⁴

The SPLA offensive of summer 2015 intentionally targeted civilians to drive them off their land. Military offensives against Malakal and other locations on the White Nile went ahead even though the Agwelek and their SPLA-IO allies withdrew from these positions before the fighting began. When the SPLA retook Malakal on Shilluk 6 July, the SPLA used helicopter gunships against Shilluk villages on the west bank of the White Nile, targeting a clearly marked International Committee of the Red Cross hospital in Kodok, killing at least 13. civilians fled. These helicopters were under the control of Juba, not of local forces, indicating the GRSS actively cooperated with SPLA Padang Dinka units in their attacks against civilians.⁴⁵

That civilians were targeted in this campaign was admitted by senior local government and military figures. On 9 July 2015 the commander of the SPLA's 1st Division, Stephen Buay Rolnyang, a Bul Nuer, said the killing of civilians in Renk over the previous month had been the work of Padang Dinka militia forces, not of his men.⁴⁶ Furthermore, Santiano Nuan, the minister of local government of Upper Nile State, discussing the fluid borders of Akoka county said that 'We are still making them' in a reference to the continuing displacement of Shilluk in the area.⁴⁷

The 28 states decree issued by President Salva Kiir Mayardit 2 October 2015 should be seen in the context of the conflict over territory and associated population engineering. It formalised the gains the Padang Dinka had made in the Upper Nile region. The territory his decree granted them control over closely matched the then-current disposition of military forces on the ground. States held by opposition forces tended to have large mono-ethnic populations crammed into small territories with no Dinka areas, whereas Dinka states included the largest amount of territory possible while preserving a Dinka majority. Kiir rewarded his regional power bases within the country by legitimising what they had seized

⁴¹ Craze , pp.40-1.

⁴² Ibid, p.47.

⁴³ Craze, P.44.

⁴⁴ Ibid, pp.52-3.

⁴⁵ Craze, pp.53-4.

⁴⁶ Ibid, p.55.

⁴⁷ Craze, p.28.

through violence and awarding them administrative power.⁴⁸ These were the spoils for two years of war in which at least 2.25 million civilians had been forced to flee their homes.⁴⁹

In early, 2016 the Padang Dinka administration started to fly in internally displaced Dinka from Juba to settle on the East Nile.⁵³ On 18 February, after several days of escalating tension and violence, the Shilluk and Nuer areas of the Malakal POC camp were attacked by SPLA soldiers and Padang Dinka militia. At least 30 were killed and 123 injured, and 2326 structures burned. The UN concluded 'it was highly likely that the attack was planned, or at a minimum supported by SPLA and/or affiliated militia to facilitate the ethnic reconfiguration of Malakal.'⁵⁰

With the resumption of the war in 2016, the SPLA's campaign against the Shilluk presence in the Upper Nile region resumed, penetrating much further into the west bank. SPLA forces targeted Shilluk civilians and Agwelek fighters indiscriminately to push the Shilluk into Sudan or reconstitute what was left of them inside South Sudan as a pliant minority population under government control.⁵¹ Between 1 January and 15 September 2017, the UN recorded the entry of some 86,297 refugees into Sudanese territory adjacent to the former Upper Nile State.⁵² The result was the almost total removal of the Shilluk population from South Sudan. By the end of August 2017, humanitarian agencies estimated that only 17,000 Shilluk remained in the former Upper Nile state outside of the Malakal POC camp,⁵³ and it has been estimated that 50 percent of the Shilluk community in South Sudan have been driven into exile by the war and 30 percent internally displaced.⁵⁴

Though the fighting along the White Nile is over, the mass displacement the fighting caused and the underlying conflict over land continues. The Shilluk live in internal exile or as a refugee population in Sudan, and the Padang Dinka forces that brutalised and dispossessed them remain in possession of their spoils. The fighting may have come to an end, but the underlying communitarian conflict over land and power has not.

D - Illegal logging

The lucrative timber trade in South Sudan, particularly for teak as well as mahogany, is a major source of conflict finance from which both government and opposition groups have profited. The UN Panel of Experts on South Sudan has referred to the payment of armed groups as 'a necessary cost of doing business' for those harvesting teak. However, in addition to protection money, armed groups profit from imposing taxes on the movement of timber, on bribes from middlemen, as well as from the control and sale of the timber itself.

Timber exploitation is centred in the south of the country, in the Equatorias, adjacent to export routes through Uganda and the Democratic Republic of Congo. It is thus a principal source of finance for armed

⁴⁸ Ibid, pp.58-9.

⁴⁹ <https://www.unhcr.org/uk/news/latest/2015/7/559bdb0e6/225-million-displaced-south-sudan-across-its-borders.html> accessed on 28 December 2019.

⁵⁰ <https://www.un.org/sg/en/content/sg/note-correspondents/2016-08-05/note-correspondents-board-inquiry-report-malakal> accessed on 28 December 2019.

⁵¹ Craze, pp.74, 76, 96.

⁵² <https://undocs.org/S/2017/979>, para 42, p.17, accessed on 30 December 2019.

⁵³ Ibid, para 41, p.17.

⁵⁴ Craze, p.10.

groups operating in that region, particularly if they have limited access to oil and other resources in the north.⁵⁵ C4ADS also notes that a poor regulation in the timber sector and a lack of transparency over the ownership of timber concessions complicates the task of distinguishing between legal and illegal logging.⁵⁶

In practice, however, whichever group controls the territory will profit from the trade. Responding to a UN Panel of Experts report that the panel had received credible information that a senior SPLA-IO commander was 'directly involved in the taxation of teak and mahogany' being illegally harvested in opposition-held areas, a spokesperson for the SPLA-IO claimed that the activity was legal because it was controlled by the SPLA-IO which was the effective government in the area in question.⁵⁷ The UN Panel has also reported that commanders of the South Sudan Peoples Defence Forces have been involved in illegal logging in former Eastern Equatoria state.

The effect on local communities of the trade in conflict teak can be devastating. With the timber effectively stolen, or taxes or protection money imposed at a punitive level, local communities are left with no source of livelihood. Those who refuse or avoid cooperation are displaced by force. In addition, local communities have to suffer other violations that come from the presence of armed groups, including endemic rape and sexual violence.

III-Recommendations

Given the centrality of the struggle for land in South Sudan conflict and the close relationship between land and the violations of international humanitarian law and human rights that have driven mass displacement, the UN Commission on Human Rights in South Sudan should explicitly recognize land as a conflict resource in South Sudan.

The seizure and exploitation of land by violence and forced displacement has been a key dynamic of the conflict, creating powerful constituencies with a vested interest in blocking an effective transitional justice process that could dispossess them of their gains. The provisions in the peace agreement allowing for the return of the displaced are unequivocal, but do not specify the resources or political arrangements likely required to facilitate the voluntary return of the four million displaced in the war. Nor do they recognise that the return of the displaced is a key issue for transitional justice in South Sudan.

Although the siphoning off of South Sudan's wealth by elites has become a topic of increasing comment in recent years, particularly following revelations by the UN Panel of Experts on South Sudan and by the Sentry organization,⁵⁸ little attention has been paid to the question of reparation to the rightful owners

⁵⁵ C4ADS, Money Tree: Teak and Conflict in South Sudan, 2019, p8, <https://static1.squarespace.com/static/566ef8b4d8af107232d5358a/t/5df2b87d4c2e38505cf22725/1576188053567/Money+Tree.pdf>

⁵⁶ *Ibid.* pp 11-12.

⁵⁷ VOA News, 'South Sudan Rebels, Government, Trade in Illegal Timber Sales', 26 November 2019, <https://www.voanews.com/africa/report-south-sudan-rebels-government-trade-illegal-timber-sales>

⁵⁸ See eg. UN Doc. S/2019/301, 9 April 2019; The Sentry, *The Taking of South Sudan*, 19 September 2019, <https://thesentry.org/reports/taking-south-sudan/>

of that wealth, including millions of ordinary South Sudanese. Redressing that balance will require not just wholesale reform to governance and public sector finances but also a comprehensive and effective reparations programme, managed by the potential Compensation and Reparation Authority.

Further, the exact scale of conflict-related displacement is unclear. The UNHCR and the international humanitarian community have collected statistics on mass displacement, but in many cases no detailed breakdown of those aggregate figures is available detailing the ethnicity of those fleeing, from where and from whom. No detailed assessment of the problem or the material and political resources required to facilitate the voluntary return of the displaced can be done without this information.

The issue of internal borders is also of critical importance to the peace process and to resolving the issue of land, conflict and the displaced. This is not an apolitical or technical issue. The work of the Independent Boundary Commission (IBC) and the Technical Boundaries Commission (TBC) has reached an impasse. The work of the TBC is complex, given the historic variation in patterns of land ownership and shared use that prevailed across much of the country during the colonial period and after.⁵⁹ The IBC, however, failed because its work is too politicized. The question of the number of states South Sudan should have and their boundaries is intimately connected to the new political order created through years of violence and serious human rights abuses across the country. The impasse in the IBC is unlikely to be resolved without the active engagement of and pressure from the international community. But it should be recognised that the issues it is dealing with are of key importance to the peace process and to transitional justice, and therefore require the full and inclusive participation of civil society.

Given the centrality of resource control, including control over land, as a driver of conflict and related human rights violations against civilians in South Sudan, it is recommended that:

Transitional justice

- the mandate of the Commission for Truth, Reconciliation and Healing should be sufficiently broad to enquire into the causes and drivers of the conflict and to document flows of pillaged resources and other illicit flows of wealth;
- the Compensation and Reparation Authority should be suitably equipped and resourced to manage an extensive programme of reparations for individuals, families and communities who have suffered harm enabling them, as far as possible, to have their situation before the conflict restored;
- economy-related crimes, including the war crimes of pillage, forced displacement of population, and destruction and seizure of property, should be explicitly included in the mandate of the Hybrid Court for South Sudan and made a priority for prosecutorial investigation.

Return of displaced populations

- The UN and other international actors should assist in collecting detailed statistics about those displaced in the conflict, disaggregated by ethnicity, where they were displaced from and by whom;

⁵⁹ Craze, p.27.

- The issue of the return of the displaced should be prioritised and recognised as a key element of any conflict resolution and transitional justice process in South Sudan.

Early warning and prevention

- Civil society efforts to develop on-the-ground early warning of conflict-related violations and armed group movements should be further supported;
- International actors should consider enhanced measures for tracking conflict resources leaving the country, including through the Uganda-Kenya route, and placing controls on both South Sudanese and foreign individuals profiting from that wealth.