



AU Commission of Inquiry on South Sudan

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A Separate Opinion

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A Separate Opinion: A Contribution to the AUCISS Report

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I. TERMS OF REFERENCE AND METHODOLOGY

1. Heads of States and Governments, meeting as the Peace and Security Council of the African Union (AU) resolved to establish the Commission of Inquiry on South Sudan. Its communiqué mandated the AUCISS
 - a. To investigate the human rights violations and other abuses committed during the armed conflict in South Sudan;
 - b. To investigate the causes underlying the violations;
 - c. To make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities with a view to deterring and preventing the occurrence of the violations in future; and
 - d. To make recommendations on how to move the country forward in terms of unity, cooperation and sustainable development;
 - e. To submit a report within a maximum period of three (3) months
2. The Commission interpreted its mandate to consist of four focal areas, summed up as follows in its Concept Note: healing, reconciliation, accountability and institutional reforms.
3. The Commission conducted several missions to South Sudan and neighboring countries on the dates indicated: April 16 (Khartoum), May 10-15 (Kenya), May 15-18 (Uganda), May 26-June 4 (South Sudan: Juba, Bor, Bentiu, Malakal, Nasir), June 5-7 (Kakuma Refugee Camp, Kenya, and Khartoum, Sudan), July 31-August 3 (Bentiu, Rubkona, Leer County), August 3-5 (Malakal, Nasir), August 6-7 (Bor), August 8-11 (Yambio, Juba). In addition, the Commission was in Addis Ababa at different times throughout its term, both to meet different members of the Opposition and to hold Commission meetings.
4. This report comprises four sections. Section I ('The Violence') gives a narrative of the extreme violence that followed December 15, 2014. The context for these events is provided in Section II ('The Context'). Together, these sections aim to present a credible and reasonably comprehensive account of events. Thereby, the Commission hopes to forestall attempts to manipulate narratives to serve partisan political ends. Section III ('The Issues') is a discussion of all four aspects of the Commission's mandate, both separately and holistically. Section IV ('Recommendations and the Way Forward') concludes this report.
5. Methodologically, the report seeks to do three things. First, it gives primary weight to the views of those interviewed by the Commission so as to give voice to those who spoke to the Commission. Second, it seeks to communicate these views in their full diversity. Third, the report seeks to engage with its four-fold mandate – healing, reconciliation, accountability

and institutional reforms – both separately and holistically as a single body of recommendations, presented in Section IV.

II. THE VIOLENCE

6. The extreme violence that is the focus of this Commission's report was unleashed in two phases. The first was over three days, from the 16th to the 18th of December, in Juba. The second phase covered three states in the provinces and was centered around three towns: Bor, Bentiu, and Malakal.
7. The violence spread rapidly from the capital city to over 30% of the country in the matter of a few days. It was intense and brutal, and targeted specific groups: Nuer in Juba; and Dinka, Nuer and Shiluk in the three states of Jonglei, Unity and Upper Nile. The dimensions of this violence have been captured in various reports, in particular those by the UN Mission in South Sudan (UNMISS). The violence in Juba targeted one nationality, the Nuer. Those who survived either fled the town by motorized transport, or ran on foot to the UNMISS compound. The Commission held a public meeting at the IDP Camp, Protection of Civilian Site No. 1, Juba 3, on 26 April, 2014. It also held extended interviews with focus groups of survivors, women in particular, that same day. Some of the accounts below corroborate what we found in UNMISS reports.
8. Juba is settled along ethnic lines, and the killings took place in Nuer residential areas, conducted as a house to house operation. One of its survivors narrated the mass killing of 307 persons: "On 16 December, after the fighting in the army stopped, they came house to house to collect and kill. I and three brothers were pulled out of the house and taken to the barracks. They put us in a container. Eleven died of suffocation in the container. There were three windows, tiny, but no wind. We were so many we could not sit; we had to stand – the whole day until the night. We heard gunshots all day. They would push people into the container the whole day. 10 at night, they started shooting through the windows that were bringing some oxygen. Then they opened the door and start shooting. It was continuous shooting until all fall down. They opened the door, lit a torch; if they saw you breathing they would shoot. If someone starts crying, they would come back and shoot. This happened four times. There was one boy who we advised to lie still, he ran, got to the door, touched it, it made a sound, and he was killed. Two others were injured in the container, but not dead. Three managed to escape. The following day, the 18th, we went back to the place with the Governor of Unity State, and got three other survivors. We know the numbers because there was a

pastor who said a prayer for each of the dead. Among the dead, there were three Darfurians and two from the Shilluk community.”¹

9. Gratuitous degradation was a marked feature in many of the incidents of brutality narrated to us. Another resident of the camp told us: “I have seen people being forced to eat other humans. Soldiers kill one of you and ask the other to eat the dead one. Women are raped, people burnt. I was a student in Nairobi, Kenya – I am not a military.”² Of the Nuer who remained in Juba, few survived the killing spree of December 16-18, 2014: “Many of us survived killings because we were presumed to be dead.”³
10. The Commission asked members of civil society in Juba, overwhelmingly non-Nuer after the ethnic cleansing of mid-December, to recount their experience of the violence on December 16 – 18. A representative for women at the IGAD-held talks in Addis Ababa, recounted her experience to the Commission:⁴ “We have no idea who did the killing. We heard bullets. It happened exactly at 11 at night on the 15th, till morning. Early morning people started running. Shooting started again in 2-3 hours. No one went out on the 1st and 2nd day. Nobody went out because there was continuous shooting. On the 3rd day people started coming out. From my house we saw a tank moving towards military barracks. People in the areas saw a woman on the tank, so people in the area were coming to see the woman. When we came, we saw three people running out. We asked why, they said they were running to UNMISS. After a while we saw more people running, all towards UNMISS. I smelt human remains in the Gudele Police Station area. The talk in town was that all the people who were brought into the police station in Gudele were killed.”
11. The Commission notes that even those on the ground with the infrastructural capacity to estimate the number of the dead have resisted to give any global estimates of how many were killed during this period. Hilde Johnson, then Special Representative of UN Secretary-General in South Sudan (SRSG), told the Commission: “We say thousands but we do not know. We are deliberately not flagging figures in any of our reports.”⁵

¹ S, IDP Camp: Protection of Civilian Site, No. 1, Juba 3, 26th April, 2014

² Sa, IDP Camp: Protection of Civilian Site, No. 1, Juba 3, 26th April, 2014

³ P, IDP Camp: Protection of Civilian Site, No. 1, Juba 3, 26th April, 2014

⁴ Juba, 24th July, 2014.

⁵ Hilde Johnson, Special Rep of Secretary-General in South Sudan, UNMIS; Ibrahim Wani, High Commissioner, Human Rights; Izeduwa Derex-Briggs, UN Women, interview, 25 April, 2014

12. The violence ethnically cleansed the city of Juba of its Nuer population. The motive of this violence was political: the violence, which originated as a schism in the governing elite of South Sudan, targeted one particular ethnicity, the Nuer. Its intent and effect was to divide the civilian population along ethnic lines, to destroy the middle ground, thereby to polarize the society into “us” and “them.” An IDP at the UNMISS compound in Juba 3, told the Commission: “They put a knife into what bound us, turned the crisis from political to ethnic.”⁶

A. Background to the National Liberation Council Meeting in Juba

13. The tensions within the political class exploded at the meeting of the National Liberation Council in Juba on December 14-15, 2014. The immediate background to the December meeting of the NLC was a split in the leadership of SPLM with several leading members – Vice President Dr. Riek Machar, SPLM Secretary General Pagan Amun, and Madam Rebecca Garang, the widow of the late Dr. John Garang, publicly announcing their intention to run for the post of Chair of the SPLM, and thus President of the country. President Kiir removed executive powers from Dr. Riek in April. In July, he dissolved the government, removing Riek and others from any government office. On July 25, Riek called a press conference saying the President has a right to remove me from state office. Soon after, President Kiir began a tour of the whole of Bahr el Ghazal, giving public speeches that were televised on South Sudan Television. These speeches, focused on his reasons for sacking Dr. Machar and the cabinet, became the focus of a growing public debate as more and more voices called for an end to “hate speeches.”⁷ A member of Dr. Machar’s delegation told the Commission: “Salva toured Bahr el Ghazal, the three states (Wau in Western Bahr el Ghazzal, Avail in northern Bahr el Ghazzal, Kwajok in Warrap, Rumbek in Lakes), saying I have removed Riek and people were saying we would. In Lakes, he said I have now decided to fight my enemies, and my nick name is Tiger, I have decided to scratch anyone who opposes me.” The Commission was unable to get transcripts of these speeches or their television coverage. When Chairman Kiir called for the National Liberation Council to meet on December 14, many feared that the stage was set for a showdown.
14. There were several attempts to postpone the meeting of the NLC. The Commission was able to get details of three different initiatives.
15. The longest standing initiative came from the military itself; it was recounted to us by a senior military officer, a Dinka from Jonglei state: “The chairman of the SPLM, Salva, and his members of the Political

⁶ IDP Camp: Protection of Civilian Site, No. 1, Juba 3, 26th April, 2014

⁷ PX, Juba, 25 April, 2014

Bureau started to have problems in 2009. I ... tried to engage the President to get him to meet his detractors. We told him that if there were cracks, Khartoum will exploit them and independence will be delayed. When elections came, we convinced Salva to take Riek as his deputy so there would be no problem. From 2010, no file would go from President to Vice President and none from the office of the Vice to the President. All files went directly to the Ministry. The Party too was not working. We were shuttling between the President and the Vice President, telling them of the danger of the situation, but we could not succeed. Both leaders turned to a sectarian way of doing things. Nuer politicians who had sided with Salva were telling him that Riek has no support among the Nuer. I advised Salva in June that better to manage Riek than to remove him. He said I cannot take him any more – this one is not going to be like 1991, if Riek does anything he is going to face it. I told him, then the people will also suffer, what will be the end game? On December 5, this issue came up that the G13 [the Group of 13 senior dissident SPLM leaders] wanted to organize a press conference in Juba at the musoleum of Garang. The President called us together and asked our opinion, said he was going to give orders for their arrest. We dissuaded him saying we will all be refugees then. Wani will not be able to handle the situation in Juba, and Riek is more powerful, let them go to the party headquarters. I managed to convince the Minister of Security, and the Director of Internal Security in Juba – together, we managed to convince the President. We came back on the 12th. Salva went to the burial of Mandela. The press conference went ahead. The Vice President did a counter press conference. We decided to stop the NLC meeting. XY was in Australia, YZ agreed. We managed to get the G13 to stop their rally on the 14th on condition that the President stop the NLC. But the President could not be stopped.”⁸ XY, another senior army officer, agreed in his remarks to the Commission: “We managed the situation when Riek was removed as Vice President – we talked to Riek. I congratulate him for dealing with the situation well. I went to see the President and told him, you can remove these but dialogue with them, but he refused. He even refused to talk to the ministers he had dismissed. He was depending on the Dinka ministers who feared they would be elbowed out if there was dialogue.”⁹

16. These senior officers were in direct contact with the AU High Level Panel on Sudan, which was the source of the second most important initiative to reconcile contending forces within the SPLM. The Chair of the High Level Panel, former President Mbeki, told the Commission:¹⁰ “During 2013, when differences within SPLM became public, the SPLM leadership set up a Commission headed by Deng Alore to reconcile the two factions. They

⁸ XP, 29 July, 2014, Addis Ababa.

⁹ XY, former Chief of General Staff, 29 July 2014, Addis Ababa

¹⁰ Mbeki Commission, Radisson Hotel, Addis Ababa, September 4, 2014

kept us informed about the work they were doing. They said that in the event they failed, they would ask our panel to intervene. Generals in the army spoke to us and said when it becomes necessary to intervene, we should be ready because if there was no reconciliation, the SPLA would split and there would be civil war. Deng Alore reported May/ June that his committee had failed; he asked us to intervene – which we did. Deng Alore reported that there was going to be a convention of SPLM in 2014 during which the party would elect a Chairperson who would become the party's candidate in the general election. Four persons had expressed interest in being candidates [for the position of Chairperson of SPLM]: Salva, Machar, Pagan, Rebecca. James Iga had said he would run if President Salva did not. Mak Pol, the Chief of Army Intelligence, was liaising with us – he warned of possible civil war. Gen Majak, Deputy Defense Minister, one of detainees, said so even more forcefully.”

17. “We asked Salva what is the problem. He said the problem is personal ambition; everyone wants to be president. His problem was that Riek Machar was acting outside the processes of SPLM. He said it was reflective of an old problem. Even the breakaway in 1991 was driven by similar personal problems. Rebecca was not campaigning. Pagan was lobbying, but was not as vocal as Riek. We asked the same questions of the opposition: what is the problem, how do you solve it? Their answer: Salva is a good military commander, but does not have the capacity for political leadership. He should hand over. Their press statement of December 6 spelt this out: incompetence, deviating from party policies, creating conflict between South Sudan and neighbors. We proposed three things. One, the public campaign should stop; all matters in dispute need to be discussed within the party. Two, the Political Bureau should meet and these issues should be resolved in it. Three, no disciplinary action against anyone – at least none until after the meeting of the Political Bureau. This was in the last week of November. We said we would be ready to sit as observers at the Political Bureau meeting and, if necessary, even intervene. We met before Riek and others were removed and after. In the July meetings, the group with Riek spoke of their willingness to reconcile with President Salva and solve our problems quietly for a win-win solution. When we saw the new Vice President in November and asked why the Political Bureau had not met, he said the Political Bureau had met four times since March but had failed to find a way forward. There was no point in calling a 5th meeting. Instead, they would call a meeting of the higher body. He said their stated willingness to reconcile is fake; they just want to go back to their government positions, which they think is their entitlement. The last time I discussed this question with Salva was the memorial meeting for Mandela in December. I asked him what would happen to others who had been removed from government positions. He said they can attend the NLC as its members. We did not expect the situation to degenerate to this point. None of the things about which they

were differing were cause enough for civil war. The resort to arms took us by surprise.”

18. The source of the last initiative was the Church. Bishop Enoch Tombe told the Commission¹¹ that the Archbishop met the two leaders – President Salva Kiir and former Vice President Riek Machar – several times. As late as the morning of December 14, he advised them to postpone the meeting but his advice was ignored. Bishop Tombe remarked on the difference between 2010 and 2013. Both times, the SPLA leadership was deeply divided. In 2010, there was a dialogue in Yei for five days: “after that, the president called us to reconcile the parties with SPLM,” an initiative that “gave them an opportunity to go for a referendum.”
19. The accounts received by the Commission of the opening day of the NLC meeting on December 14 confirm early fears that it may generate sparks that would light a fire. A former Minister in the government, told the Commission: “When Salva got up to talk, he was on a war path, attacking those who wanted to take his power. On the second day, Pagan, as Secretary-General, was not allowed to attend the NLC. Riek too refused to attend. That evening, shooting occurred; it started at the army head quarters and spread all over town.”¹² A senior military officer told the Commission: “the speech of the President at the opening of the NLC contributed to 70% of this problem.”¹³
20. The meeting of the NLC took place against a rumor-laden, crisis atmosphere. A sense of a protracted crisis had permeated the public sphere ever since the dismissal of most of the cabinet. The atmosphere was rife with rumors, with talk of a possible breakdown leading to a split in the army and civil war. Two kinds of preparations unfolded in this context. The first, which we have already recounted, were attempts from several quarters – the army leadership, the AU High Level Panel on Sudan, and the Church leadership – to mediate the split. The second was a set of reverse tendencies, the result of both sides preparing for the worst. Unlike in 2010, when the anticipated referendum for independence put an effective check on competing ambitions, this time the momentum seemed unstoppable. The Commission asked XY, a senior military officer, “How would you apportion blame for events of that night between 2 leaders?” This is what he told the Commission: “Both are to be blamed – Salva more because he is president. I freed myself from this tribalism since I was in high school. *We even discussed that may be we should arrest these people – but we had a problem. The Dinka will not understand that I was*

¹¹ Bishop Enoch Tombe Stephen et.al., Juba, 24th July 2014

¹² PX, Juba, 25 April, 2014

¹³ XY, Addis Ababa, 29 July 2014

trying to rescue them, they will think I am acting as a Nuer. So we said we do not do this.”¹⁴

B. The Trigger

21. XP, a senior intelligence officer, gave the Commission an idea of the web of rumors that were beginning to cover certain sectors in Juba:¹⁵ “On the 11th, a lot of rumors were going around – that Salva has ordered the disarmament of Nuer in the Presidential Guard – from the 10th to 11th – Taban called me to say we have heard there is impending disarmament of the Nuer – I called Major General Merial, Commander of the Presidential Guard. He denied the rumor. We had the old regulation that all guns have to be in the armory. This rumor spread within certain sectors, but there was no public disclaimer. Instead there was a counter-rumor that Salva has mobilized his own tribe in Luri, near his farm, that he has brought 7,000 from Bahr el Ghazal – in reality, this force was 311, because 10 of them died in training.”

22. Many interviewed by the Commission focused on the trigger that sparked the violence in the army headquarters on the evening of the 15th. There were three different explanations: a coup attempt by the opposition, an attempt to disarm Nuer soldiers, and an attempt by Nuer soldiers to break into the armory. A leading media person told the Commission that the head of the Presidential Guard tried to disarm Nuer soldiers.¹⁶ Major General Marial Chanuong Yol Mangok, the commander of the Presidential Guard, otherwise known as the Tiger Battalion, discounted this as “false information,” explaining: “people not on duty leave their arms in the armory, only those on duty carry arms.”¹⁷ XY, the senior army officer, concurred: “We do not allow soldiers to go to sleep with their guns. There was no attempt to disarm anyone” He went on to tell the Commission: “We had two colleagues on duty that day. People mobilized to break the armory. There was no attempt to keep a particular group from being on duty that night. The Commander, a Nuer, killed his deputy, a Dinka, who was refusing for the armory to be opened. That same night, people came and broke open the armory.”¹⁸ This account is consistent with that of the commander of the Presidential Guard. Furthermore, both contradict the claim by President Kiir on December 17 that there had been a coup attempt. Maj Gen Marial Chanuong Yol Mangok told the Commission: “I reported a mutiny in my garrison. When the shooting spread beyond my

¹⁴ XY, 29 July 2014, Addis Ababa

¹⁵ XP, 29 July 2014

¹⁶ ZA, Juba, 21 July 2014

¹⁷ Major General Marial Chanuong Yol Mangok, Commander, Tiger Battalion, Presidential Guard, Juba, 22 July, 2014

¹⁸ XY, 29 July 2014, Addis Ababa

garrison to town, I could not give it a name.”¹⁹ XP, the senior intelligence officer, shed further light on this issue in his remarks to the Commission: “Breaking into the armory was a response to rumors. Nuer mobilization began when the killing began on the 17th and 18th.”²⁰

23. The Commission ZA, the leading media person: What happened on 15 December? His response:²¹ “My office is not very far from where the President stays, and where Riek stayed. Each would bring people from his own tribe as Presidential Guard protectors of President and Vice President. On the 16th, the army came in and pounded Riek’s house which had 15 or so guards. They came with tanks, destroyed the place completely, killed all guards. They also destroyed the house of Gier Chwong, one of the G11. The President spoke in his fatigue on the 16th. My reporter saw three vehicles full of dead bodies from the hospital, being taken somewhere. The government wants no negative reporting. A month later, I wrote that atrocities had been committed in Juba, and gave this as an example. I also wrote that people of Gudele say that lots of Nuer killed in Gudele, thousands. I was summoned by security. My telephone was tapped for talking to Alfred Lubogore, Riek’s deputy.”

24. The Commission asked the same question of AB, a senior police officer. His response confirms the account painted by civilians of Juba under siege those three days, December 16 to 18, by an armed mob:²² “The army went on a rampage. Three quarters of the army stay in residences in

¹⁹ Major General Marial Chanuong Yol Mangok, Commander, Tiger Battalion, Presidential Guard, 22 July, 2014

²⁰ XP, 29 July, 2014, Addis Ababa. An alternative account was offered by a deputy brigade commander in his remarks to the Commission on 29 July, 2014: “On the 12th of Dec 2013, 740 soldiers were brought from Bahr el Ghazal, and taken to Luri. On 14 December, they brought them to Tiger headquarters at Giyada. When they arrived, they informed all of them that the guns will be taken to the stores. On 15 December at 8 p.m., the Dinka component of Tiger Battalion were rearmed. I was there and inquired why the guns were taken from the store. They answered that we will take them back to the store. I waited for 30 minutes and asked again. At that time, Gen Marial Chanuong arrived, and ordered them to take more guns out. I went again to ask them why more guns were being taken out. This is when the bodyguards of Marial began shooting. He started running back to his brigade headquarters, which is when his soldiers began breaking into the armory.” When asked by the Commission – “Who fired the first shot? – he responded: “I was shot at first – body guard of Marial fired at me.” This contradicted accounts from not only Marial but also both senior military and intelligence officers interviewed by the Commission who maintained that the first shot fired was “when the Major was killed by his superior.”

²¹ ZA, Juba, 21 July 2014

²² AB, Juba, 22 July 2014

Juba. When the army controls a situation, it becomes very difficult for the police to step in. We buried 50-60 people in one place. We have formed a committee to investigate into the killings – there is a report with the IGP.”

25. XP, the senior intelligence officer, told the Commission that 38 died on the side of government and 59 on the other side in the fighting in the barracks on the 15th: “On the 16th, there was another shootout. These people were defeated at 2 p.m. They lost 22 in that random shooting; seven members of a civilian family were also killed by a shell falling on their house. This was after the President’s address on the 16th. The President’s address re-triggered the shooting in the barracks. I was in the office, and could not hear any counter-fire – only random shooting for 20 minutes, fighting within government troops in response to a rumor that an attack was coming. I could hear all weapons, even tanks.”

C. Resistance

26. The Commission reflected on two institutions that could have put a break on the violence that resulted in a mass slaughter and effective ethnic cleansing of the Nuer population of Juba. These institutions were the army and the parliament.
27. “What did you do to stop the killing of civilians?” the Commission asked several officers who were then at the Army Headquarters. XA, a deputy brigade commander, told the Commission: “We were overpowered night of the 16th and ran to Terakeka, 45 minutes from Juba by car. The Nuer soldiers in the army headquarters also ran that same evening. *When they were already targeting Nuer politicians and civilians, there were no Nuer soldiers in Juba.*”²³ General XY concurred: “Back to killing of 17th and 18th and why there was no attempt to counter the organized killing. The reason was that the Nuer [in the Army] had left. We were only left with the Dinka. There was no way of stopping an organized killing of Nuer. Even many Dinka and Equatorians were killed.”
28. In the aftermath, he told the Commission: “To investigate the killing, we arrested some officers 16th and 17th. Some escaped. We took all their statements. They were 12 officers. We were going up to Colonel. We were stopped, asked not to continue with the investigation. We handed all papers to the National Commission of inquiry. We were stopped by a decree.”²⁴

²³ Lt Col Peter Lok Tang, 29th July, 2013, Addis, Deputy Commander in the 2nd Brigade

²⁴ XY, 29 July 2014, Addis Ababa

29. The Commission raised the question at a joint meeting with two parliamentary committees, that of Peace and Security. One member of parliament responded²⁵: “This committee has not tabled any issue in parliament because it was preceded by the government formation of an investigation committee. Even before the formation of the government committee, the military started arresting individual elements held responsible for the violence. Then government formed a committee led by Justice John Makesh. We cannot table anything until they report.” He said they had heard a military announcement in March to the effect that the majority of those arrested had run away. The government-appointed Committee, the Honorable Member informed the Commission, will only report in August. When asked whether parliament had given any explanation to the public, the M.P. told the Commission: “There has been no explanation to the public because we just came back in session and our time has been taken by the budget discussion.”
30. Parliament remained silent in spite of the fact that some of its members were among those targeted in the violence. A Nuer member of the Committee on Security, told the Commission: “There was fighting in the barracks. We saw people come in army uniform. We heard them ask neighbors: where is the house of Nuer? [The neighbor pointed to our house. I asked my small boy to open the gate.] They killed him. We ran out of the house and then into the neighbor’s house, and then to the UNMISS compound. I have not been to my house yet. I am an honorable here. I come here to work in the day time and go to the UNMISS compound to spend the night.”²⁶ Parliament, for this honorable member, was a seamless extension of the IDP camp at UNMISS.
31. Reflecting on the violence, the G12, former members of the cabinet who had been detained on December 16, 2014, then released, told the Commission: “The crisis would have been contained within the party if the security institution were really independent – but our background as a liberation movement means that SPLM and SPLA were two sides of the same question.” And then added: “Parliament never played a role in resolving the crisis – what the President had done was a gross violation, it would have led to impeachment in another country.”²⁷

²⁵ XB, Juba, 25 July 2014

²⁶ XC, Parliamentary Committee on Security, 25 July 2014

²⁷ Pagan Amun Okech, Deng Alor (cabinet affairs), Luk Jo (Justice), Kosti Manibe (Finance), Deng Ajak, Majam Dagot, Ezikiel [NLC, ambassador in D.C.], Addis Ababa, 10 June 2014

D. Who were the Killers?

32. The Commission received three different responses to the question: Who carried out the killing of Nuer civilians in Juba from December 16 to 18? The most widespread explanation was that the body of killers was a body of irregulars recruited in two districts of Bahr el Gazal by the current Chief of Staff who was then Governor of Northern Bahr al Gazal and ran the party branch in the district. It was alleged that he started recruiting this force in 2012. According to a high official in the Ministry of Defense, “we did not pay for it from the Ministry of Defense, though they tried to get us to pay from our budget. The force was 15,000 strong, and was recruited in one area.”²⁸ Among people who gave roughly the same account, numbers varied, from a low of 3,000 to a high of 15,000.
33. The figure of 3 to 4,000 came from former cabinet minister. He said President Salva Kiir “ordered the Governor of Northern Bahr el Ghazal to recruit youth from two places.” They were “trained in Luri – not part of any security service – but a private army that Salva trained using elements of the UPDF to train and arm them. They were all over Juba ostensibly to clean the town but really reconnaissance to see where the Nuer were. Immediately fighting started in Giyeda, they began killing Nuer in residential areas where they were concentrated. It was deliberate, something planned – explains why there is no report in the press. The population was told never to talk about it, that if they did they would just be killed. When these 3 to 4,000 passed out, the Chief of Staff and the Minister of Defense were not there; only the President was present.”²⁹
34. The Commission asked former Vice President Riek Machar about the mobilization in Northern Bahr al Ghazal.³⁰ “There were skirmishes in Higlik between our forces and Sudan in March, 2012. This is when Salva started hard preparations. I spent two weeks in Unity State. In Northern Bahr el Ghazal I witnessed the mobilization of youth in camps. When Higlik finished, I was chairing the Council of Ministers. Niah Deng asked the question: ‘why is there training of youth in camps in only one place in South Sudan?’ I said I had no answer with both the President and Minister of Defence away. This same force was used by Salva in Juba and elsewhere. There has been an impression that 70% of the army is Nuer and that after the incident of Juba all the Nuer elements defected. Both allegations are false. A justification was being created for the training of the 12,000. It transpired later that the General Chief of Staff did not know of this training, only Salva and the Governor did. We did not think these problems could not be resolved militarily. We did not want to take the

²⁸ XD, Ministry of Defense

²⁹ PX, Juba, 25 April, 2014

³⁰ Riek Machar, SPLM – Opposition, 29th July 2014, Addis Ababa

country to war. ... The president visited four states of Bahr el Ghazal. He gave public speeches preparing the public for action. ... On December 9, a general cleaning was done of Juba by Tiger Batallion, called Lau cleaning, done to demarcate areas. ... Salva said on the 16th: we do not want to see any '91 (meaning Nuer) walking around in Juba. 19th December, Salva spoke to parliament and said if you love me and my government, please stop killing Nuer citizens. On 24th, he said whoever is killing Nuer now, I don't think he is liking me. — What we wanted to avoid happened. We said this man is not going to listen, we must prepare a resistance.”

35. When asked about this, President Kiir told the Commission Chair that the recruitment was the result of “a general order” and that he “was trying to diversify the army.” He gave the numbers as 6,000. ZA, the senior media person, told the Commission: “If it was a general order, ordinary people did not hear about it – nor did the press.”³¹ The Minister of Internal Affairs concurred and elaborated: “I was Chairman of the Defence and Security. They were recruited in 2012 when we fought the North. Many volunteered, especially in Bahr El Ghazal. The present Chief of Staff, then Governor of Bahr El Ghazal, retained them, though there was no budget for it. This was never a government program, but a local initiative. They were brought here to help in the fight. But they never came here, they went to Bor.”³²

36. The Commander of the Presidential Guard, Maj Gen Marial Chanuong Yol Mangok, gave a slightly different version of the same story:³³ “At the time of the fighting in Northern Sudan in 2012, there was a general call from the President and the Vice President to join the army and fight the war. All these came to Unity State. When the fighting stopped, they were taken to the training centre anticipating what will happen. They were trained in Pantet in Northern Bahr El Ghazal. They were 12,000. Recruitment was announced by the Chief of Staff from three areas, though only those from Bahr El Ghazal were trained at Luri. They were 700. The President spoke to the battalion at Luri, near the President's farm – we asked him to talk to them.”³⁴

³¹ ZA, Juba, 21 July 2014

³² Minister of Internal Affairs, Juba, 22 July, 2014

³³ Commander, Tiger Batallion, Presidential Guard, Maj Gen Marial Chanuong Yol Mangok, Juba, 22 July, 2014

³⁴ The same version was offered the Commission by Maj-Gen Akool Koor Kuc, Director General of Internal Security in an interview on 23 July 2014: “A force of 700 being trained in Luri, near the President's farm. The President addressed them, was on TV. The opposition capitalized on it.”

37. Gen. Paul Malong Awan, former Governor of Northern Bahr El Ghazal State and now Chief of General Staff, ³⁵ denied that he had recruited this force: “It is a new story to me that I made a recruitment – as a General. No one can recruit an army apart from the national army. There will be no budget, and no trainers if they are not in the army. I did not recruit them, this is not my job. When people were fighting in this part of the country, there was a national call, the army was expected to make a recruitment, regional commanders were expected to do training. I do not know how many were recruited. They were recruited by the army and taken for training.”
38. The Commission posed the question to a senior UN official, part of the UN Team in South Sudan. He told the Commission ³⁶: “Recruitment of commandos from one area is a bit tricky. When we asked about it, we were told it was transparent. The recruits were parading publicly, not in clandestine. Some of our interlocutors say this was the government’s way of correcting the ethnic imbalance in the Presidential Guard.”
39. The second explanation expressed the official view, and came from Maj-Gen Akool Koor Kuc, Director General of Internal Security. He explained both who was responsible for mass killing of civilians from December 16 to 18, and why the government was unable to respond while the killings were going on: ³⁷ “Up to now we have not identified a single employee of National Security participated in this. Rogue elements took part. Some people were arrested. They were taken to military intelligence.” As to why there was no government response those three days, he had this to say: “We met on the 18th (Chief of Staff and IGP) and agreed to deploy joint security forces from the army and National Security. We spent the 16th and 17th addressing the attack on the barracks.” The National Security Council, he said, met on the 17th; at that meeting, he gave the directive to protect civilians.
40. The Commission asked a high level member of UNMISS to comment on the official explanation of the killing of civilians on December 16-18. He told the Commission ³⁸: “We skirted around the issue in the report. We do not believe the two explanations. The anger part may be true. We do have

³⁵ Gen. Paul Malong Awan, former Gov of Northern Bahr El Ghazal State and now Chief of General Staff, Juba, 22nd July, 2014

³⁶ XE, senior member of the UN Team in South Sudan, Juba, 21 July 2014

³⁷ Maj-Gen Akool Koor Kuc, Director General of Internal Security, Juba, 23 July 2014. Ibrahim Wani, Director, Human Rights Division, Rep of the High Commissioner for Human Rights, told the Commission that the government also claimed that a group of soldiers were very angry because Machar groups killed people as they were retreating – and that the anger led to counter-killings.

³⁸ UNMISS, June 2, 2014, 11 AM

a throwaway sentence that these things went on for a long time; there was an element of organization. It involved elements of security forces, elements of the Presidential Guard that remained under the control of particular individuals. They were joined by a group of red barets, a group of some 5,000 soldiers recruited in his own area, trained separately, pulled together by Paul Malong, current head of army. And it involved elements of National Security.”

41. A leading public intellectual said “the scuffle within the Presidential Guard went out of control. There was no command. Many officers tried to get in touch with them on the phone. Even generals taken off active duty were back. A man called Major General Bol Akot was in charge of the force defending the President – he told me the forces were fighting without command. Word was spreading to Dinka soldiers that Riek had defected.” PX, the former Minister in the Government, held President Kiir responsible for setting the stage³⁹: “When Salva went to Bahr el Gazal, in his rallies, in his own village, in August, he talked in Dinka – this was carried by SSTV – he said this cloth I have belongs to you people, are you going to accept it being taken?” A Minister in the cabinet told the Commission of “a shadowy group [that had] organized itself as *Rescue the President*. It killed most people here – from 15th to 18th. It was even more powerful than organized forces. This is a very militarized country.”⁴⁰

42. A leading member of the police told the Commission: “That night of the 15th I came to my office when I heard of the shooting. We heard of the killing in the morning. We sent police. They were overwhelmed by military or anyone claiming to be military. I was with Chief of Staff. There was no order from Chief of Staff or Commander of Operations, James Ojong, nor from Chief of Intelligence of Army. There was no centralized command. There could be elements who could have organized in a certain way – a certain civilian calling himself a Major-General and a group calling itself ‘Rescue the President.’ That Major-General was arrested by the army but escaped as part of the breakout on March 5.”⁴¹

43. A fuller account was given by XP, the senior intelligence officer, :⁴² “Organized killings of civilians began the night of the 16th. Forces fighting in the barracks were defeated – house to house. It began in a place called 107. Perpetrators of this came from New Site, a military residential area. It was a combination of military police, commandoes, national security, etc. Those who killed from 16th evening to the 18th came mainly from Bahr el

³⁹ XP, Juba, 25 April, 2014

⁴⁰ Juba, 21st July, 2014

⁴¹ Juba, 24th July, 2014

⁴² XP, 29 July, 2014, Addis Ababa

Ghazal. Maj Gen Bol Akot led the commandos, who had no other command.”

He explained the background to the killing: “Secret mobilization had happened before this that we were not aware of. It started earlier in November. Elders met and chose mobilizers at this meeting, to protect the president. The meeting was chaired by former Chief Justice, Ambrose Riing Thiik. This force was called ‘Rescue the President’ [*Dot ke beny*]. Almost 70% of anyone from Bahr el Ghazal was mobilized in this, in their thousands. Those who remained in Juba were now mainly from Bahr el Ghazal. The elders coordinated with the President. The financing came from his office. Riek Machar was aware of this. He was doing his own organizing. On the 16th, some of the civilians got guns, either from National Security or Presidential Guard. I began to see civilians putting on uniform with a gun. This was a result of the mobilization the elders had done. Elders were moving from community to community. The committee of elders was 17 in number. This committee of elders moved around Bahr el Ghazal, talked to their sons in the army. They called the tank crew commanders in Bentiu who were all from Bahr el Ghazal and asked them to disarm others in the command.”

44. This then was the gist of the third *and the most credible* explanation to the question: Who were the killers? The third explanation came from XY and XP, respectively senior army and intelligence officers at the time. It incorporates elements from the first explanation but also provides a corrective on it. The first corrective is that most of those recruited in Bahr al Ghazal, estimated variously between 3,000 and 15,000, were deployed for the fight in Bentiu. Many participated in the general cleaning of Juba on December 9, but only 321 were taken to Luri, near the President’s farm. The second corrective is that these were joined to others recruited from various security services (including National Security, Wildlife, even Police) and even civilians. All were from Bahr al Ghazal. Organized by a group known as “Rescue the President,” this initiative was chaired by the former Chief Justice, Ambrose Riing Thiik. They received funding from the President’s Office. The commandos who led the killing did so under a retired military officer, Major General Bol Akot.

E. Revenge Violence

45. Nuer mobilization began on the 17th and 18th of December. It took two forms, a rebellion and an uprising. The rebellion followed a mutiny by Nuer in the army, led by Peter Gatdet, commander of 8th Division of SPLA, who had his own problems with Juba. Following the killings in Juba, his force broke into two, the Nuer he led and the Dinka who remained loyal to the government. The Commission asked Riek: When did General Gatdet,

commander of the 8th Division, come into the picture? His response:⁴³ “He is currently my officer.” The elaboration came from another member of Dr. Machar’s delegation: “On the 17th, many Nuer civilians were angry with Gatdet. They were saying: In the last 2 days many Nuer have been killed, Dr. Riek has disappeared, why are you doing nothing? The army was in their barracks 17 kilometers south, in Malwal Chal. They had a disagreement that evening in the barracks. On the 24th we saw Dr. Riek in Bor.” The Commission was unable to meet with General Gatdet.

46. A more spontaneous response came from county level youth fighting formations known as the White Army (the name refers to white ash from cow dung with which the youth smear their bodies). In December 2013, as word spread via cell phone communication that there was a slaughter of Nuer civilians in Juba, youth mobilized to move to Juba and rescue their people. Because these age groups that fight together were fresh from campaign against David Yau Yau’s Murle militias, they mobilized with relative ease and speed.

47. The White Army left a trail of pillage, carnage and destruction in the towns and villages they swept through in their march to Juba. And when these same towns were retaken by the government army, there was more carnage, more destruction, leading to another cycle of revenge and counter-revenge.

48. Majak Dagot, former Deputy Minister of Defense and one of the detainees, told the Commission: “No one recruited the White Army. It is a tribal youth militia. They have been involved in cattle raiding between Nuer and Murle and have their own structure. They were organized on a clan basis. Someone who claimed to be a prophet came up. He is supposed to have spiritual powers. Riek had no control over them. We had difficulty curbing the marauding nature of this force. They carried out three campaigns against the Murle in 2012. When they heard their relatives were killed in Juba, they began to move to Juba – 50,000 in all.”⁴⁴

49. A leading member of the UNMISS team attributed the gratuitous side of the violence, its added viciousness, to the desire for revenge: “Revenge brings a higher level of ferocity to violence. Every action is done with a vengeance to send a message, to humiliate, to settle a score. It is now a cycle. Malakal and Bentiu have changed hands more

⁴³ Riek Machar, SPLM – Opposition, Addis Ababa, 29th July 2014.

⁴⁴ Pagan Amun Okech, Deng Alor (cabinet affairs), Luk Jo (Justice), Kosti Manibe (Finance), Deng Ajak, Majam Dagot, Ezekiel [NLC, ambassador in D.C.], Addis Ababa, 10 June 2014

than six times. No place is safe – churches, hospitals have been attacked – in the mosque in Bentiu, last week, there was killing. Individual civilians and communities are getting involved in the violence. It demonstrates a high level of anger.” That same member went on to remark how “mid-April in Bentiu became a critical turning point in Upper Nile and Jonglei, where the pattern of fighting henceforth gave rise to cycles of atrocity, as one group was displaced by another.” As the SPLA – Opposition forces took over the town, there were rampant killings, “reflecting a deep level of animosity between two ethnic groups – giving rise to greater ferocity with each sequence of fighting.” He recounted to the Commission an incident during the visit of the UN High Commissioner for Human Rights and the Secretary General’s Special Envoy on Genocide: “The President spent a long time talking of Machar as a nasty anti-Dinka fellow. He said that the group was bent on humiliating the Dinka, and cited two examples. In the first case, a pregnant woman was killed, her stomach ripped open, and the baby was taken out and stabbed. In the second case, in Bor, fighters raped a very old woman. The point is that it was not about sex but about telling the Dinka that we slept with your mother.”⁴⁵

50. Lt Col Joe Ndahure, Operations and Training Officer of the Uganda People’s Defence Forces (UPDF) shook his head as he recounted revenge stories. One of these was a macabre account of “someone breaking into a mortuary and shooting dead bodies because they do not belong to their own ethnic group.”⁴⁶

51. A marked feature of the violence was to target women. A woman representative told the Commission: “I was in Bentiu. Ten women were shot through the vagina because they refused to be raped. One was 10 months pregnant. Another was raped to death.”⁴⁷ Hilda Johnson told the Commission: “For the first time, we are seeing rape as a weapon of war within South Sudan.”⁴⁸

52. The discussion on revenge violence has given rise to two debates. The first is about the responsibility for the violence. In particular, the Commission was concerned to understand the relationship between atrocities committed by the White Army and the leadership of the SPLA – Opposition. The Director of Human Rights Division at UNMISS, meeting

⁴⁵ UNMISS, Juba, June 2, 2014.

⁴⁶ Lt Col Joe Ndahure, Operations and Training Officer of UPDF, Lt Col Abdelrahman Mutabazi, Intelligence Officer, Bor, 7 August 2014

⁴⁷ Meeting with women group representatives, Juba, 25 April, 2014

⁴⁸ Interview with Hilde Johnson, Special Rep of Sec-Gen in South Sudan, UNMIS; Ibrahim Wani, High Commissioner, Human Rights; Izeduwa Derex-Briggs, UN Women, 25 April, 2014.

the Commission as one of the UN Team in South Sudan, explained:⁴⁹ “We tracked the movement of the White Army when they got involved the first time. They got together in Gadiang with defected soldiers (where Machar had his headquarters). Our helicopter was shot at while it was flying over Gadiang. Hilde Johnson called Machar to protest at this shooting and the hijacking of NGO vehicles. She specifically asked Machar: are you sure you can control the White Army? He said, yes, they will listen to me. Several months later when he understood the implications, he began to back track.” Asked whether Machar did indeed control the White Army and could be held responsible for their actions, the Director of Human Rights responded in the negative: “The White Army as traditionally existed they have defied him and listened to another Prophet. They cared more about avenging the death of their kith and kin. Second, they looked for an opportunity to loot as they had in the past (cattle, women and children). They loot, they leave.”

53. When asked whether the White Army are under command, Brig Gen Majier Mayom, Commander of the SPLA Military Camp, expressed a similar view:⁵⁰ “They are not soldiers. They are people mobilized from their houses or they are hooligans. They are not soldiers and they cannot be commanded as soldiers. All these atrocities are committed by the White Army because there is no command. White Army is an organization of youth. When they are in action, they are led by someone. They do what is agreed upon by all. This is not a command. Each clan has its leader – even they have to agree.”

54. The strategic objective of the Machar group, the Director of Human Rights at UNMISS told the Commission, was to bring the White Army under the command of his military forces:⁵¹ “Two months ago, these groups were

⁴⁹ UN Team in South Sudan, Juba, 21 July 2014

⁵⁰ Brig Gen Majier Mayom, Commander of the SPLA Military Camp, Bor, 7 August, 2014

⁵¹ UN Team in South Sudan, Juba, 21 July 2014. The role of the Prophet and his relationship to the White Army is part mythology, part reality. The mythology often comprises bits of historical truth put together in such a way as to serve contemporary political objectives. This is how Hon. Gabriel Chanson Chang, former minister in the South Sudan Government, who has held six portfolios since 2006, explained to us at a meeting on 29 July, 2014, one of the most pertinent prophecies of one of the best known Nuer Prophets, Wundeng: “Wundeng was a prophet who predicted many things. All his prophecies come from songs: one, ten states will be ruled in one state; two, the referendum - you my people will be in the palm of my hand – thus, two choices were made, unity and independence (palm was the symbol of unity); three, in 1970 he predicted the coming to power of Abel Alier, left handed from Bor; four, it will take time for Nuer to leadership – one day they will come to

under the control of the Prophet who then said he did not want them to fight. The government chartered a plane to go talk to him; the plane was captured. Machar's explicit objective was to incorporate these groups into his formal structure. This objective was formulated at the conference in May in Nasir: to mobilize them to achieve political and military ends of Machar's organization."

55. Major General Mohammad, Head of IGAD Verification and Monitoring Group and Director of Security in the African Union, confirmed this point of view: "The White Army is various youth groups that are part of local security on a county basis. There is a big population of White Army in Jonglei and Unity States. This force is organized and commanded on a county basis. A General who belongs to Unity is deployed [by the Opposition] to mobilize White Army in Unity State. If they have a plan or an operation to take over a base from government, they have an army component, they add to it the White Army. They put the White Army under the command of the defected army. They do not call in the White Army for a long time, only for a specific operation."⁵²
56. The same point of view, that the leadership of SPLA – Opposition cannot be held responsible for the conduct of the White Army, even when Dr. Machar opportunistically claimed that it was under his command, was shared by XY, the senior military officer:⁵³ "White Army are civilians – they have two motives: revenge and looting – Riek was not in control – if he was in control, he can be blamed." In sum, the White Army is not an army. It is not even a collection of militias. These are not soldiers but civilians with arms. The difference is in motivation and discipline. The White Army is motivated by a deep sense of grievance – revenge – and the promise of plunder. Unlike with soldiers, its members lack any sense of military discipline, command or hierarchy.
57. The atrocities of the White Army, like those committed by government forces, has also given rise to a second debate. This concerns the role of culture, both in giving high regard to revenge and in accenting the need for it, and in sanctioning gendered violence. Over time, each side in the debate, as in the conflict, has come to string together different and separate accounts of brutality and indignity, all based on experience, into proof that the adversary is indeed inhuman. For many in the international media, it was evidence of what was wrong with South Sudanese, or

power, then they will take the remnants; five, oil: that cow, no one will enjoy its milk, it will be a contested asset.

⁵² Major General Mohammad, Head of IGAD Verification and Monitoring Group and Director of Security in the African Union, Juba, 24 July 2014

⁵³ XY, 29 July, 2014, Addis Ababa

African, culture. The Commission heard several anecdotal accounts from different witnesses.

58. In a discussion with the Caucus of Women, one participant remarked: “There is an element of revenge in the culture of these two communities. When two people fight, a third person will come and join the fight, only after the fight will they ask: why were you fighting?”⁵⁴
59. During their visit to non-conflict states, the Commission noted a low level of persistent conflict in even these states said to be devoid of conflict, and a marked militarization of society, particularly around cattle, used exclusively to pay dowry or compensation for a dead person, the going rate being fifteen cows for one dead person. Commission members were told in Bahr al Ghazal that when news of fighting in Upper Nile spread in these states, there were several instances of Dinka women beheading Nuer women as revenge for the death of their husbands in battle.
60. Representatives of UNDP and UN Women listed gendered practices that are considered a part of “culture” but are heavily weighted against a female child: “Girl child education is not encouraged by culture or practice; girls are married before menstruation; polygamy means there is hardly any man with less than three wives, that men are never guilty of adultery, and a woman who is raped is jailed because she is seen as having committed adultery. Indeed, the notion of rape does not exist because girls are raped at marriage.”⁵⁵
61. That culture could not adequately account for the extreme violence, whether in 1991 or in 2013, came out in reflections by IDPs at the UNMISS compound in Juba. A woman IDP reflected on the violence⁵⁶: “During the civil war, we fought the north with arms. That fighting was only on the frontline; it did not involve women and children. Now I am so surprised, we are killing one another, we are South Sudanese. We thought it was fighting between two brothers, not between Nuer and Dinka.”
62. Another IDP in the same camp, before December 15 a leader of the African Union’s 50th Anniversary national team on South Sudan culture, said: “The culture of this nation is under threat. During this crisis, some of our colleagues do not speak their languages. If you speak your language, you are targeted. Different communities are connected. Nuer, Dinka, Shilluk, Bari cannot be differentiated. The crisis is political. They put a knife into what bound us, turned the crisis from political to ethnic. This war is more dangerous than the war with the North – this is a war between

⁵⁴ Caucus of Women (South Sudan and Sudan – inclusive of women), 26 April 2014

⁵⁵ UNDP and UN Women, Juba, 25 April 2014

⁵⁶ Martha, the IDP Camp: Protection of Civilian Site, No. 1, Juba 3, - 26th April, 2014

brothers.” He spoke with passion, in his hand was a book he said he had been reading, John Coetzee’s *Waiting for the Barbarians*.

63. Many who spoke to us, especially victims, looked for explanations of the extreme violence in the present rather than the past as coded in the notion “culture.” A woman representative told the Commission:⁵⁷ “This situation is more complex. We are fighting ourselves. Before we knew who is the enemy and who the mediator. Even among us as women, the issue of trust becomes crucial. People will not listen to me unless I have a gun. We need help right now.” For this group, culture was historical and changing in a dialectical relationship with a rapidly changing reality. Two factors, in particular, have affected this reality: an abundance of youth who have little to occupy their time, and the proliferation of small arms.

III. THE CONTEXT

A. SPLA

64. The SPLA is not a standing army, even if its ranks may suggest so. The soldiers are mobilized for each operation and disbanded after it. In its looseness of formation, the SPLA resembles the White Army. The only difference is that the SPLA has a formal command structure and some training, which make for minimum discipline.
65. The SPLA is today said to comprise roughly 240,000 soldiers, 200,000 military and 40,000 reserves, all handicapped and retired, but still on the pay roster. At the same time, however, many a person familiar with the SPLA cautioned us that this number may be taken as no more than a rough guide. For a start, the SPLA does not have a full roster of its soldiers. The SPLA has a roster of commanders, and each commander has a roster of soldiers under his command, but the central command does not have access to these individual lists. In other words, the SPLA is not a single integrated formation. As the Minister of Defense explained the Commission, even the Presidential Guard was not a single integrated formation: “There were those who guarded the President. Riek had a personal force. Paulino Matip, Deputy Commander in Chief of SPLA, had his own guards from his own area, Unity State. They too were part of the Presidential Guard.”⁵⁸ This is how XY, the senior military officer, summed up the situation: “Body guards of Salva were mainly Dinka, of Riek and Paulino Matip mainly Nuer. Majority of Ministers also had personal militias. Nothing we could do about it – we wanted mixed units but could do

⁵⁷ Meeting with Women Groups, Juba, 25 April, 2014

⁵⁸ Minister of Defense, Gen Kuol Mayang Juuk, Juba, 21st July, 2014

nothing about it.”⁵⁹ The Minister for Cabinet Affairs explained that “other prominent politicians (like Lam Akol) have their own army. SPLA Cobra of David Yau Yau has just been brought in. There are generals who are neither with the government nor with the opposition – they are not under the control of Riek, so even if he signs a proposal tomorrow, they will continue fighting.”⁶⁰ The Minister of Defense, General Kuol Mayang Juuk, explained the status under this agreement of the area under David Yau Yau, a former teacher, with a population of 127,000 (according to the 2008 census): “It will be autonomous and under the office of the president, not a state and yet it will have the powers of a state.”⁶¹ Brig Gen Majier Mayom, SPLA Commander at the Military Camp in Bor, told the Commission that “David Yau Yau has been given what he wanted. His troops are under him but nominally inside the SPLA. We do not know where his troops are now. This is not the first time; he has joined Khartoum before and come to us, not once but many times – this will not be the first time that he is with his troops.”⁶²

66. The loose formations that comprise the SPLA have been brought together in successive phases. Among the most notable of these have been the post-1991 return of troops around Riek Machar and Lam Akol, then the return in 2006 of innumerable Khartoum-allied militias, under an umbrella organ led by Paulino Matip, called South Sudan Defense Forces (SSDF). According to XY, the senior military officer, “Riek Machar went into Sudan in 1995 with his own forces. Khartoum decided to disintegrate his forces. In 2002 Riek decided to come back. The problem is he came back as leader of a faction.”⁶³

67. The return of Paulino Matip was hailed as the great success of Salva Kiir’s ‘Big Tent’ policy. Hilde Johnson, the Head of UNMISS at the time, called it “a major achievement.”⁶⁴ Itself a loose conglomeration of village-based militias, the SSDF is said to have been comparable to the SPLA in numbers. And yet, as we have seen, aggregate numbers can only be guessed at where there is no single consolidated roster.

⁵⁹ “The Presidential Guard Unit had 3,000. The Nuer were 1,500. The specialized units – tank, artillery, medical, commando – were mainly Dinka.” XY, Addis Ababa, 29 July 2014.

⁶⁰ Hon. Martin Elias Lomuro, Minister for Cabinet Affairs, Juba, 23 July, 2014

⁶¹ The Minister of Defense, General Kuol Mayang Juuk, Juba, 21st July, 2014

⁶² Brig Gen Majier Mayom, SPLA Military Camp, Bor, 7 August, 2014

⁶³ XY, Addis Ababa, 29 July 2014

⁶⁴ “The Juba Agreement 2006, a major achievement, by which the South Sudan Defense Force was integrated into the SPLM/A. Paulino Matip, the powerful Nuer militia leader, was made Deputy Commander in Chief of the SPLA.” Hilde Johnson, *Waging Peace in Sudan, The inside story of the negotiations that ended Africa’s longest war*, Brighton: Sussex Academic Press, 2011, p. 207

68. Whereas the number of soldiers in the SPLA can only be guessed at, there is relative certainty when it comes to numbers that comprise the SPLA command, its generals. Salva Kiir was the commander of SPLA and Paulino Matip, the former head of SSLF, its deputy commander. That Paulino Matip, an illiterate person, could be the deputy commander of the national army, is itself a comment on the nature of this formation. There were reportedly 700 generals at the time of the December 15 crisis. XY, the senior military officer, elaborated on the top-heavy nature of the command: "There are four four-star generals, including the President as the Commander-in-Chief, the deputy commander-in-chief, and There are nine three-star generals, a hundred major-generals and uncountable Brigadier-Generals."⁶⁵

69. This is how XY summed up status of SPLA on the eve of 15 December 2013: "SPLA is composed of former guerrillas and different factions of militias that were fighting alongside Sudan government. We did not build a national army. Before CPA, in 2003, we integrated four or five different factions that had been fighting us, for example that of Lam Akol. On 8 January 2006, after CPA, we integrated different forces under the command of General Paulino Matip, under the overall command of the Sudan Army. Khartoum continued to recruit from South Sudanese. Every time we integrate, someone declares in Khartoum that we have a militia. We integrate them and give them a rank. Most of these militias are illiterate – led by illiterate Major-Generals. Even today, we have not integrated them. *It was like dealing with NGOs, all with their own leadership, each sponsored by a different country.* We tried to demobilize them, but that was difficult. You cannot demobilize someone who has a gun. You give him money under DDR. When the money is finished, he will go back to the bush."⁶⁶

70. Even if not intended, the outcome of the 'big tent' policy was perverse. It bought short-term relief but entrenched processes that threw the wider society into crisis in the longer run. Rather than create a disciplined formation out of the tribally recruited, mobilized and commanded forces, it further disintegrated the ballooning army, from a coalition of tribally recruited militias to a loose confederation of militias which were not only tribally recruited, but whose loyalty was limited to those who commanded and paid them. Rather than a single structure that is loose and decentralized, this formation should really be thought of as a collection of separate armies, all drinking from the same bore hole. Their only common connection was that they drew finances and equipment from the same

⁶⁵ XY, Addis Ababa, 29 July 2014

⁶⁶ XY, Addis Ababa, 29 July 2014

source, the Government of South Sudan. Some of the old timers could not come to terms with a situation where they not only had to work in the same army alongside those whom they had fought only yesterday, but also sometimes work under them. Some even left, convinced that this was not just an ethnic divide between Dinka and Nuer, but also a political divide between liberators and collaborators. This is how the Minister of Defense put it to the Commission: “Real SPLA soldiers who fought the war left SPLA – [they are] all in an organization called *Wounded Heroes*. Most Nuer [in the army] are not original SPLA, most were collaborators.”⁶⁷

71. The ‘big tent’ policy was couched as a grand reconciliation, but it was more a huddling of military chiefs under a common tent, coming together to drink from a common well, but not to create a common policy for a common future. South Sudan never developed a national security policy. The notion that peace was paid for encouraged militias to bargain for peace, with rebellion as their bargaining chip: those with a grievance rebelled, but only to return with a reward, seen by all concerned as the prize for keeping peace. Instead, it turned into an incentive to rebel. Peter Biar Ajak, advisor to President Salva Kiir, wrote in a *New York Times* op-ed: “... several warlords rebelled continually throughout the interim period, leaving and rejoining the S.P.L.A., which reinforced their own power with their loyalists, rather than the army’s authority.”⁶⁸

72. So preoccupied was the leadership of South Sudan, and that of the Troika, and indeed the international community, with the specter of ongoing war with Sudan to the north in the period after independence, that all key decisions seem to have been taken with this single idea in mind. Part of the preparation was to cherry pick generals and install them as Ministers or Governors or heads of civil service divisions. Generals became top politicians. Not only did the military commander-in-chief become the civilian President, testifying to military control over civilian authority, a general became the Speaker of Parliament, and Brigadiers became generals – as Lam Akol, member of SPLAM, an opposition party, complained to the Commission: “The law says the political party should have nothing to do with the army – the speaker is a General, the governor is a Brigadier.”⁶⁹ The Commission asked the new Chief of General Staff, General Paul Malong Awan, former Governor of Northern Bahr El Ghazal State:⁷⁰ “Are you still Chairperson of SPLM and Chief of General Staff?” He nodded in the affirmative. We asked for his ideas on reform. He

⁶⁷ Minister of Defense, Gen Kuol Mayang Juuk, 21st July, 2014

⁶⁸ Peter Biar Ajak, ‘South Sudan’s unfinished business,’ op-ed, *New York Times*, February 6, 2014

⁶⁹ Lam Akol, SPLAM, Juba, June 1, 2014

⁷⁰ Chief of General Staff, Gen. Paul Malong Awan, Juba, 22nd July, 2014

responded: “I will not force my ideas on reform – reform is what the law says.”

73. All other security organs, the police included, are militarized. The Inspector General of Police told the Commission about how the large number of police at his disposal masked the division between nominal and effective police.⁷¹ “Police is a decentralized service, supposed to be locally recruited in each state. We have 46,000 police now. Many come from militia, SPLA disabled, from civilians that joined other armed groups. So the effective police is only 15,000. Even a blind person being pulled can be a police officer.” Asked about reform, he responded: “The police we have now has been recruited through a political policy, not a professional policy. Recruitment is done as a political solution to a political problem. Police is supposed to be local. Police depends on personalities. You do not accommodate people into police, but recruit quality into it.” A leading South Sudanese public intellectual scoffed at the idea that new recruitment may change the face of the army or the police.⁷² “The Nuer are flocking to the army. Dinka are flocking to training camps to become officers. The UN talked of training women police constables – but these were taken out of dorms and raped.”

74. As small arms proliferated, the society got further militarized. Most soldiers did not live in barracks; they lived in civilian neighborhoods, with their families. This is how the Minister of Defense described the situation to the Commission: “Soldiers stayed in own housing with own guns, no arms stores – even the population had guns. No guns had been collected. The militia before the war, neither absorbed nor known, also had guns. Soldiers were relieved from the army but still with their guns.”⁷³

75. The commander in the field was literally a dictator. If the army was not a school for discipline, it certainly was not a school for democracy. The commander was the top authority, and there was no appeal against a decision he took. Living among civilians, soldiers created detention centers for civilians and these proliferated. A Senior Legal Research Officer, also the Senior Legal Aid Attorney of South Sudan Law Society, confirmed: “A lot of detention centers have been created for civilians. People go for revenge killings because the justice system is very weak, [so they feel they] must take the law into their own hands.”⁷⁴

⁷¹ Inspector General of Police, General Peng Deng Kuol, Juba, 24th July

⁷² Juba, June 1, 2014

⁷³ Minister of Defense, Gen Kuol Mayang Juuk, 21st July, 2014

⁷⁴ Senior Research Officer, Taban Romano, Senior Legal Aid Attorney, South Sudan Law Society, Juba.

76. A woman participant in a meeting with civil society representatives told the Commission:⁷⁵ “We are all insecure: society is infested with small arms – with a mentality that if there is anything I can pull my gun. I am asking myself: do we need an army? The army has turned its guns against us – why have innocent young men turned these guns against innocent civilians? Because to be a politician you have to be a general, to be a general is also to be a businessman. The most important thing is security. We will need to involve demilitarization of the population. But rearming is going on. New groups of people are coming into the army. When was this recruitment done? Why?”
77. The UNMISS team agreed. When asked by the Commission how many would be needed to keep the country peaceful, they answered: “No numbers can keep this country peaceful. The only solution would be political. The violence is totally decentralized.”⁷⁶
78. The Ugandan commanders in Bor also agreed:⁷⁷ “All we are seeing has emanated from (the) weaknesses of armed forces. Tribalism was OK among civilians but entered the armed forces. Even if Riek Machar takes over today, the problem will not be solved. (Here is the) key: South Sudan needs time to form a national force, the way we have done it in Somalia. Creating a transitional government is not a solution. The next problem is disarmament of the population. Here in Bor 97% are armed. AU has to ask how to handle the issue of disarmament. The answer should be an AU trusteeship.”
79. The SPLA has dragged the country to war twice, the first time in 1991 and the second time in 2013, and it nearly drove the country to a war a third time, in 2005, but that was preempted by the death of its leader, John Garang, in a helicopter crash.

B. Comprehensive Peace Agreement (CPA)

80. Before the independence of South Sudan in 2011, the Intergovernmental Authority for Development (IGAD) comprised six countries: Kenya, Uganda, Tanzania, Ethiopia, Djibouti and Sudan. IGAD’s involvement in the civil war in Sudan gathered steam after the formation of a group of three countries – the USA, the UK and Norway – then called “Friends of IGAD,” and more recently the Troika that put resources and muscle

⁷⁵ Woman representative, meeting with Civil Society, Grand Hotel, Juba, July 23, 2014

⁷⁶ Hilde Johnson, Ibrahim Wani, High Commissioner, Human Rights Izeduwa Derex-Briggs, UN Women, 25 April, 2014

⁷⁷ Lt Col Joe Ndahure, Operations and Training Officer of UPDF, Lt Col Abdelrahman Mutabazi, Intelligence Officer, UPDF, Bor, 7 August 2014

behind IGAD. “There is no doubt,” wrote Hilde Johnson, the head of UNMISS, “that September 11th was a factor in bringing the Sudanese government to the negotiating table in a serious way.”⁷⁸ 9/11 led both to deeper US interest and involvement in the Sudanese civil war and to greater Sudanese susceptibility to increased American pressure. The combination led to the signing of the Comprehensive Peace Agreement (CPA) in 2005.

81. South Sudan was the second new state to be created in the region. The first was Eritrea. This is where the similarity ends: whereas Eritrea became independent following the defeat of the Derg, the then government in Ethiopia, the government in Sudan was not defeated and SPLA did not win the civil war. Rather than the victor in the civil war, SPLA was a beneficiary of an unanticipated change in the international situation after 9/11.

82. 2005 was the year the SPLA experienced its second major internal political crisis. On 15th July, 2005, Dr. John Garang dissolved the SPLM/A Leadership Council, intending to appoint the new leadership later. It is John Garang’s death on 30th July 2005 which averted a full blown political crisis whose dimensions would have been similar to that in 1991. It is immediately following John Garang’s death that Salva Kiir reinstated the dissolved SPLM/A Leadership Council.⁷⁹

83. The Troika provided backup support and strategic guidance for parties involved in the negotiations that led to CPA. In her interview with the Commission, Dr. Ann Ito, Acting Secretary-General of SPLM for the past seven years, credited the Troika with the achievements at Naivasha and the CPA that followed: “The Troika voluntarily agreed to work together to achieve peace at Naivasha. They agreed to support IGAD – sometimes pressurized them, put funds into all processes of negotiations, including workshops and seminars to inform negotiators better. They played a good role in mobilizing funds for implementation of CPA. They helped monitor the process of implementation from 2005 to 2011.”⁸⁰

84. As Lam Akol told the Commission:⁸¹ “CPA gave SPLM the power it could not have got by political means. It made it possible for SPLM to entrench itself in the agreement. They gave themselves all the power and marginalized everyone else. The state became the SPLM and the SPLM became the state. He went on to contrast 2005, the year the CPA was

⁷⁸ Hilde Johnson, *Waging Peace in Sudan, The inside story of the negotiations that ended Africa’s longest war*, Brighton: Sussex Academic Press, 2011, pps. 18-21

⁷⁹ Hilda Johnson, *Waging Peace in Sudan*, pps. 197, 199

⁸⁰ Dr. Ann Ito, Acting Secretary-General, SPLM, 24th July, 2014

⁸¹ Lam Akol, SPLAM, Juba, June 1, 2014

signed and the transition began, with 1972, the year the first civil war ended with the signing of the Addis Ababa Agreement: “The agreement in 1972 was negotiated by a party called SSLM which did not carve out for itself all the power. We had a vibrant but plural power even though there was a single party in Khartoum. But SPLM got power through an agreement, not through elections. After excluding everyone else, they began to exclude themselves.”

85. The relationship of SPLA to other political forces in South Sudan, no matter how weak, went through a sea change after the referendum. Before the referendum, SPLA was open to negotiation with internal forces whose cooperation and support it needed during the process leading to independence. After the referendum, SPLA saw these forces as a handicap to exercising power, a nuisance to be dispensed with, especially given that it could count on firm support from the Troika. Lam Akol recalled 2010, the year before the referendum, as the last time SPLM was interested in negotiations with other southern political parties. The All-South Sudan Political Parties Conference was held in October, 2010. It ended with a road map, which called for a transitional government of national unity composed of all political parties, headed by Salva Kiir (then the *de facto* President), and included an agreement to hold a Constitutional Conference and another election in two years, but this time for President of South Sudan, and not Vice President of Sudan. “Following the referendum,” Lam Akol told the Commission, “the SPLM Political Bureau met and said they have an electoral mandate and will rule until 2015. They formed a committee and revised the constitution. Really, they formed a committee so they could recycle the provisional constitution as a permanent one. The consensus built in 2010 was shattered.”⁸²

86. CPA was not comparable to the prototype Lancaster House conference that half a century ago prepared the ground for the independence of many a British colony. The closest development to a Lancaster House conference in the South Sudan case was the all-South Sudan Political Parties conference but its outcome was aborted in the aftermath of the election. As a result, South Sudan has never had an election. Salva Kiir was elected Vice President of Sudan, but never President of a state called South Sudan. It is wrong to think of South Sudan as a failed state – for the simple reason that South Sudan never was a state. There was no bureaucracy, no judiciary, there was nothing to fail. There were only fighting forces, most of the times fighting one another and a make believe state whose leadership was propped up and fated by important sections of the international community, key being the Troika. The state called South Sudan exists more as a juridical fiction than as an institutional reality. ZB, another senior media person, told the Commission that “from 2005 to now,

⁸² Lam Akol, SPLAM, Juba, June 1 and July 21, 2014

there has been no freedom of expression.” When asked how the paper had survived in such a context, he explained that the machinery of the state was never equal to implementing policy, even when it came to repression: “There is the tendency of dictatorship, but not the capacity for it.”⁸³

87. This is how XF, a high ranking UN officer with extensive experience in the region, summed up the situation on the eve of independence: “The only uniting factor was hatred of the North – otherwise there were internal conflicts, between pastoralists and agriculturalists, and among pastoralists, such as the Nuer and the Murle. The tribes did not have a vision to change the whole society – they just wanted to be safe at a distance.” As for the political elite, “they only focused on the North as the problem. They never believed that the North would allow a peaceful separation, so everywhere they nominated generals for elections so they may mobilize the people against the North. They did not build institutions. This was the problem of a movement built on the notion of a common enemy but never a common future.”⁸⁴

88. The Commission asked XF to explain the rationale for a Chapter VII intervention on the day before independence: “The problem was the North. The North had other problems, Darfur. There was a lot of troop movement from the North to the border to block southern support for Darfur. I was getting calls from Susan (Rice) and others, daily, saying the North is planning to fight. I asked (Prime Minister) Meles to send troops to Abyei to form a buffer. That assured skeptics.”⁸⁵

89. The South Sudan political elite, “fated and insulated” by the Troika, in the words of a leading member of the Mbeki Commission⁸⁶, turned the CPA into an opportunity to occupy South Sudan effectively. The political order created under the CPA was not a dictatorship of a single party; rather, it was a dictatorship of all armed groups. In brief, the Comprehensive Peace Agreement (CPA) was responsible for setting up an unchallenged armed power in South Sudan, and thereby legitimizing both anyone holding a gun and the rule of the gun. It is in this context that SPLA expanded its grip from political to administrative areas. As more and more trained and experienced cadre were denied employment in the state sector – on grounds ranging from not having participated in “the struggle,” to having worked in “the North” to “speaking Arabic but not English,” an artificial scarcity of human power was created. Donors filled the gap. The result was a total disjunction between a donor-directed technical cadre and the

⁸³ ZB, Juba, July 22, 2014

⁸⁴ XF, September 4, 2014

⁸⁵ XF, September 4, 2014

⁸⁶ Mbeki Commission, Addis Ababa, September 4, 2014

political leadership of South Sudan. ZB, the media person, told the Commission that the problem lay at the top, not with the shortage of trained personnel: “There were lots of [trained] people attached to each Ministry for the past eight years. But there is no political will to implement what has been recommended. The challenge is with the leadership. If you want to assist us, start correcting people from above. The struggle for liberation united us in the past but there is neither liberation nor vision today.” Asked to define responsibility, he responded: “The international community prepared the ground for the current leadership. The election of Sudan became the legitimation for the government in South Sudan. There was no interim government, no fresh elections.”

90. The connection between the Troika (“Friends of IGAD”) who brain-stormed the CPA and UNMISS was seamless. Another leading UN official, complained of the outcome where two parts, UN paternalism and South Sudanese dependence, fed one another: “What has the UN done with 7,000 troops and 1,000 police? The internationals resist government attempts to take control and yet complain that the government leaves everything for them to do.”⁸⁷
91. When the Commission asked Hilde Johnson, the head of UNMISS and Special Representative of UN Secretary General in South Sudan, to define her mission, her response was all-embracing: “state-building and nation-building.” At the same time, she told the Commission: “The CPA avoided questions to do with intra-South Sudanese tensions.”⁸⁸
92. Hilde Johnson, who shepherded the transition from CPA in 2005 to independence in 2011, put forth both an agenda and a rationale for institutionalizing South Sudan as an international dependency: “... the donors had already established the Capacity Building Trust Fund, hosted by UNICEF and administered by an international firm of accountants. ... I argued that NGOs and UN agencies had to be major beneficiaries of the Multi Donor Trust Fund and help to implement programs ‘on contract’ from the government.” Never mind that “neither the government nor the World Bank had this capacity,” it was enough that “such an agreement could facilitate continuation of UN and NGO programs in the South, with no gaps, at the same time ensuring government leadership and ownership.”⁸⁹
93. To think of South Sudan as a failed state is to overlook the simple fact that the very political foundation for the existence of a state – a political

⁸⁷ XG, Addis Ababa, April 1, 2014

⁸⁸ Hilde Johnson, Special Rep of Secretary-General in South Sudan, UNMISS, Juba, 25 April, 2014

⁸⁹ Hilde Johnson, *Waging Peace in Sudan*, pps. 180, 184

compact – has yet to be forged, either within the elite or between the communities that comprise South Sudan.

C. IGAD and the Region

94. Major General Mohamed of the IGAD Mediation Team explained the operational details of IGAD mediation: “IGAD has eight monitoring teams. There are seven teams in 3 states: Upper Nile, Jongelei, Unity, and one mobile team in Juba. The standard strength of a team is six to eight: six internationals, two from each side, and three from the community. The protection force is from UNMISS, three battalions. This force can be deployed for protection of civilians (IDPs) as a priority.”⁹⁰
95. Asked to assess the prospects of the mediation, General Sumbeiywo, also a member of the mediation team, told the Commission that both sides in the conflict were in it for victory: “What they are doing does not show that they are preparing for peace. The opposition is busy building institutions. Could this be negotiating from the position of strength? It is unthinkable that one will vanquish another.”⁹¹
96. The Commission interviewed a wide range of groups to get a sense of how South Sudanese assessed the work of the region. The overwhelming assessment was mixed. Members of the Caucus of Women said “the region is playing a positive and negative role.” On the positive side, “most have opened their borders to refugees.” But on the negative side, assistance is turning into interference.
97. Even when it came to the presence of external troops – Ugandan and UNMISS – inside South Sudan, the assessment was mixed. Most said their role was positive at the outset. Both were said to have prevented genocide, Ugandans “by halting the march of the White Army,” and UNMISS “by opening its doors to fleeing civilians.” But these same persons called for the departure of Ugandan troops and a reassessment of the role of UNMISS since both were said to be rapidly turning into a hindrance in restoring peace in the country. Ugandan troops, the Commission was told, have become a party to the conflict, supporting one side to it; UNMISS, too, was seen by some as a partisan force, on the side of the IDPs and not the government.⁹²

⁹⁰ Major General Mohamed of Sudan, from the IGAD Mediation Team, Juba, 24 July 2014

⁹¹ General Sumbeiywo of Kenya, a member of the IGAD team, 21st July, 2014

⁹² Caucus of Women, Juba, 26 April 2014

98. A more serious reservation was expressed by the leader of an opposition party: "They think they can benefit from this country and are dividing up this country region by region."⁹³

99. The Commission asked the Government Delegation to the IGAD mediation for its assessment. According to the government team, negotiations began 3rd January, 2014. On 23 January, they agreed on the first cessation of hostilities. "They were supposed to work out an implementation matrix, but this has not happened to date." The government side said the mediation is supposed to go through a triple focus: "Phase 1 in Addis dealt with monitoring and ceasefire between rebels and the government. Phase 2 is to include an all-inclusive national conference dealing with the political process and reforms in three sectors. Phase 3 is to deal with healing, reconciliation and accountability." IGAD met twice: "On 9th May they agreed on format of the negotiations and defined four issues: details of transitional agreement; security arrangement for a permanent ceasefire; healing; and reconciliation. The 10th of June communiqué of IGAD specified that the agreement be completed in six days."

100. Asked if they had any reservations with the work of the mediation, the Government Delegation answered: "IGAD does not want to work on the details to operationalize the agreement. IGAD may have a hidden agenda. They went to the Security Council, not to the AU – why not?" Asked to explain further, they elaborated: "Read IGAD's report to the Security Council, they blamed all on the parties. Yet, they presented it without going through the Council of Ministers, the AU or anyone else. Something is wrong with the mediation. They say there is no political will on either side. If we are allowed to sit on our own, we would go ahead."⁹⁴

101. The Minister of Internal Affairs told the Commission: "IGAD are being driven, especially by the Troika, especially British and Norwegians. It goes back to the days of the struggle. So much was promised to so many. At the last meeting at Rumbek, Norway was supposed to manage the oil. It didn't happen. Chinese are now managing the oil. These guys are not happy with the way we are relating to China. We made a mistake to bring in UNMISS. We thought it would protect the South against the North. But their mandate had nothing to do with it. When we fought with the North, they did nothing. They never protected anyone, only reported bad things about us. The Americans knew only the G12 in the bush – think these are the only leaders."⁹⁵

⁹³ Juba, June 1, 2014

⁹⁴ Government Delegation IGAD Mediation, Addis Ababa, 23 July 2014

⁹⁵ Minister of Internal Affairs, Juba, 22 July, 2014

102. The role of IGAD and its relationship to the Troika, in particular the USA, is a sensitive but important issue. Those we interviewed stressed two issues in particular. First, IGAD is a mediator and yet several of its members have been directly implicated in the conflict, both historically and presently. This is in particular the case with Uganda, Ethiopia, and Eritrea – not to mention Sudan to the North. Second, several felt that – except for announcing sanctions – the US in particular has preferred indirect action through an IGAD member rather than direct involvement in the conflict.
103. To understand the relationship between IGAD and the big powers, the Commission turned to the Mbeki High Level Panel. “The region,” a member observed, “is a combination of failed states and national security states.”⁹⁶
104. The Commission asked XF, the senior UN official with deep knowledge of the region, one who had been working in close quarters with the IGAD Mediation Team, to give his view of the turn in the IGAD mediation, when Dr. Riek Machar refused to sign the September agreement endorsed by IGAD Heads of State and the President of South Sudan. His response confirmed that the Heads of States within IGAD had overruled the initiative of the Mediation. It also confirmed the overwhelming influence of *real politique* in the foreign policy of national security states in the region: “This is not an agreement since both sides did not sign it. The idea came from the mediation. All time has been spent in discussing procedure. The two are intent on a military solution. They are recruiting every day, buying arms every day. Given that, can we think of a final solution that IGAD can table? Riek does not want a power-sharing arrangement if Salva is not running the country. We have to give him a good chance. Salva says he is tired. Let Salva continue as president but without having to run the government. Salva is not running next time, so Riek will be able to. But the Heads of States completely changed the agreement ... the mediation were surprised – nobody would expect Riek to accept this.”⁹⁷
105. The dilemma of external troops – Ugandan and UNMISS – is overly determined by the very nature of the conflict. Though the crisis originated as a political split within the SPLA, it has reproduced this split inside the civilian population and split it into two: residents of communities, and those who have fled their communities and are now either IDPs inside the country or refugees outside. The residents are by and large protected by soldiers of the Uganda Peoples Defense Army (UPDA) and the IDPs shelter in UNMISS camps. Both UPDA and UNMISS are inevitably implicated in the growing tension between residents and IDPs.

⁹⁶ Mbeki High Level Panel, Addis Ababa, September 4, 2014

⁹⁷ XF, Addis Ababa

106. Whatever their political allegiance, the conflict between residents and IDPs stems from a simple difference in circumstance: the fact that IDPs are “protected” by the UN and residents are not. “Protection” translates into guaranteed services, modest shelter, minimal food, basic medical care, and so on. The resident sees the IDP as the beneficiary of a guaranteed livelihood, and the latter sees the resident as privileged with life and free movement.

107. Girma Gebre – Kristos, head of the Kakuma camp, told the Commission that even “after repatriation to South Sudan, before Dec 15, some families were sending their children back to the camp because there were no schools in their communities.” This is how he described the tension between the refugee and the host community: “The host community comprises marginalized people in extreme poverty. Poor refugees are relatively better off than poor members of the host community.” Of its half million dollar annual budget, the camp spends a fifth on host community projects.⁹⁸ Not surprisingly, we found that only one in 20 South Sudanese refugees we interviewed at the Kakoma camp wanted to return home. The rest were convinced that the camp would provide them better security in the present and better prospects for the future.⁹⁹ Reflecting on this dilemma, the UNHCR Country Representative in Nairobi told the Commission: “A chance now to get people to go back – the more we wait, the more being in the camp will become a way of life.”¹⁰⁰

108. The dilemma inside South Sudan is more complicated. The IDPs have no free schooling, at least not yet, and residents in the surrounding community are more than likely to appear as potential killers in a context of daily low-level violence. At the same time, the structural conditions underlying the tension between residents and IDPs remain. The commanders of Ugandan troops in Bor told the Commission: “Housing civilians here has compromised the UN in terms of how civilians outside view the UN. After April 17, a UN convoy going to town would be hit; they avoided town. Only now that we are here, can they move around.”¹⁰¹

109. The staff at the UNMISS camp in Bor, known as Humanitarians, complained that “IDPs have no freedom of movement, and yet community

⁹⁸ Girma Gebre – Kristos, head of the Kakuma camp, Kenya, 5 June 2014

⁹⁹ Meeting with Kakuma Camp Refugee elders – 5 June 2014

¹⁰⁰ UNHCR Country Representative, Nairobi, , 4 June 2014

¹⁰¹ Lt Col Joe Ndahure, Operations and Training Officer, Lt Col Abdelrahman Mutabazi, Intelligence Officer, UPDF, Bor, 7 August 2014

residents think IDPs are favored, and that government thinks Humanitarians are allied with the opposition.”¹⁰²

110. The UNMISS Camp Coordinator in Bor commented: “Town people often say that camp residents have guns. The townspeople say there are over 2,000 guns in the camp. It is naive to think people in the camp do not have a political agenda. Some are relatives of soldiers, but they remain civilians.” In the next sentence, instead of addressing the political problem, she preferred to hide behind a statement of UN policy as principle: “Whatever their previous background, they are all entitled to protection. This entire area is a UN sacrosanct area. There are political agenda on both sides. There is contact between residents and opposition, even directly with Peter Gatdet.”¹⁰³ Could it be that the Camp Coordinator side-stepped the political dilemma and recited UN policy as one would a pledge of allegiance because she was not in a position to think outside the existing policy framework?

111. The UN’s dilemma is one of accountability. Who is the UN accountable to? The UN is in a bind because it appears increasingly partisan as “protection” translates into partisanship. Humanitarians too reflect the same dilemma: who are they accountable to?

D. The Economy

112. XG, previously a senior official in the Political Department at UNMISS, spoke to the Commission about the potential of Sudan: “The population of South Sudan is 10 million people and its revenue is \$5 billion. The revenue is \$1600 per capita a year.”¹⁰⁴ If these figures suggest the promise of South Sudan, the UNDP delegation recalled the realities of day-to-day life in the country: “For four consecutive years, from 2009 to mid-2013, per capita income has declined and inequality has increased. 75% of the population is illiterate. One in 50 die at childbirth (this is the worst indicator in the world). There are a large number of returnees from Sudan. 70% of government budget goes to pay people in arms. Small arms are proliferating. Socially excluded youth have evolved into a volatile force, and a very large group of unemployed youth are ripe for manipulation.”¹⁰⁵

¹⁰² Meeting with 17 Humanitarians, Humanitarian Hub, UNMISS – 6 August 2014

¹⁰³ UNMISS Camp Coordinator, Bor, 7th August 2014

¹⁰⁴ XG, UNMISS [April 1]

¹⁰⁵ UN Women; Balazs Horvath, Country Director, UNDP; Rowland Cole, UNDP, Juba, 25 April, 2014.

113. A tiny elite monopolized the peace dividend. A leading Juba public intellectual described the looting spree that the CPA turned into: "The period following 2005 was a period of entitlement, we are entitled to eat, we liberated this country. But it was also a period of myopia. Just that they were not sure independence will come in 2011 led to outright theft, not just rent-seeking. Liberation fighters suspended all traditional ways of doing things. Flagrant theft of public money created serious injustices."¹⁰⁶
114. "South Sudan," Peter Ajak, an academic based at Cambridge University in England who returned to be advisor to President Kiir, wrote in a *New York Times* op-ed, "is the third-most corrupt country in the world."¹⁰⁷
115. There are three main sources of corruption in South Sudan: oil money, government employment, and land. XF, the high level UN official, told the Commission: "Oil revenue for Sudan as a whole was \$50-60 billion from 2005 of which 50% came to South Sudan. There is nothing to show for it." He said oil is sold in two ways, in the open market and in the spot market: "None of the spot market money got into the bank. It is divided between individuals."¹⁰⁸
116. Oil is the backbone of the South Sudan economy, counting for over 90% of its export income. Oil deals began long before independence. According to Hilde Johnson, "We knew already of deals with oil companies, behind Dr. John's back."¹⁰⁹ The corruption was pervasive among the elite.
117. President Kiir publicly accused 75 top public officials of being responsible for the cumulative theft of \$4.5 billion. Among those accused were the ministers who were later detained. In an interview with the Commission, four of the G12, including former ministers of Finance, Cabinet Affairs and Justice, and the former SPLM Secretary General, claimed that "president Kiir is the leading corrupt person": "All contracts for roads in Juba town over the past four years were awarded to his own company, and others in the previous year to Hyatt company (also owned by him). He began with the Hyatt company, giving a contract of \$238 million without the parliament or the ministry or anyone being involved. When the Deputy Governor of the Bank of South Sudan objected and

¹⁰⁶ Juba, June 1, 2014

¹⁰⁷ Peter Ajak, 'South Sudan's unfinished business,' *New York Times*, February 6, 2014

¹⁰⁸ XF, Addis Ababa, former UN SRSG to Sudan and South Sudan, Addis Abba, September 4, 2014

¹⁰⁹ Hilde Johnson, *Waging Peace in Sudan, The inside story of the negotiations that ended Africa's longest war*, Brighton: Sussex Academic Press, 2011, p. 185

blocked the deal, President Kiir wrote to President Bashir for him to be arrested and accused him (Elijah) of stealing the money. Kiir then made a standing order in the Ministry that money to the Hyatt company should be deducted every month from the oil money.”¹¹⁰

118. The former Minister of Justice told the Commission that when the dura (grain) scandal broke, he brought in the World Bank to do a forensic audit: “The report of World Bank came to the government. Over 290 companies were listed as having received millions of dollars without any delivery; there was a second list of those who were overpaid. The President’s own family, business people from his region, some Ministers, leaders from army, ministers, members of parliament, all were involved.”¹¹¹ The former Minister of Finance said the amount was an exaggeration: “If you deduct \$4.5 billion from the monies that came from Sudan, then nothing could have been done – less was stolen.”¹¹²

119. Notwithstanding pervasive poverty, the oil bonanza attracted many in the region. A businessman with the National Chamber of Commerce described the array of regional interests: “The most important regional investments come from Uganda first – there is the import of food, construction material, cement. Uganda is our largest trading partner. The Ethiopian interest is mostly in hotels. Besides some cement and banks, all foreign imports come through Kenya. Chinese companies are active in petroleum and construction. As for Sudan, there is only smuggling now. There is lack of skills here – so we hire outsiders. Soldiers brought their friends to work here – in the boda boda (motorcycle taxi) work. 80% of petty traders are Ugandans.”¹¹³

120. The CPA introduced an armed power into South Sudan, but not a civil service. Ministries were occupied rather than run by generals and their relatives. A participant in the Caucus of Women explained: “Employment in the Ministry, from the Director General to the cleaner, is for only one tribe. When a Minister is appointed, his first question is how many people from his tribe are there in the Ministry. If he thinks them not enough, then some others are dismissed without due process and tribespersons are appointed.” The same reasons are given each time: “We fought, and you did not; you were with the Jalaba, we were with SPLM; we were with the Red Army, you were not.”¹¹⁴

¹¹⁰ Pagan Amun Okech, Deng Alor (cabinet affairs), Luk Jo (Justice), Kosti Manibe (Finance), Deng Ajak, Majam Dagot, Ezikiel [NLC, ambassador in D.C.], Addis Ababa, 10 June, 2014.

¹¹¹ Luk Jo (former minister of Justice), Addis Ababa, 10 June, 2014

¹¹² Kosti Manibe (former minister of Finance), Addis Ababa, 10 June, 2014

¹¹³ Meeting with National Chamber of Commerce, Juba, 25 July 2014

¹¹⁴ Caucus of Women, 26 April 2014

121. It was not enough to be from “a big tribe” like the Dinka, you also had to be from “a big clan” in the tribe. A soldier who had run away after December 15 and is now a refugee at the Kakoma Camp in Kenya, told the Commission of life as a member of a small Dinka clan: “I am from the minority of Dinka, Aliab, smallest clan in the Dinka. If you do not know a big person, there is no job for you. When you apply, someone says where are you from? Which tribe? I say Dinka, OK, so I qualify as Dinka. Then, which clan? Aliab, I do not qualify.”¹¹⁵
122. More often than not, international consultants took charge of the functional part of the civil service. “International donors,” wrote Peter Ajak, the presidential advisor, “deployed legions of foreign technical assistants who, eager to showcase immediate results, ended up doing everything themselves, transferring little know-how to South Sudanese civil servants.”¹¹⁶
123. The prime target of large scale land acquisition, what has come to be called land-grab, are the areas of peasant cultivation in the south of the country, mainly Equatoria. ZA, the high level media person, told the Commission: “Equatorians are very unhappy. Their major grievance arises from land drabbing. A lot of land around the President’s house was taken with no compensation. A lot of people are talking of how government deserves what Riak’s men are doing.”¹¹⁷
124. The debate around corruption, as that around violence, was between two sides, one accenting “culture” - how things have always been – and the other circumstance, how things have become. The former head of the Anti-Corruption Commission, fired by the Government for being overzealous, told the Commission: “The culture says your relatives sacrificed to send you to school and so you must look after them. 70-75 kin come to your home. Your salary is not large enough. It had always been like that but was exaggerated by the war.”¹¹⁸
125. The debate around culture and circumstance made sense of petty corruption, but not grand larceny, where massive sums were grabbed with impunity. A leading member of the Mbeki Commission spoke of “lack of cohesiveness among leadership and capacity to lead.” He gave an example of high-level corruption: “George Athor, a candidate from Jonglei State, had been quarter master general of SPLA. He got all monies to pay

¹¹⁵ John, Kakoma Camp, 6 June 2014

¹¹⁶ Peter Ajak, ‘South Sudan’s unfinished business,’ *New York Times*, February 6, 2014

¹¹⁷ ZA, Juba, 21 July 2014

¹¹⁸ former head, Anti-Corruption Commission, Juba, 21 July 2014

salaries. Salva said he got reports from soldiers they don't get paid. Salva instituted an inquiry, which found Athor stealing money, paying ghost soldiers, but not paying real soldiers. When Salva decided to take disciplinary action, the leadership of SPLA sent a big delegation to say you cannot take action; if you do SPLA will split. Leave it alone. Salva left it alone."¹¹⁹ How to face the question of impunity, holding high officials responsible for their actions, without exploding existing rifts, is the challenge South Sudan faced on every major issue.

E. The Judiciary

126. A senior legal personality told the Commission that the acute shortage of legal personnel in the judiciary was partly a result of political decisions. Young people with legal training were denied jobs, he said, because "they have no knowledge of English, they speak Arabic." He complained: "I said why punish them? Finally, we appointed 78 young men, of which 34 were women. In South Sudan, the only communication across ethnic groups is in Arabic. I studied Arabic, Islamic law, before I went to Harvard. Even though English is the official language of SS, you cannot ignore the reality."¹²⁰ Lam Akol concurred: "The judiciary is very weak. The whole system is based on one party, SPLM. All those who were in the judiciary in the North were ignored."¹²¹

127. The single most important failing of the justice system South Sudan inherited at independence is the tendency to summary justice and the absence of due process. The colonial administration created a form of justice called "customary justice." In spite of the name, this was not a benign reproduction of "customary" forms that existed in the pre-colonial period. Because there was no absolutist state in the era before colonialism, there was also no single state-regulated and enforced legal regime in that period. Social conduct was regulated by different groups – chiefs, clan heads, age sets, women's groups – in different domains of social life. Custom and tradition were more part of society than of the state. By standing behind the chief in the name of ensuring order, the colonial state transformed "custom" into "customary law" and consolidated and institutionalized the authoritarian tendency immanent in the traditional system.

128. This authoritarian legacy was further consolidated after independence, both by rulers in Khartoum and by those who rebelled against them. Hassan Turabi used the introduction of September Laws to

¹¹⁹ Addis Ababa, September 4, 2014

¹²⁰ Juba, 26 April 2014

¹²¹ Lam Akol, Juba, 21st July, 2014

create a rule by executive decree. According to the same senior legal personality cited earlier, “Turabi’s reforms gave powers of arrest and investigation to Ministry of Justice and not the police. Some people in the South are inclined to do the same thing after independence.” The legacy of the armed struggle against Khartoum reinforced the trend to rule by executive decree: “During the war, the commander was everything – you could arrest, detain without a charge. A new constitution can help us. The problem not resolved in the current constitution.”¹²²

129. Is there a tension between two types of accountability, to “culture” and to those who live that “culture”? This would be so only if we understand “culture” as something ossified and unchanging, wielded as a weapon by a “cultural” authority claiming to be its custodian. As we have seen, this is indeed what happened both under colonialism, when the colonial state claimed to be a protector of “custom,” and after when both governments and those who resisted them, claimed to be the custodians of an authentic culture, whether understood as religious or ethnic. The question this raises is simple but critical: what happens when existing cultural practices turn out to be detrimental to the interests of those whose lives are regulated by it?

IV. THE ISSUES

A. Accountability

130. The Commission interviewed a large number of persons on the question of accountability. They ranged from ordinary working people to people in positions of leadership, whether in government, civil society, business or embassies and the UN. Very few believed that the choice was a simple one, justice or peace. Most cherished both peace and justice and wrestled with the dilemma of how to achieve both.
131. Several debates emerged in the course of these discussions. The first concerned the question of impunity. Whereas everyone we met wanted an end to impunity, and everyone stood for justice, very few understood justice narrowly as criminal justice. The most uncompromising call for criminal justice came from the coordinator of the UNMISS camp in Bor, Jonglei State. Hazel told the Commission: “The issue of accountability is central. Justice delayed is justice denied. There is a long history of lack of accountability. There is very limited capacity of

¹²² Juba, 26 April 2014

government. But it is very important to have a few cases which will show that the state is serious about accountability.”¹²³

132. Most of those we interviewed shared the feeling that South Sudan must come to terms with its long history of impunity. Church leaders discussed the issue in an interview with the Commission.¹²⁴ One of the Church leaders, told the Commission: “You can go back to 1821 when Ismail Pasha first came to South Sudan. There have been lots of atrocities since then. There was the history of the slave trade and colonialism. Then there was the war of liberation. But there has been no accountability. We are all children of war.”¹²⁵

133. Whether criminal justice could bring an end to impunity was hotly debated in a Commission meeting with Civil Society organisations.¹²⁶ One member demanded to know the truth about the violence: “Who is responsible for this? We need to know. No matter who you are, we need to make you accountable.” Angelina, another participant, followed: “What happened here is a crime against humanity. The culture of impunity is there. There can be no reconciliation without justice, but where is the room for justice? The problem did not spread on ethnic grounds – it spread because every citizen in South Sudan has a grievance. If there are no national courts here, African courts should step in and give people the solace that there has been justice, to preempt the possibility of revenge.” Another member put forward a different perspective: “first political settlement, then accountability” and cautioned the Commission: “Do not expect a unified position of political settlement and accountability from civil society.” Another participant defined the dilemma: “How do you get a government that has not been accountable suddenly become accountable?” Someone else answered: “Separate the military from politics.”

134. A second debate focused on the meaning of accountability. There were different interpretations and definitions, narrow and broad. The most widely held was the notion that truth – and not punitive justice – is central to accountability. A member of the Caucus of Women urged the Commission to acknowledge the meaning of the 1991 Bor massacre: “A big number of Dinka were killed. There was no accountability, efforts for reconciliation but no truth. The wound is still there in the hearts of many Dinka. This may happen again, if we are not careful. We cannot just follow the African way of reconciling – let the past go – we have to make sure there is truth and accountability. The violence now is for me a continuation

¹²³ Hazel, Coordinator of the UNMISS camp in Bor, Jonglei State, 6 August, 2014

¹²⁴ Meeting with Church leaders, Juba, 24th July 2014

¹²⁵ Meeting with Church leaders, Juba, 24th July 2014

¹²⁶ Civil Society organisations, Juba, 25 April 2014

of the 1991 massacre. If the truth is told, the ground will be laid for a transparent process.”¹²⁷

135. A woman member of the Church delegation told the Commission: “When it comes to accountability, the most important is truth, acceptance of responsibility. Our people do not want someone to be judged in court. If our leaders could just come out and say we have done wrong – reconciliation is possible.” Another member of the delegation asked: “If the people followed their leaders to slaughter one another, will they stay quiet if their leaders are put behind bars?” A third member reminded the Commission: “The CPA had a provision for a Truth Commission spelling out atrocities committed by both sides – but neither was committed to it, so nothing happened.”¹²⁸

136. The public intellectual cited earlier underscored the point: “People believe that if you admit to responsibility for a certain action that in itself is a form of justice – truth, not retribution. Punitive justice in my view will lead to more violence. Reconciliatory justice is more appropriate. At the end of the day in customary law everyone must go home, in statutory law someone must go to jail. An international tribunal is premature.”¹²⁹

137. A third debate revolved around the need to heed the importance of politics in any attempt to forge the way ahead. Bishop Isaiah underlined the importance of divorcing reconciliation from politics. He recalled July 2012: “Riek Machar, in a ceremony commemorating the death of John Garang, said, whatever happened in 1991, I take responsibility and I apologize, and he wept.” The Bishop added: “I do not know what a genuine confession would be if that one was not. But it was politicized. Confession has to be divorced from politics.”¹³⁰

138. In a meeting with university intellectuals, one of them explained the logic of revenge violence, and that of defending “one’s brother” even when it is clear the brother is in the wrong: “We jumped the gun, believing – and the international community encouraged us to believe – that there is something called South Sudanese. If you can understand why the Somalis will never give someone else up if the Americans offer \$20 million because you never give up your brother. If my brother makes a mistake, there is a brotherly way of handling it but I do not hand him over. If I am 100 miles from Juba and hear that my brother is killed, that is enough. Language of the law is the language of a coward in those circumstances. Our allegiance is to something other than South Sudan. If I was a lawyer

¹²⁷ Caucus of Women, Juba, 26 April 2014

¹²⁸ Meeting with Church leaders, Juba, 24th July 2014

¹²⁹ June 1, 2014

¹³⁰ Meeting with Church leaders, Juba, 24th July 2014

and wanted to accuse the President of committing genocide, the case for people would be why are you after our man – and not the strength of the evidence. This is how we handle things like corruption. When a very rich man was jailed for corruption, the youth of his tribe came and broke into jail, freed him, and he was appointed a member of the Upper Chamber.”¹³¹

139. A fourth debate focused on whether and how much to prioritize the pursuit of criminal justice. Members of the National Chamber of Commerce cautioned the Commission to resist the temptation to eat a whole loaf but to define priorities and take on the challenge step by step.¹³² A businessman spoke in Arabic and his neighbor translated: “The house is burning. Do not talk of accountability, who burnt it. We are wasting our time. First calm the fire, then ask who is responsible for it.” Zainab, a bank owner, a UK resident who returned after December 15, worried that “everything has stopped since the war started.” Asked to define the way forward, she suggested: “We need reform. The dead are gone, we want to save the ones who are left. The first reform is a ceasefire that holds.” Her neighbor, Mariam, agreed: “No one is taking care of widows – cry for peace not for revenge.”

140. PX, the former cabinet minister, agreed: “Accountability comes much later. What is important is restoring peace and law and order, courts, training police and demilitarizing. Accountability can only come after law and order has been restored. Those who committed crimes are known, even if they are outside.”¹³³

141. The former head of the Anti-Corruption Commission, fired by the Government, advised the Commission not to think of impunity as an individual problem: “Impunity is related to the rule of law. The problem is weak institutions.”¹³⁴

142. Those with leadership positions in society, across the range, no matter their political sympathies, agreed on the need for caution. In short, get your steps right, not just your destination. XY, the senior military commander, told the Commission: ¹³⁵ “If you indict someone, then it becomes difficult for him to leave power – why Salva keeps on saying ‘I am a sitting president.’ If he sees no room for reconciliation, then he will resist – we need to bring healing too.”

¹³¹ Social and Economic School, Juba University, 23 July, 2014

¹³² Members of the National Chamber of Commerce, 25 July 2014

¹³³ PX, Juba, 25 April, 2014

¹³⁴ Former head of the Anti-Corruption Commission, 21 July, 2014

¹³⁵ XY, Addis Ababa, 29 July 2014

143. Ambassadors of the Troika too counseled caution.¹³⁶ The US ambassador told the Commission: “There has never been any accountability. Even the new director of military intelligence was accused, went into jail for some time, and is now back in power.” He suggested the need to think of “adapting traditional institutions – just as Gacaca was adapted to a new situation – not a perfect situation. It could it be a TRC, South African-style, or Peruvian, Guatemalan, Phillipines.” The UK Ambassador cited the Latin American experience: “It has taken a minimum of 10 or 15 years before a community has been able to get sufficiently beyond the trauma to address it – reciprocity and justice do not have to be simultaneous.” He too acknowledged the problem with looking for justice where institutions are weak: “Judiciary here recognize the need for justice but say they are not ready to deal with it. Even a hybrid court requires national elements of that court to be competent.” The US ambassador agreed and pointed out: “The advocates who represented the four detainees are all being targeted. The head of Law Society has fled. Lawyers are not likely to take on some of these cases.”

B. Reconciliation

144. There were many instances of humanity and consideration at the popular level, in 2013 as no doubt before. XG, the high level official formerly with the UN’s Political Department, told the Commission of an entire Nuer division which defected to Machar but assisted the Dinka among them to go back to their home areas.¹³⁷ The point that the problem lay with the elite, and not ordinary people, was made over and again in the meeting with businesspersons in the National Chamber of Commerce.¹³⁸ A businesswoman, who belonged to the South Sudanese diaspora in the UK and had returned to set up a business, told the Commission: “Warrap State is Dinka land, but Nuer are now in Warrap State and there is no problem. This problem is not a tribe thing. This is about political positions. Someone wants to become president. The people dying are community people, not political people. Nuer and Dinka are the ones who fought.” Another businesswoman agreed: “The 10% educated are confusing the 90%. The talking should be here, not in Addis.” The UK-returned businesswoman responded: “The solution is to educate the people about this. Communities lack education. Politicians lack accountability. This was a political problem – someone decided to use violence to kill people of one community, and one community only. They politicized communities, split them, polarized them.”

¹³⁶ Ambassadors of US, UK and Norway, 2 June 2014

¹³⁷ XG, Juba, April 1, 2014

¹³⁸ Rep National Chamber of Commerce, Juba, 25 July 2014

145. Popular reconciliation was driven by one inescapable fact: that communities found themselves next to one another and had no choice but to learn how to accommodate one another – sooner or later. This ground level process took place in many a community, as it did between many neighboring communities. The initiative often came from local leadership: usually chiefs or religious leaders. And it often involved the active participation of groups like women and youth.
146. Many who spoke before the Commission on the question of reconciliation made a distinction between popular and elite reconciliation. Often, they drew on the example of 1991 to illustrate this distinction. In the decade that followed 1991, the best known of organized efforts at reconciliation at the ground level, building on popular reconciliation initiatives, was Wunlit. This notable work of peace-building culminated in the Dinka-Nuer West Bank Peace and Reconciliation conference in Wunlit, Bahr el Ghazal, from 27th February to 8th March, 1999. The SPLA joined this initiative, but half-heartedly and reluctantly. Wunlit bore the hallmarks of the forces that drove it: popular communities had no choice but to find ways to get along in the medium run; the Church, which made a choice, was limited by its own history of internal divisions. Though it covered multiple communities and was trans-local, the Wunlit process did not cover all regions torn apart by the 1991 violence. It affected only one side of the Nile; it involved the Dinka of Bahr el Ghazal, but not the Bor Dinka.
147. In a meeting with the South Sudan Council of Churches, Church leaders briefly sketched this history for the Commission:¹³⁹ “[In the colonial period,] Britain divided the South into zones: Presbyterians got Upper Nile; Catholics Upper Bahrel Ghazal; Anglicans got Equatoria. In 1925, missionary groups got together to prevent missionaries from infighting. So Church is an ethnic church, all members of a church of one ethnicity.” Unity came after the Sudan government passed the 1962 Missionary Act and expelled all missionaries: “Since then, the Churches have worked together as a Council of Churches.” This history sketches both the sectarian beginning of Church organization and the imperative to transcend it in the face of government repression; it also underlines the inadequacy of the Church as a viable force for national reconciliation.
148. A second initiative for reconciliation in local communities has come from Chiefs. In the absence of a viable set of institutions to undergird a rule of law, people have fallen back on quasi-traditional and quasi-official institutions like chiefs to find a practical way of resolving day-to-day conflicts. The UNDP Team in South Sudan told the Commission: “Traditional authorities play a very important role. Their role has assured

¹³⁹ South Sudan Council of Churches, Juba, 25 April 2014

some degree of sanity. The use of chiefs as a means of dispute resolution continues to be important.”¹⁴⁰ That chiefs have played an important role in addressing the challenge of co-existence on a daily basis has also made for a negative development: it has allowed the traditional leadership to appropriate to itself justice delivery, including criminal justice. The Commission learnt that it is possible for chiefs to sentence someone to imprisonment and send that person to the barracks to be jailed.

149. When asked to reflect on the adequacy of traditional justice, those interviewed tended to agree that the scope of traditional justice is limited to community-based conflicts, not conflicts that arise from modern constructs, whether of the state or of individual rights. Lam Akol told the Commission: “African methods always differ on issues, but they hardly deal with leadership. Resolving issues is easier than resolving personal conflict. Both [contenders] would want the status quo, but only under their own leadership. In the African setting, if you touch my brother, you have touched me.”¹⁴¹ The situation following December 15 has highlighted the limitations of traditional justice in the face of mass violence and mass appropriation of property, such as the grabbing of houses in urban areas (particularly Juba), and land in the countryside, in the aftermath of large-scale ethnic cleansing.

150. UNMISS officials too have responded to conflicts – both within IDP camps, and between IDPs in camps and residents in surrounding communities – with their own initiatives. XE, the high level UN official, summed up these initiatives in his presentation to the Commission: “We have made efforts to test waters regarding healing. Since early February, women from both communities came together in our camp in Bentiu – where communities lived in different corners and women began to come together daily. There is no violence in the camp. It is the only camp with no violence. When there is fighting, even soldiers throw away weapons and seek refuge within their community in the camp. This should be encouraged.”¹⁴²

151. The last source of reconciliation initiatives has been the government. Government initiatives have been driven by two different impulses. The first has been the need to respond to and manage initiatives outside of government control. It was this need that led to the creation of an umbrella body, Platform for Peace and Reconciliation, to bring together three different groups. The second has been the need to respond to mass violence that has ripped society apart.

¹⁴⁰ Balazs Horvath, Country Director, UNDP; Rowland Cole, UNDP, Juba, 25 April, 2014

¹⁴¹ Lam Akol, Juba, 21st July

¹⁴² UN Team in South Sudan, Juba, 21 July, 2014

152. An official commission was formed in the aftermath of the violence that followed December 15. According to its Chairperson, the South Sudan Human Rights Committee was convened in the third week of January, 2014, “to investigate human rights abuses resulting from the fight that broke out in Juba on 15 December and continued for a week in Juba and then extended to Jonglei, Upper Nile and Unity State.” He added that “it is not within the powers of the committee to investigate the causes of the conflict which started with a political conflict among leaders – this was the subject of a legal committee in the Ministry of Justice which led to the formation of the court which ended in stay of the trial.” He concluded that the Committee’s mandate covered “killing, rape, looting of civilians and whether this took an ethnic form.”¹⁴³
153. Based on the interviews it has heard, the Commission draws a further distinction between pragmatic and principled reconciliation, whether popular or elite. Popular reconciliation has been pragmatic; necessary but not sufficient. After a tour of one of the non-conflict states and a study of different methods of traditional reconciliation, a Commissioner with a legal background concluded: “I gathered that reconciliation is for now. It does not mean I am not coming back for you in the middle of the night tomorrow. There is a tradition for that too. There is no culture of judicial process.” Traditional reconciliation in this sense is pragmatic and temporary. It is an accommodation.
154. Elite reconciliation has evaded South Sudan for decades. The only program around which different factions have managed to come together has been that for independence and power-sharing. Since independence, the South Sudan political class has lacked a forward-looking project around which to coalesce. The responsibility for this falls squarely on the shoulders of those who designed and steered the six year transition period ushered in by the CPA: by focusing on Sudan to the north as the enemy to be confronted, the CPA lost an opportunity both to confront its past failure at reconciliation and forge a national project around which the South Sudan political elite could unite.
155. Clearly, 1991 was not resolved; it was deferred. The accommodation that was Wunlit had been pragmatic, not principled. Former President Thabo Mbeki recalled 1991 as a recurring theme in his discussions with President Kiir: “Salva told us: Riek killed a lot of Dinka, and we will not give him the opportunity to do so again. Rebecca (Garang) said we agree with Machar that Salva must go but I will never allow Riek to be President – never a fellow who did that.”¹⁴⁴

¹⁴³ South Sudan Human Rights Committee/Commission, Juba, 3 June 2014,

¹⁴⁴ Mbeki Commission, Radisson Hotel, Addis Ababa, September 4, 2014

156. The history of SPLA is replete with deep internal tensions, unresolved and deferred: first 1991, then 2004, now 2013. At the 2004 meeting in Rumbek, Salva complained that Garang was dictatorial, and raised sharply the question of corruption ('we already own property in foreign countries'). The players in 2013 were the same as in 2004. A member of the Thabo Commission told us: "They patched over 1991 with a political deal among tribal leaders, leading to CPA. But it was never reconciliation."¹⁴⁵ Asked whether he saw the possibility of genuine reconciliation at the highest level, XF, the high level UN official, told the Commission: "No. They can only share the spoils. The majority of SPLM say the leadership brought them the problems. This elite is not deep-rooted. Their power does not depend on the ability to create a clientele, but on the gun."¹⁴⁶

C. Debates around Impunity

157. More than any other single event, it is 1991 that has shaped the collective psyche of the present generation of South Sudanese. This is worth a reflection. It is noteworthy that this source of national trauma does not originate from the struggle against Khartoum but from the failure to handle internal conflicts within SPLA. When the Commission met two parliamentary committees, one on Peace and the other on Security, in Juba, a member of parliament asked the Commission: why did not the AU set up a Commission on 1991?

158. The demand for impunity is made in various languages. Two that the Commission heard often were sovereignty and democracy. You cannot remove an elected president, the Troika envoys told us, or a sitting president, Salva Kiir's supporters told the Commission.

159. Some others asked the Commission: Is President Kiir an elected President or an elected Vice President and, in that case, of South Sudan or Sudan? After all, Salva Kiir was elected as Vice President, and not as President. Furthermore, that election was organized by the Republic of Sudan, not by the Government of South Sudan. For that matter, South Sudan has never had an election since it became independent. Another set of questions asked: when a president removes elected officials, and does not replace them through that election, does that same president have the right to invoke his election as an argument that he must not be removed from office except through an election?

¹⁴⁵ Mbeki Commission, Radisson Hotel, September 4, 2014

¹⁴⁶ XF, Juba, September 3?, 2014

160. Does an elected president have impunity? If some constitutions allow a sitting president to be impeached by an elected authority like parliament, does it mean that in countries without such a constitutional provision elected presidents should be allowed to get away with, literally, murder?
161. How do we reconcile rule of law with sovereignty? How do we ensure that in ensuring one of the two, we do not compromise or even negate the other? How do we ensure that Africa's hard won independence is not compromised in the African struggle for democracy?
162. This is the dilemma that many South Sudanese the Commission interviewed wrestled with when they addressed issues of truth and justice, peace and accountability. Their refusal to make a simple choice, embracing one side and letting go of the other, was testimony that they were indeed equal to making that choice. Their answer was that there is no single formula, no 'one size fits all', no 'best practice' that can guide us regardless of context. There is no substitute to thinking on our own feet.
163. The preponderant view among those the Commission interviewed was that we must think of accountability in a broad way, not just to include criminal accountability, but first and foremost to mean the acknowledgement of truth and the need for a political settlement. Their overriding conviction was that every value must be pursued in practice in a way that the part does not comprise the whole. In brief, the pursuit of criminal accountability should not be at the expense of peace and political order. To do so is not to give up the demand for criminal accountability, but to acknowledge that the realization of that demand calls for the prior realization of practical conditions – most of all, the building of sufficient political consensus – necessary to realize that demand. This is why the Commission is unsympathetic to demands from quarters that this report be issued alongside a sealed list of names of those who may be the target of judicial investigation *immediately*. As we point out in the recommendations that follow, the first priority is political and social justice; together, these will create the conditions necessary for criminal justice.
164. Where state sovereignty is used to license mass murder, the Commission is of the view that state sovereignty must be temporarily suspended in favor of African sovereignty – so that a period of transition is instituted with guidance and direction from African institutions to restore state sovereignty under conditions favorable to maintenance of political order and the nurturing of democratic institutions. That nurturing, however, must be the work and the responsibility of the people of South Sudan.

V. RECOMMENDATIONS AND THE WAY FORWARD

A. The Conundrum

165. This is how Hilde Johnson, the Secretary-General's special representative to South Sudan and head of UNMISS, summed up the situation after December 15 in her interview with the Commission: "This crisis is beyond anything we have seen in scale, magnitude and depth. A quick fix power-sharing agreement will not work – problems of the country and leadership are too deep." She repeated, for emphasis: "We need to re-boot South Sudan – no quick fix, no deal, will do it."¹⁴⁷

166. In their first meeting with the Commission, the ambassadors of the Troika (U.S., U.K. and Norway) shared that same view, in unison, that President Kiir should step down and, indeed, that both Kiir and Machar should both step aside.

167. Only a month later, however, the ambassadors of the Troika had changed their mind. They shared with the Commission what they described as "a central conundrum." In the words of the British envoy, "Dinka without Kiir will not settle; Nuer without Machar will not settle; and yet, the two will not work together." The US envoy said "there is so much hatred they can't move forward even with both of them there." The Norwegian envoy concurred: "There is no reflection yet on why things went wrong." Even parliament, he pointed out, "has not made a statement; normally, if you want inclusivity, you go to parliament."¹⁴⁸ The conundrum arises from a crucial difference between criminal and political violence: Unlike criminal violence, political violence is not just driven by planners and perpetrators, it also has a political constituency.

168. That the views of the Troika changed so radically between the two meetings is, we believe, evidence of a steep learning curve. They had come closer to a contextual definition of the problem, and thus more receptive to an African solution to the problem.

B. An Africa-Oriented Solution

169. What is popularly called "an African solution" is a contextual solution. The demand for an African solution arises from the experience of having been prescribed a series of single-formula or "one-size-fits-all"

¹⁴⁷ Hilde Johnson, Special Rep of Secretary-General in South Sudan, UNMISS, 25 April, 2014

¹⁴⁸ Meeting with Troika envoys, Juba, June 2, 2014

remedies packaged as universal. In economic policy, the best-known single-formula remedy was known as the Washington Consensus of the 1980s and 1990s, and was the result of efforts to address the problems of the debt crisis and global inequality. Its destructive effects are well documented. Today, that same single-formula remedy rules the roost in the field of conflict resolution and transitional justice, prescribing a single across-the-board remedy: criminal accountability.

170. In the words of authors concluding a study of international aid and “capacity-building” in South Sudan: “... context was largely overlooked during South Sudan’s crucial interim period and after independence, in order to pursue the international donors’ preferred state building agenda. Without any history of South Sudanese self-governance, no predecessor institutions, and starting essentially from scratch, the temptation to transplant ‘best practices’ was hard to resist.” The result, they conclude was “this constant, significant, global *capacity- building* enterprise that rarely builds any effective *capabilities*.”¹⁴⁹
171. In addressing situations of extreme violence, there are now advocates of a similar one-size-fits-all approach. This might seem appropriate -- justice, after all, like economics, is supposed to be based on universal principles. But there is a difference between following universal principles and adopting single-formula solutions.
172. In the field of justice, the single-formula approach makes a simple declaration: a crime has been committed, and its perpetrators must be identified and punished. The question of justice is reduced to an issue of crime and punishment. Those who see things in these terms will scan this report for a list of perpetrators to be investigated, tried, convicted, and punished.
173. Context is not the opposite of a universal value or standard. Context is an understanding that any concrete situation is an outcome of multiple causes: historical, political, moral, and economic. The call for a contextual understanding is an argument that we need to move away from a single-formula prescription to understand the precise interaction of multiple processes in the creation of a single event or outcome.
174. Precisely because political violence addresses a constituency, the only way to hold its planners criminally accountable is first to isolate them from the very group (constituency) from which they expect to draw support. Thus the Commission proposes a contextual remedy: to

¹⁴⁹ Larson, Ajak, Pritchett, South Sudan’s Capability Trap: Building a State with Disruptive Innovation, Centre for International Development at Harvard University, Report no. 268, October, 2013, p. 9

distinguish between different forms of justice, so as to sequence these. Political justice must precede criminal justice.

C. Political Accountability

175. The Commission holds the Troika (“Friends of IGAD”) and IGAD responsible for its decisive role in framing an agreement (“CPA”) that set up a politically unchallenged armed power in South Sudan. In setting up a power that could act with impunity, they legitimized both anyone holding a gun and the rule of the gun.

176. The Commission holds the cabinet of the Government of South Sudan before its dismissal in July, 2013, its high political leadership, responsible for the political crisis that led to the political meltdown on December 15, 2013 and the organized massacres and the large-scale violence that followed. The Commission was told of instances whereby those in high circles thought of taking counter-measures to put a break on the deteriorating situation: Vice President Machar concluded he must resist but the resistance he organized was tribal; high level military and intelligence officers wanted a broader resistance that would remove both the President and Vice President from office, but they were constrained by the reality of ethnic considerations.

177. We note that killings continue on both sides even as negotiations towards an effective ceasefire and the formation of an interim government continue in Addis Ababa.

178. The Commission distinguishes between two different cycles of violence in the present crisis. The first is the target violence of December 15-18 in Juba which the Commission holds responsible for initiating the cycle of violence that followed. The second is the revenge violence in the country at large, but particularly in the three states of Jonglei, Upper Nile and Lake, which has since fed this cycle.

179. The target violence was organized, not spontaneous. It was directed from a center. Revenge violence followed. It was more reactive than deliberated. As such, it combined elements of both spontaneity and organization. Its spearhead were both the village level youth militia, known as the White Army, and sections of the SPLA which had mutinied and were led by the Eighth Brigade. The target violence should be the subject of political accountability, and revenge violence of a Truth Commission.

D. A Transitional Program

180. The preponderant view among those the Commission interviewed was that we must think of accountability in a broad way, not just to include criminal accountability, but first and foremost to mean the acknowledgement of truth and the need for a political settlement. Thus the Commission takes seriously the mandate to identify and promote opportunities and processes for healing in South Sudan. The weakness of exclusively retributive forms of justice is that the pursuit of that form of justice risks etching in stone the polarization of society and contributes to the mischaracterization of an essentially political problem. Alongside political justice, which must be realized in the context of the range of political and other reforms we recommend, South Sudan desperately needs processes of societal and community healing facilitated by a truthful engagement with the past. This is a complex process, and only the South Sudanese can identify with the required precision what mechanisms and processes will facilitate the healing of their land.
181. South Sudanese will need the continued support of the rest of Africa to redefine their politics and effect the fundamental changes that are needed to repair the damage of their recent history. We have wrestled with what this will mean in practical and policy terms, and have concluded that it will be necessary to have a Transition Period in which the necessary foundations can be laid for South Sudan's recovery.
182. Justice must not be transposed onto South Sudanese society in purely formalistic terms alien to the vast majority of the population. Those who have suffered most harm as a consequence of the violations and abuses that the Commission has identified deserve to be genuinely involved in the processes of accountability and reconciliation using mechanisms that are accessible and with which they can fully identify.
183. The Commission therefore recommends a transitional period with three distinctive features: (a) a High Level Oversight panel to guide the period of transition; (b) a transitional government that excludes those politically accountable for the crisis; and (c) a transitional program that address the question of justice in different forms.
184. The justification for this set of recommendations has been set out in this report: The Comprehensive Peace Agreement (CPA) was responsible for setting up an unchallenged armed power in South Sudan, and thereby legitimizing both anyone holding a gun and the rule of the gun. Without the Comprehensive Peace Agreement that politically marginalized the civil population of South Sudan and ushered in an unaccountable political class, the SPLA would not have held unchallenged power. Continued support from the international community, in particular the Troika, kept this

setup in place and reinforced the illusion of the political class that all it needed was international support to ensure its continued hold on power. That this political class should seem incapable of reform on its own should not come as a surprise. In the view of the Commission, the need to inaugurate a period of sustained all-round reform is the primary justification for the establishment of a High Level Oversight panel, answerable to the Peace and Security Council of the African Union, to guide the period of transition. The Commission recommends that the High Level Oversight Panel be appointed by the Peace and Security Council of the AU; that it be mandated by the UN Security Council and the AU, and that it report to both the UNSC and the AU; that it be formed of three persons, with a strong background in the fields of finance, security and statecraft; and that it operate under a permanent Chairperson.

185. To arrest the bloodletting and begin a process of healing, the Commission recommends an interim transition period of five years led by a Transitional Executive. Members of the Transitional Executive shall be South Sudanese, shall form a collegial presidency drawn from three broad geographical constituencies (Equatoria, Upper Nile, and Bahr al Ghazal) and shall be chosen through a process overseen by the High Level Oversight Panel. The Commission recommends a three-fold process:
- a. Broad consultation, leading to nominations by different sectors of society, in a process designed to identify persons of consensus. The process should be thought of as a starting point, a trigger, for a national consultation;
 - b. Vetting by a reconvened all-South Sudan Political Parties Convention, expanded to include representatives of civil society, churches and chiefs;
 - c. Ratification by parliament.
186. The Executive Council shall constitute the cabinet and shall be appointed by the Collegial Presidency in consultation with Parliament and the High Level Oversight Panel.
187. The Commission recommends that Parliament be the one political institution from the previous era that be maintained. Though divided, fragmented, and silent, Parliament was not directly involved in the extreme violence that followed December 15, 2013. At the same time, as a body that brings together representatives from different parts of the country, it has the potential to reflect the full diversity of the country in a single institution.
188. The Commission further recommends that all leading members of the GOSS (President, Vice President, Ministers) – in power before the dissolution of the cabinet in July, 2013 – shall be barred from participation in the Transitional Executive.

189. The mandate of the Transitional Executive will be three-fold: political justice (through state reform, including the reform of financial and security sectors), social justice (resettlement of refugees and IDPs), and criminal justice (accountability of individual officials proven to be responsible for extreme violence).
190. *Political Justice and State Reform:* Key to the pursuit of political justice in the transitional period is the exclusion from high office of all those held politically accountable for the mass violence that followed the crisis of December 15, 2013. Key to political justice will be the twin processes of demilitarization and democratization.
191. To reform the security sector, the Commission recommends the establishment of an African Oversight Force, comprised of troops from African countries beyond the surrounding region, and without prior involvement or direct interest in South Sudan. The Commission further recommends that this force operate under AU command and be under the overall charge of UNMISS. The Commission also recommends that the High Level Oversight Panel appoint a joint African/South Sudan Military Commission, whose members are drawn from senior military persons from both South Sudan and other African countries and whose mandate is to draw up a program to build the capacity to screen, reduce, reorganize and, where necessary, retrain the forces that currently exist under the umbrella of the SPLA. The Commission recommends that both the Ugandan forces currently in South Sudan and the IGAD Monitoring Force be replaced by the African Oversight Force, and be charged with monitoring, facilitating and overseeing the military reform process supervised by the High Level Oversight Panel, and this force be paid partly from the escrow account managed by the ADB-coordinated committee (see below).
192. The Commission is of the view that the army – like parliament – is one of the few institutions in South Sudan where representatives and recruits from different groups come together. For this reason, it is important that the army, like Parliament, represent the full diversity of South Sudanese society. For this diverse composition to act as a check on one sectarian tendency unleashing a reign of terror on the rest of society, it is vital that the reform of the army be linked to the consultation and democratization process at the local level.
193. The Commission acknowledges that the exercise of self-determination is incomplete if understood in only its *external* aspect, i.e. the relationship between the independent state and other states in the international system. The Commission calls for an internal process of broad consultation and reform to realize *internal* self-determination. The

Commission recommends a linking of local democratization to the process of demilitarization (and DDR), so that the process of reform of militias at the local level goes hand-in-hand with that of creating self-governing democratic communities, thereby linking demilitarization with democratic state-building.

194. *Social Justice:* As a form of reparation for victims of the violence who are still alive, the Commission recommends that the Transitional Government guide and oversee the resettlement of refugees and IDPs with appropriate support from both UN and African agencies, that it institute a vigorous process of financial reform, and that it set up a Truth Commission, both nationally and in the states.
195. To reform the financial sector, the Commission recommends that the African Development Bank, in coordination with the World Bank and the International Monetary Fund, establish an active and continuous oversight over all key public financial institutions in South Sudan. The Commission further recommends that all oil proceeds be placed in an escrow account under the oversight of this joint committee, and that these funds be used to finance both the recurrent expense of government and administration, and the funding of the triple transitional mandate, including a portion of the cost of the African Peacekeeping Force. The Commission also recommends that all large-scale land acquisitions since 2005 be reviewed by a body appointed for that purpose, also under the oversight of the same joint committee.
196. *Criminal Justice:* The Commission acknowledges the extremely weak and fragile character of infrastructure that can support the existence of rule of law in South Sudan. Whereas the means for an internally administered form of justice have yet to be created inside South Sudan, the International Criminal Court (ICC) remains highly politicized. The Commission recommends that criminal jurisdiction over high state officials individually responsible for war crimes and/or gross violation of human rights be the responsibility of the African Court of Human and Peoples Rights. *The fact that this Commission has held high public officials politically accountable and has called for their withdrawal from public life for the duration of the transition period signals the end of an era of impunity.* In the Commission's view, individual criminal accountability should follow collective political accountability, so as to give priority to the creation of a stable political order capable of withstanding the inevitable stress generated by the trial of prominent public officials. Whereas this Commission was charged with a holistic mandate calling on it to charter a way forward for a crisis-torn society, it would be the responsibility of the High Level Oversight Panel to mandate an investigation into the culpability of individual officials for the extreme violence that followed December 15, 2014.

197. The Commission strongly believes that just as no institutional arrangement is impervious to the human factor, none can guarantee an assured outcome. This is why the above interim arrangement, put in place for a period of five years, will be susceptible to a range of outcomes. At worst, it could institutionalize an AU-mediated dependency; at best, it will usher a transition to a stable and democratic order. The specific outcome will depend on the quality and commitment of those who steer the arrangement.