



**ASSESSMENT OF JUSTICE, ACCOUNTABILITY  
AND RECONCILIATION MEASURES  
IN  
SOUTH SUDAN**

**Final Report and Recommendations**

**JUNE 2014**

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## Executive Summary and Recommendations

The human tragedy that has occurred in South Sudan since mid-December 2013 has been widely reported. In brief, a political struggle in South Sudan's dominant political party, the Sudan People's Liberation Movement, erupted at a party conference on December 15 in the capital of Juba. The struggle immediately turned into a fast-spreading conflict along ethnic lines. Despite two agreed-upon ceasefires, large-scale military operations and ethnic killings continue on all sides. Schools, hospitals, churches and mosques have been targeted, and civilians, including women, children and the elderly, have been brutally murdered. The American Bar Association Rule of Law Initiative has conducted an assessment to examine existing and potential justice, accountability and reconciliation measures that could respond to the current conflict in South Sudan. The following report sets forth the main findings of the assessment and concludes with a detailed set of recommendations that describes an integrated strategy providing for mechanisms that can investigate and prosecute perpetrators, establish the truth about how violations occurred and advance reconciliation efforts in the country.

### Part One: JUSTICE AND ACCOUNTABILITY MEASURES

Criminal accountability involves a number of different types, dimensions and aspects of accountability, concerning crimes, types and levels of perpetrators, types of courts or other fora, and sorts of evidence. Accountability for certain types of crimes and misconduct, such as atrocity crimes, and for certain levels of perpetrators, might well be different and raise a range of different issues than accountability concerning other misconduct by another level or category of persons.

Common themes included:

1. Every person interviewed indicated that there must be accountability, at all levels, for the atrocities committed during the current crisis. A deep-seated culture of impunity and the historical lack of accountability, following each cycle of brutal violence in or concerning South Sudan in the past 60 years, are *root causes of the current situation*.
2. Subject to full investigation, it can be stated that a significant number of atrocity crimes have, or very probably have, been committed in South Sudan since mid-December 2013. Further, it appears highly likely that both Government and opposition forces have committed atrocity crimes, especially in Juba and the states of Jonglei, Unity and Upper Nile. Moreover, there has been a marked failure by both Government and opposition forces to protect civilians from violence.
3. There is currently little evidence or available public information of any genuine Government accountability efforts, or the results of those efforts, to date. Except for a 13-page interim report issued by the South Sudan Human Rights Commission in February 2014, several Government investigations have yet to produce any tangible results.
4. Unanimous interviews indicate that there is no current or near-term capacity in the national justice system for accountability proceedings concerning atrocity crimes involving relatively major political or military figures.

5. Some interviewees cited the military justice system of the Sudan People's Liberation Army as a potential bright spot, having some capacity to try military perpetrators, particularly mid- to low-ranking soldiers. It remains an open question, however, whether the military justice system might be available for mid- to low-level SPLA actors in a conflict that is as complex and politically fraught as this one. There was some indication that some judge advocates of the military justice system, particularly junior military lawyers, as well as some mid-level judge advocates and higher-level leaders, would be capable and willing to overcome the political and tribal overtones of the current environment. Consideration of the military justice system as a viable forum to try lesser offenders for crimes related to the current conflict does not come without serious concerns.

<b>Part Two: DOCUMENTATION AND INVESTIGATION AS STEPS IN SEEKING ACCOUNTABILITY</b>
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Human rights documentation and criminal investigation share many of the same goals, including reinforcing the state's responsibility to protect human rights by pursuing accountability. While they are related and often complementary, there is also a distinction between the two. Human rights documentation has limited impact where it is necessary to establish criminal accountability in compliance with rules of evidence and procedure. Criminal investigations and evidence-gathering, which focus on establishing command and control, linkage to crimes or other misconduct and individual responsibility, are necessary to develop more sophisticated accountability cases against high-level political and military actors.

Common themes included:

1. Human rights documentation efforts are substantially limited in virtually every aspect, in terms of resources, training, access, scope and reporting.
2. International and domestic observers alike criticized the lack of regular reporting from the United Nations Mission in South Sudan and the absence of any recommendations, fact-finding or legal analysis in UNMISS's interim report. UNMISS has now issued its fuller report. Despite this, the predominant feeling of those in both the international and national human rights community is that senior leadership of UNMISS does not believe the UNMISS mandate includes carrying out documentation or investigation for purposes of producing admissible evidence for a future accountability mechanism. Others interviewed stated that the UNMISS's Human Rights Division has not received full support from the leadership and that the Human Rights Division has much more information than they have reported to date. Interviewees expressed a general desire that the Human Rights Division should publicly report its information more fully, in greater detail and more regularly.
3. The documentation efforts of South Sudanese civil society organizations have generally been quite limited. While they have some dedicated staff and potentially the most natural contacts in the South Sudanese communities, interviewees stated that they lack resources, training, mobility and access.
4. The only Government organization that has produced any public report to date regarding the conflict is the South Sudan Human Rights Commission. The American Bar Association Rule of Law Initiative has not seen any additional Commission reports or follow-up actions, and must question its ability to operate independently and take effective action.

5. All documentation (and investigation) efforts to date have been substantially limited by security conditions on the ground and significant limitations on freedom of movement.
6. According to those interviewed, if documentation efforts are still limited, then criminal investigation and evidence-gathering are even further behind the curve. No actors are currently engaged in focused or systematic investigations or professional gathering and preserving of evidence for accountability purposes.
7. On December 30, 2013, the African Union created a Commission of Inquiry to look into the events in South Sudan. While a few of those interviewed expressed hope that the Commission of Inquiry might play a productive role in connection with accountability, interviewees generally had little to no enthusiasm for the process. A large majority of those interviewed, including community and tribal leaders, expressed serious concerns – even fears – that the Commission of Inquiry would ultimately do very little in terms of accountability.
8. Given the current challenges with the African Union Commission of Inquiry, it is vital to get professional investigation teams in place and on the ground as soon as possible. Existing security conditions in the field and limitations on freedom of movement, which will likely require a military or other protection component, are two chief obstacles to these efforts.

### **Part Three: TRUTH-SEEKING AND RECONCILIATION MEASURES**

Truth-seeking mechanisms may be effective to establish a full account of a conflict and the factors that contributed to it, and to provide an opportunity for direct participation by a large number of victims. Truth-seeking mechanisms may also advance goals of restorative justice by focusing directly on the concrete needs of victims.

Common themes included:

1. When the assessment team asked interviewees about “transitional justice” mechanisms that fall outside of a criminal accountability lens, the majority, with a few strong exceptions, conceived of those mechanisms as “peace” and “reconciliation.”
2. A majority of interviewees were skeptical about the effectiveness of reconciliation efforts during an ongoing conflict and believed that reconciliation was a long ways away.
3. On April 5, 2014, the National Platform for Peace and Reconciliation was launched. Since its launch, significant distrust of a perceived Government-led process among a majority of civil society members and the opposition has grown. Others have also criticized the Platform for not having a clear mandate or timeline. Despite this skepticism, interviewees suggested that they are withholding judgment to see if, perhaps with proper implementing legislation and a clearer mandate, the Platform may be able to accomplish something useful.
4. When asked about local processes for justice and peace, interviewees spoke about desires for justice through a traditional reconciliation lens. Some cited the well-documented 1999 Wunlit Nuer-Dinka Reconciliation Conference, as a workable model, which, while imperfect, might have lessons that could apply in the current context.

## Part Four: RECOMMENDATIONS

Any pursuit of accountability for atrocities requires a multi-dimensional approach that combines multiple mechanisms to investigate and prosecute perpetrators, establish the truth about how violations occurred and advance reconciliation efforts in the country.

### **Recommendation 1: *Expand and Reinforce Human Rights Documentation.***

Existing human rights documentation efforts should be expanded and reinforced, with additional resources and training. In particular, South Sudanese civil society organizations should be trained and provided resources to conduct documentation on a broader and deeper scale, including outside Juba and the state capitals.

Actions may include:

- A. Establish, staff and fund a documentation training and technical assistance program, especially for South Sudanese civil society organizations, to assist documentation in secure areas both inside and outside South Sudan. Partnerships might be explored with international non-governmental organizations that are most experienced in documentation projects. As part of this training, nurture links between South Sudanese civil society organizations and criminal law and accountability experts who could be actively consulted on (a) various evidence or information to look for to establish individual responsibility for atrocity crimes; and (b) practices that are consistent with and facilitate the use of such evidence and information in later accountability processes.
- B. Establish, staff and fund a program to create an “evidence unit” (essentially a conflict database and searchable archive) that would compile, organize and consolidate evidence gathered by actors conducting documentation to facilitate the use of that evidence in any future legal action. Consider using CaseMatrix, a program modeled on International Criminal Court crimes, as a framework for creating the archive. This evidence unit could be housed within an international non-governmental organization or, if possible, within a South Sudanese civil society organization with sufficient credibility. The evidence unit would complement, rather than duplicate, the efforts of UNMISS and the African Union Commission of Inquiry.
- C. Advocate for it to be made explicit within UNMISS’s mandate that its human rights reporting should include preservation of testimony and physical evidence for later accountability processes. Should UNMISS’s leadership be open to receiving assistance, provide increased support to the Human Rights Division to improve its capacity to conduct human rights documentation and investigation, including forensic documentation.

### **Recommendation 2: *Put Professional Criminal Investigation Teams in the Field.***

Establishing the individual criminal responsibility of perpetrators requires a professional, coordinated approach to gathering, inventorying and preserving evidence to establish the individual culpability of those most responsible. Because the existing international investigation mechanism – the African Union Commission of Inquiry – lacks credibility, and is perceived largely as an attempt to prevent or deflect an International Criminal Court process, this report’s recommendation is therefore to pursue an alternative international, professional investigative

body. Such an alternative mechanism would not necessarily replace the Commission of Inquiry but could augment and assist that effort, both by pressuring the Commission of Inquiry to demonstrate a real commitment to accountability and, should the Commission fail to do so, by filling the accountability gap.

Actions may include:

- A. Organize an international, professional investigative capacity and get it on the ground in South Sudan at the earliest possible moment, both as an accountability and deterrence measure.
- B. Options to create this investigative capacity and get it on the ground include:
  - (1) Organize this capacity or body either unilaterally (by the United States) or as a “coalition of the willing.”
  - (2) As necessary or helpful (or to make it as effective as possible), consider the formation of an International Commission of Inquiry, using all of the tools available under international law and practice. Use Chapter VII of the Charter of the United Nations to create such a capacity and/or to give any such body the maximum investigative and law enforcement powers possible supported by international law, including subpoena power, search warrant authority and the ability to make official requests for assistance binding on United Nations Member States.
- C. Organize and deploy at least three 15-person core teams, with rapid response capabilities and the required protection element. Provide the effort with unarmed surveillance drones, including those that can be launched by teams in the field. Provide a secure base of operations and secure facilities for the storage of evidence.
- D. Organize and operate this investigative capacity with maximum independence and, if organized within the United Nations system, separate from UNMISS.

***Recommendation 3: Combine Support for a Hybrid Tribunal with Efforts to Reconstruct the National Justice System.***

There has been widespread support within the South Sudanese and international community for the creation of a hybrid tribunal in South Sudan. Support for a hybrid tribunal is not surprising in view of the perceived weaknesses of the national justice system and the lack of appetite for an intervention by the International Criminal Court. The international community, however, has not utilized the levers necessary to pressure the Government to agree to participate in, or at least comply with, any future accountability mechanism. The international community should therefore consider using the United Nations Security Council’s Chapter VII powers to require the Government to cooperate with a hybrid tribunal. If the Government continues to refuse to agree to the creation of a hybrid tribunal, an International Criminal Court referral or the creation of an international tribunal under Chapter VII should at least be considered as an alternative accountability mechanism.

In order to lay the foundation for the creation of a future hybrid tribunal, the international community should take steps now to strengthen the capacity of the South Sudanese national justice and military justice systems.



Actions may include:

- A. Consider a United Nations Security Council resolution under Chapter VII requiring the Government to agree to, and participate in, the creation of a hybrid tribunal.
- B. Support South Sudanese civil society organizations' efforts to advocate for accountability to be integrated into the framework of any peace agreement. This could include support for large-scale population-based studies to determine the attitudes of South Sudanese towards peace and justice. It should also include efforts to strengthen the role of women and other marginalized groups in peace negotiations.
- C. Lay the groundwork for the creation of a future hybrid tribunal if, in the short or medium term, it becomes politically feasible, that is, there is sufficient Government cooperation and transitional arrangements as part of any peace agreement are put in place. This could include support for an effort led by South Sudanese civil society organizations to draft a sample statute for a hybrid tribunal; study tours for South Sudanese lawyers, judges and civil society organizations to other jurisdictions which have hosted hybrid tribunals (e.g., Sierra Leone, Bosnia and Cambodia); and/or trainings on post-conflict justice for South Sudanese civil society organizations.
- D. Consider the creation of a hybrid tribunal pursuant to Chapter VII as the most effective and expeditious way to put a genuine accountability mechanism in place as soon as possible.
- E. Strengthen the capacity of the national justice and military justice systems. This could include efforts to train progressive South Sudanese lawyers and judges, including within the military justice system, on investigating violations of international criminal law. In preparation for larger-scale assistance to South Sudan, international donors should conduct an assessment of the capacity of the national justice system to administer a hybrid tribunal, as well as of existing criminal justice reform efforts in order to identify potential areas of intervention.

***Recommendation 4: Provide International Subject-Matter Expertise and Financial Support to Strengthen the National Reconciliation Body and Local Peace Processes.***

In April 2014, the National Platform for Peace and Reconciliation, consisting of three national bodies working on peace and reconciliation, was launched. One of these bodies, the Committee for National Healing, Peace and Reconciliation, is responsible for an ambitious three-year undertaking, in which it will carry out large-scale community consultations to begin the reconciliation process. At the same time, foundational work should be done now to support local peace processes.

Actions may include:

- A. Empower and help to mobilize moderate Nuer and Dinka leadership, including Chiefs and spiritual leaders, to carry out their own community consultations within their communities. International organizations, such as the Centre for Humanitarian Dialogue, should provide support for this work. Later, bring together Chiefs and spiritual leaders outside of South Sudan for a communal dialogue.

- B. Lay the groundwork for a future reconciliation process. As a first step, engage with the National Platform for Peace and Reconciliation to draft implementing legislation to help clarify its mandate and strengthen independence. The Platform could make a valuable contribution to an integrated approach to justice, accountability and reconciliation, but, to do so, it would need the support of the international community. Any reconciliation process must make provisions for justice and accountability. The Platform could expand its mandate to include a truth-telling component that would provide a public platform for victims to tell their stories and perpetrators to confess their wrongs.

## List of Acronyms

<b>ABA ROLI</b>	American Bar Association Rule of Law Initiative
<b>AI</b>	Amnesty International
<b>AU COI</b>	African Union Commission of Inquiry
<b>CEPO</b>	Community Empowerment for Progress Organization
<b>CNHPR</b>	Committee for National Healing, Peace and Reconciliation
<b>CPA</b>	Comprehensive Peace Agreement
<b>CPJ</b>	Citizens for Peace and Justice
<b>CPMT</b>	Civilian Protection Monitoring Team
<b>CSO</b>	Civil Society Organization
<b>DRL</b>	US Department of State, Bureau of Democracy, Human Rights, and Labor
<b>GCM</b>	General Court Martial
<b>ICC</b>	International Criminal Court
<b>ICG</b>	International Crisis Group
<b>IDP</b>	Internally Displaced Person
<b>IGAD</b>	Inter-Governmental Authority on Development
<b>INGO</b>	International Non-Government Organization
<b>IJR</b>	Institute for Justice and Reconciliation
<b>MVM</b>	Monitoring and Verification Mission
<b>NPPR</b>	National Platform for Peace and Reconciliation
<b>NSCC</b>	New Sudan Council of Churches
<b>ORP</b>	Operation Restore Peace
<b>SCPR/NLA</b>	Specialized Committee on Peace and Reconciliation of the National Legislative Assembly
<b>SSLS</b>	South Sudan Law Society
<b>SPLA</b>	Sudan People's Liberation Army
<b>SPLM</b>	Sudan People's Liberation Movement
<b>SSHRC</b>	South Sudan Human Rights Commission
<b>SSPRC</b>	South Sudan Peace and Reconciliation Commission
<b>TRC</b>	Truth and Reconciliation Commission
<b>UN</b>	United Nations
<b>UNMISS</b>	United Nations Mission in South Sudan
<b>UNMISS HRD</b>	United Nations Mission in South Sudan Human Rights Division
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>US</b>	United States

## Introduction

The human tragedy that has occurred in South Sudan since mid-December 2013 has been widely reported.<sup>1</sup> In brief, a political struggle in South Sudan's dominant political party, the Sudan People's Liberation Movement (SPLM), erupted at a party conference on December 15 in the capital of Juba. The struggle immediately turned into a fast-spreading conflict along ethnic lines, with the mass execution of 300 Nuer residents of the Gudele neighborhood in Juba ranking among the most atrocious crimes of the conflict to date. Days after the conflict erupted, former Vice President Machar was openly leading an armed rebellion. Despite two agreed-upon ceasefires, large-scale military operations and ethnic killings continue on all sides. Schools, hospitals, churches and mosques have been targeted, and civilians, including women, children and the elderly, have been brutally murdered.

The violence has also included attacks and threats against United Nations Mission in South Sudan (UNMISS) personnel and United Nations (UN) facilities, reducing the capacity of the international community to respond successfully to a humanitarian and human rights crisis. A December 19, 2013, attack on an UNMISS camp in Akobo resulted in the death of two Indian peacekeepers and the wounding of another, as well as at least 20 other casualties seeking UNMISS protection. Further attacks occurred in the northern oil town of Bentiu on April 15, 2014, including the murder of several hundred civilians at a mosque, and in Bor, the capital of Jonglei State, on April 17, 2014, at a UN base and internally displaced person (IDP) camp, in which at least 51 people were killed.

Close to one million South Sudanese have been forcibly displaced within their own country, and hundreds of thousands have become refugees in neighboring Ethiopia, Uganda, Sudan and Kenya since last December. The United States (US) and international leaders have called on both sides of the conflict to immediately end the atrocities, brutal violence and population displacements that threaten to tear South Sudan apart, and have promised that those responsible will be held to account.

The American Bar Association Rule of Law Initiative (ABA ROLI) has conducted an assessment to examine existing and potential justice, accountability and reconciliation measures that could respond to the current conflict in South Sudan. The following report sets forth the main findings of the assessment and concludes with a detailed set of recommendations that describes an integrated strategy providing for mechanisms that can investigate and prosecute perpetrators, establish the truth about how violations occurred and advance reconciliation efforts in the country.

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<sup>1</sup> See UNITED NATIONS MISSION IN SOUTH SUDAN, CONFLICT IN SOUTH SUDAN: A HUMAN RIGHTS REPORT (May 8, 2014) [hereinafter 2014 UNMISS HUMAN RIGHTS REPORT]; AMNESTY INTERNATIONAL, NOWHERE SAFE: CIVILIANS UNDER ATTACK IN SOUTH SUDAN (May 2014) [hereinafter AI NOWHERE SAFE]; INTERNATIONAL CRISIS GROUP, SOUTH SUDAN: A CIVIL WAR BY ANY OTHER NAME (April 10, 2014) [hereinafter ICG A CIVIL WAR BY ANY OTHER NAME]; UNITED NATIONS MISSION IN SOUTH SUDAN, INTERIM REPORT ON HUMAN RIGHTS: CRISIS IN SOUTH SUDAN (February 21, 2014) [hereinafter UNMISS INTERIM REPORT]; and SOUTH SUDAN HUMAN RIGHTS COMMISSION, INTERIM REPORT ON SOUTH SUDAN INTERNAL CONFLICT, DECEMBER 15, 2013-MARCH 15, 2014 [hereinafter SSHRC REPORT].

## **Methodology**

The assessment team conducted dozens of interviews and consultations from April 17-28, 2014 with key stakeholders based in Juba (South Sudan), Addis Ababa (Ethiopia) and Nairobi (Kenya), including the authorities of the Government of the Republic of South Sudan (Government), tribal and community leaders, South Sudanese civil society organizations (CSOs), international non-governmental organizations (INGOs), UNMISS and other UN bodies, the African Union Commission of Inquiry (AU COI), academics and church leaders. A confidential list of interviewees is on file with ABA ROLI. The assessment team also conducted a thorough desk review of relevant legislation, government records and reports, and reports and assessments by CSOs, INGOs, UNMISS and others.

## **Acknowledgements**

This assessment was conducted by a dedicated team made up of Kenneth Scott, an *Amicus* Prosecutor of the Special Tribunal for Lebanon and a former Senior Prosecutor for the International Criminal Tribunal for the former Yugoslavia, specializing in international humanitarian and human rights law, international courts, investigations and human rights enforcement; Jennifer Tsai, a Senior Advisor at ABA ROLI and an expert in access to justice, vulnerable populations and human rights documentation; and Steve Minhinett, a former UN Security Specialist and an expert in international security and logistics. This team designed the framework and methodology for the assessment. The assessment team received strong support from ABA ROLI staff, including Africa Division Director Maria Koulouris, Acting Deputy Africa Director and Senior Legal Analyst Jim Wormington and Senior Program Officer Jimmy Lim. ABA ROLI would like to express its gratitude for the time and assistance given by all those who agreed to be interviewed. Finally, ABA ROLI wishes to thank the US Department of State, Bureau of Democracy, Human Rights, and Labor (DRL), for providing generous support for the implementation of this assessment.

**Part One: JUSTICE AND ACCOUNTABILITY MEASURES**

Criminal accountability involves a number of different types, dimensions and aspects of accountability, concerning crimes, types and levels of perpetrators, types of courts or other fora, and sorts of evidence. There is no “one-size-fits-all” approach to accountability. Accountability for certain types of crimes and misconduct – such as atrocity crimes<sup>2</sup> – and for certain levels of perpetrators, might well be different and raise a different range of issues than accountability concerning other misconduct by another level or category of persons. Such an observation is not unique to the situation in South Sudan, but has been true as to all of the international tribunals, special and mixed courts over the past twenty years. Domestic accountability mechanisms, too, have adopted various approaches to prosecuting and adjudicating atrocity crimes.

**FINDINGS**

Every person interviewed indicated that there must be accountability, at all levels, for the atrocities committed during the current crisis. The Government believes that at least opposition leaders must be held accountable, and, in turn, the opposition believes that Government officials must be held accountable. Indeed, a deep-seated culture of impunity and the historical lack of accountability, following each cycle of brutal violence in or concerning South Sudan in the past 60 years, are *root causes of the current situation*.<sup>3</sup> To date, there has been an unbroken cycle of violence and impunity, and no culture of accountability. Many interviewees expressed the view that sustained peace without justice was not possible, just as it has not been in the past.<sup>4</sup>

**A. ACCOUNTABILITY OF MAJOR ACTORS FOR ATROCITY CRIMES**

Subject to full investigation, it can be stated that a significant number of atrocity crimes have, or very probably have, been committed in South Sudan since mid-December 2013.<sup>5</sup> Some of the more major examples are the orchestrated Sudan People’s Liberation Army (SPLA)/Dinka killings of Nuer residents

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<sup>2</sup> As used in this report, “atrocity crimes” refer to crimes involving large-scale violence against civilians contrary to international law. They include crimes against humanity, genocide, and war crimes, as defined under the Rome Statute of the International Criminal Court, as well as acts of ethnic cleansing. ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, arts. 6, 7, 8, U.N. Doc. A/CONF.183/9 (*adopted* 2002) [hereinafter ROME STATUTE]. While ethnic cleansing is not a separately listed crime in the Rome Statute, acts of ethnic cleansing are considered crimes against humanity concerning forced displacement or persecution.

<sup>3</sup> JOK MADUT JOK, THE SUDD INSTITUTE, SOUTH SUDAN AND THE PROSPECTS FOR PEACE AMIDST VIOLENT POLITICAL WRANGLING at 1 (January 4, 2014) [hereinafter JOK MADUT JOK, POLICY BRIEF] (writing that the current conflict escalated so quickly “partly due to the history of the liberation wars, in which South Sudanese committed atrocities against one another and no accountability for these atrocities was established when those wars ended”); AI NOWHERE SAFE at 16-17 (footnotes omitted) (making similar findings); ICG A CIVIL WAR BY ANY OTHER NAME at 32 (“In the wake of further atrocities after the ceasefire, political, civil society and community leaders have drawn a direct link between past impunity and present abuses and demanded accountability.”).

<sup>4</sup> 2014 UNMISS HUMAN RIGHTS REPORT at ¶ 313.

<sup>5</sup> *Id.* at ¶ 8 (stating that “countless incidents of gross violations of human rights and serious violations of humanitarian law have occurred during the conflict . . . [including] extrajudicial killings, enforced disappearances, rape, the direct targeting of ordinary civilians, often along ethnic lines, as well as ill-treatment and the destruction of property.”).

in Juba in mid-December and the events in Bentiu and Bor in April, along with many other incidents.<sup>6</sup> Further, it appears highly likely that both Government and opposition forces have committed atrocity crimes, especially in Juba and the states of Jonglei, Unity and Upper Nile.<sup>7</sup> Moreover, there has been a marked failure by both Government and opposition forces to protect civilians from violence.

The Government has made some statements that at least broadly acknowledge killings and other human rights violations by Government forces, although these statements also claim that such conduct was carried out by uncontrolled elements.<sup>8</sup> Under the doctrine of command responsibility, senior military commanders and ordinary civilian officials with potential effective control over their subordinates are not only responsible for their own orders, directions and other actions, but also for violations committed by their subordinates, to the extent that they knew or should have known of the crimes, but failed to take meaningful action to prevent them or punish those responsible.<sup>9</sup> In apparent contradiction to claims of crimes being carried out by uncontrolled rogue elements or individual soldiers, a principal component of Government military and security services that appears to have committed the coordinated and systematic mass killings in Juba in December 2013 was the Presidential Guard (or Tiger Battalion), which, together with other elements, was largely regarded as President Kiir's private army, reporting directly to him rather than to the regular military command.<sup>10</sup>

While President Kiir and other senior Government officials have made public statements or claims about holding perpetrators to account,<sup>11</sup> many of those interviewed voiced a concern that peace will be prioritized at the expense of justice. This concern has been reinforced by recent reports that the Government's Minister of Cabinet Affairs Martin Elia Lomuro has publicly expressed his support for a *general amnesty for all alleged crimes and perpetrators* concerning the violence and other abuses since December 15, 2013, "as part of South Sudan's peace process, *which would prevent the*

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<sup>6</sup> *Id.* at ¶ 265; SSHRC REPORT at 5-8.

<sup>7</sup> 2014 UNMISS HUMAN RIGHTS REPORT at ¶ 266 (finding reasonable grounds to believe that both parties to the conflict have perpetrated violations); AI NOWHERE SAFE at 7-8, 44 (reporting that Government and opposition forces have committed war crimes and crimes against humanity, as well as grave human rights abuses).

<sup>8</sup> The Government's own SSHRC report states:

Following the eruption of fighting among the soldiers of the Tiger battalion the fighting quickly assumed an ethnic dimension and loss of control of the fighting groups. There were reports that a section of the security forces began targeting the Nuer homes around Juba and rounded up the Nuer and killed them. . . . Eyewitness account [sic] also sighted some Dinkas in uniform carrying out house-to-house search of the Nuer homes, and victimizing the occupants. The Commission also received reports of door to door search for members of the Nuer ethnic groups carried out in the then Government-held town of Malakal in Upper Nile State. SSHRC REPORT at 4.

<sup>9</sup> *See, e.g.*, ROME STATUTE, art. 28 (setting forth responsibility of commanders and superiors).

<sup>10</sup> ICG A CIVIL WAR BY ANY OTHER NAME at 7 (footnote omitted).

<sup>11</sup> On May 16, President Kiir vowed to try perpetrators of "crimes," stating, "I will not protect anybody, and I have instructed the investigation committee led by Justice (John) Wuol Makec to see that all these people who committed crimes must be punished, if needs be, with death," *available at* <http://www.aa.com.tr/en/rss/329575--kiir-vows-to-try-people-involved-in-s-sudan-crimes>.

*prosecution of war criminals.*<sup>12</sup> As reported, his announcement was made “as part of an explanation of *what the government sees as next steps in the political process in South Sudan.*”<sup>13</sup> Mr. Lomuro is reported to have said that a general amnesty would be issued “after [diplomatic talks] and the ceasefire” and that this “plan” is “based on the experience of the CPA, the 2005 Comprehensive Peace Agreement.”<sup>14</sup>

## **B. CURRENT GOVERNMENT ACCOUNTABILITY EFFORTS**

There is currently little evidence or available public information of any genuine Government accountability efforts, or the results of those efforts, to date.<sup>15</sup> Except for a 13-page interim report issued by the South Sudan Human Rights Commission (SSHRC) in February 2014, discussed *infra*, several Government investigations have yet to produce any tangible results.

To date, the Government has not demonstrated any will or capacity to hold perpetrators accountable. There is a widely circulated Government claim that some 120 to 200 SPLA soldiers were arrested earlier this year on account of atrocity crimes-type misconduct, but all of them have allegedly since “escaped.” When asked, a senior member of the Parliamentary Committee on Human Rights could not identify a single accountability result accomplished by the Government to date. As a competent, knowledgeable and dedicated human rights worker stated, “there’s just no history of any kind of investigation producing anything ever, despite dozens being set up over the years.”

There is a general principle that, if Government soldiers and other state security officials are involved in atrocity crimes, there is “an obligation to immediately suspend those under investigation from their duties and to permanently remove those found to have participated in serious violations from the security forces or, in the case of armed groups, bar them from entering such forces.”<sup>16</sup> According to those interviewed, there is no public information or known evidence that this has happened in South Sudan, with regard to either the Government or the opposition, concerning the events since December 15.

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<sup>12</sup> “South Sudan Cabinet Minister Supports ‘General Amnesty,’” (Radio Tamzuj, May 26, 2014) (emphasis added).

<sup>13</sup> *Id.* (emphasis added).

<sup>14</sup> *Id.*

<sup>15</sup> AI NOWHERE SAFE at 42, 50-51 (stating that various investigations initiated by the Government now and in the past have failed); 2014 UNMISS HUMAN RIGHTS REPORT at ¶ 310 (documenting the Government’s claims of accountability efforts and its subsequent denials of UNMISS requests for information or refusal to provide any information about, or results from alleged efforts).

<sup>16</sup> 2014 UNMISS HUMAN RIGHTS REPORT at ¶ 294.



### C. NATIONAL CAPACITY TO INVESTIGATE AND TRY HIGH-LEVEL ACTORS FOR ATROCITY CRIMES

Unanimous interviews indicate that there is no current or near-term capacity in the national justice system<sup>17</sup> for accountability proceedings concerning atrocity crimes involving relatively major political or military figures. Multiple interlocutors identified the same three basic factors: (1) lack of competence to carry out such trials; (2) lack of the necessary independence from the Government; and (3) lack of public trust.<sup>18</sup> South Sudan's justice system, which has long been underdeveloped, has ground to a halt in the wake of the current conflict.

Some interviewees commented that the recent treason trial against four political detainees accused of attempting to overthrow the Government in mid-December, the "Juba Four,"<sup>19</sup> was carried out relatively professionally and fairly in terms of the trial process itself, as opposed to the absence of a prosecution case. There was no feeling, however, that this single experience provided any basis for atrocity trials in the national system. The case concluded in late-April, with the Government staying the proceedings under Article 25 of the Criminal Procedure Code<sup>20</sup> in the interest of "peace and reconciliation." Many interviewees viewed the Government's decision as a political maneuver, not based on the merits of the case, made just hours after the UN Security Council threatened to impose targeted sanctions on those blocking peace in South Sudan.<sup>21</sup>

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<sup>17</sup> As used in this report, "national justice system" refers to ordinary criminal courts as defined under the 2008 Judiciary Act. Ordinary criminal courts are structured in a single hierarchy, starting with the Supreme Court at the national level, followed by three regional courts of appeal (Juba, Malakal and Rumbek), and high courts in the capitals of each of the ten states. The high courts have original jurisdiction for all capital offenses, including murder cases. CODE OF CRIMINAL PROCEDURE ACT, ch. II, § 12 (2008). The Judiciary Act also envisages, at the local government level, county courts presided over by magistrates in all of the counties and payam courts in all of the payams. THE JUDICIARY ACT, ch. II, § 7 (2008).

<sup>18</sup> DAVID K. DENG, SOUTH SUDAN LAW SOCIETY, SPECIAL COURT FOR SERIOUS CRIMES (SCSC): A PROPOSAL FOR JUSTICE AND ACCOUNTABILITY IN SOUTH SUDAN, A WORKING PAPER (May 2014) [hereinafter DENG, SPECIAL COURT FOR SERIOUS CRIMES] at 4-5 (noting "problems of extended pretrial detention, chronic underfunding, inexperienced investigatory and prosecutorial staff, shortages of defense attorneys, lack of legal aid, lack of witness protection services, corruption, torture, lack of security for judges and lawyers, limited geographical reach, overcrowded detention facilities, and dilapidated infrastructure") (footnotes omitted); JOHN PRENDERGAST, PEACE MUST COME SOON: A FIELD DISPATCH FROM SOUTH SUDAN (February 19, 2014) [hereinafter PRENDERGAST PEACE MUST COME SOON] at 9 ("Unfortunately, South Sudan's formal legal system remains embryonic"); ICG A CIVIL WAR BY ANY OTHER NAME at 32-33 ("Many South Sudanese, including within the government, say they have little faith in the police and judiciary to investigate and prosecute government abuses and of the SPLA's ability to investigate the Presidential Guard."); AI NOWHERE SAFE at 50 ("South Sudan faces numerous challenges in ensuring that national investigations of human rights abuses are conducted promptly, effectively and impartially, including limited technical capacity in investigatory methods, the lack of forensic experts, the interference or resistance of security organs, and the lack of victim support and witness protection programs. The justice system lacks sufficient judges and prosecutors, and they are not adequately deployed across the country.")

<sup>19</sup> The four were: former SPLM Secretary General Pagan Amum Okiech; former Security Minister Oyay Deng Ajak; former Deputy Defense Minister Majok D'Agot Atem; and former envoy of the semi-autonomous Southern Sudan Government to the US, Ezekiel Loi Gatkuoth. The four were among 11 political figures who were taken into custody shortly after fighting erupted in Juba on December 15.

<sup>20</sup> CODE OF CRIMINAL PROCEDURE ACT art. 25 (2008).

<sup>21</sup> See, e.g., <http://mobile.nation.co.ke/news/United-Nations-Security-Council-South-Sudan-Sanctions/-/1950946/2292122/-/format/xhtml/-/11her4lz/-/index.html>.

#### D. NATIONAL CAPACITY TO INVESTIGATE AND TRY LESSER OFFENDERS AND LESSER CRIMES

Information gathered from interviewees suggests that, at least, various mid- to low-level actors belonging to the Government and the opposition committed serious human rights violations. Many interviewees stated that the national justice system lacks the capacity to hold even mid- or low-level perpetrators to account.

Some interviewees cited the military justice system<sup>22</sup> of the SPLA as a potential bright spot, having some capacity to try military perpetrators, particularly mid- to low-ranking soldiers. It remains an open question, however, whether the military justice system might be available for mid- to low-level SPLA actors<sup>23</sup> in a conflict that is as complex and politically fraught as this one.

According to an international organization that provides advisory and training assistance to the SPLA, the military justice system has been used in the past to good effect by the SPLA to hold soldiers to account for military and common law offenses. The SPLA has been trying serious, common law offenses such as homicide and rape, by General Court Martial (GCM) for at least several years, and its military courts have in no way been limited to adjudication of only purely military offenses.<sup>24</sup> Recently, for example, two SPLA soldiers were convicted of negligent homicide in a shooting case in Pibor County in July 2013. The SPLA also tried approximately 84 cases by court martial during its Jonglei State Disarmament Operation known as “Operation Restore Peace” (ORP).<sup>25</sup> While most of these involved military offenses, there were also some homicide and

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<sup>22</sup> The military justice system handles both criminal and disciplinary offenses committed by military personnel under provisions of the Sudan People’s Liberation Army Act (SPLA Act) and the SPLA Rules and Regulations. There are two levels of military courts, a District Court Martial (DCM) and a General Court Martial (GCM). A DCM has jurisdiction over any SPLA personnel for any offense under the SPLA Act “except murder, mutiny, desertion, cowardice during combat and any other offen[s]e punishable with death.”<sup>22</sup> GOVERNMENT OF SOUTH SUDAN, SUDAN PEOPLE’S LIBERATION ARMY ACT (SPLA), ch. VI, § 37 (2009) [hereinafter SPLA ACT]. A GCM has power to try any SPLA personnel for any offense under the SPLA Act. A DCM requires a three- to five-member Panel, and a GCM requires a five- to seven- member Panel. The President of the Court Martial, who is the most senior officer in rank, presides over each court martial. The Court President is not a lawyer. Thus, there are no “military judges” *per se*. Court-martial procedure is similar to any civil criminal court procedure, where the prosecution, or Government, presents its case, followed by a defense presentation. After any rebuttal or sur-rebuttal, the court martial panel deliberates on the question of guilt.

<sup>23</sup> The military justice system would be available only for prosecution of SPLA actors. Neither civilians nor those in opposition who perpetrated atrocities would fall under the jurisdiction of the military justice system.

<sup>24</sup> Statistics provided by the SPLA’s Military and Justice Affairs Directorate’s Court Department indicate that, in Greater Equatoria State, in 2009-2010, there were 123 GCMs, all involving homicide and three resulting in executions by hanging; in 2011-2012, there were 50 GCMs in Juba town alone, of which 30 were homicide cases and 20 were adultery cases. Although less in number than those in Greater Equatoria State, the number of GCMs and homicide cases were substantial in Greater Upper Nile and Greater Bar-Ghazal States.

<sup>25</sup> ORP was a SPLA-led civilian disarmament campaign begun in March 2012 in response to inter-communal violence in Jonglei State, which killed hundreds of Murle and Lou Nuer civilians in December 2011 and early 2012. The disarmament campaign resulted in an inordinate number of reports of human rights abuses and atrocities committed by SPLA military personnel. The ORP AOR was divided into five sectors, each of which had a legal advisor in charge of directing investigations into allegations of misconduct and recommending to the Commander the disposition of cases, i.e. whether to bring offenders to court martial or to discipline them, if needed, through non-judicial or administrative means, or to refer them to civilian criminal court. ORP Military Courts were created in Bor, Pibor, and Fangak counties, the village of Waat (Akobo county) and the

attempted homicide cases tried by military court martial by the SPLA in Jonglei State.<sup>26</sup> One of these cases involved the rape of two women by two SPLA soldiers – a corporal and a private – on March 27, 2012, in Bor County, Jonglei State, which resulted in both soldiers being dismissed from active service in the SPLA and sentenced to 14 years in prison. In mid-2013, the SPLA made a decision to investigate an SPLA brigade commander, Brigadier General James Otong, for his criminal failure to properly command and control his soldiers during Jonglei State operations.<sup>27</sup>

Consideration of the military justice system as a viable forum to try lesser SPLA offenders for crimes related to the current conflict, however, does not come without serious concerns. The case involving the rape of two women by SPLA soldiers is a specific example, in which there were significant right to counsel and jurisdictional violations. While unverifiable, interviewees stated that the accused were tried in GCM without legal representation. The case should also have been tried in an ordinary criminal court because the victims were civilians, pursuant to the SPLA Act, which provides that “whenever a military personnel commits an offen[s]e against a civilian or civilian property, the civil court shall assume jurisdiction over such an offen[s]e.”<sup>28</sup> According to those interviewed, however, in practice, deficiencies in or the absence of ordinary criminal courts mean that the military justice system often does not adhere to these jurisdictional limitations and is often the only forum available.

Another concern is what has been described, *supra*, as a great potential for impunity and the lack of any Government will to hold perpetrators accountable.<sup>29</sup> While the majority of those interviewed were skeptical that there could ever be any genuine willingness on the part of Government, a few interviewees did state that the Government could get “on board” with the prosecution of mid-level (and low-level) SPLA actors. There was some indication that some SPLA judge advocates,<sup>30</sup> particularly junior SPLA military lawyers, as well as some mid-level judge advocates and higher-

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town of Boma (Pibor county), one in each of the ORP sectors. There were cases tried in each of the five military courts. Many of the sentences imposed included dismissal from active duty service and substantial terms of imprisonment.

<sup>26</sup> See SPLA ORP Military Justice Jonglei State Report, from senior SPLA Judge Advocate in ORP, 1<sup>st</sup> Lieutenant William Nyuon Kur Bol, to the Judge Advocate General of the SPLA, Brigadier General Henry Oyay Nyago Karial (reporting court martial convictions during ORP from March 2012 through May 2013).

<sup>27</sup> A SPLA investigative report, written by an SPLA judge advocate, clearly recommended that Brigadier General James Otong should be brought to court-martial on a command responsibility prosecutorial theory of the case.

<sup>28</sup> SPLA ACT, § 37(4).

<sup>29</sup> AI NOWHERE SAFE at 47, 53. See also PRENDERGAST PEACE MUST COME SOON at 9-10 (noting that senior military officers have tried to prevent courts martial).

<sup>30</sup> A judge advocate serves the GCM as the Panel’s Legal Advisor. The judge advocate has two primary functions. First, the judge advocate can make decisions and advise the President of the Court-Martial on questions of law, including the admissibility of evidence, legal procedure, and matters requiring expertise in substantive law. Second, the judge advocate can summarize the evidence and the arguments of counsel for the court martial members at the end of both parties’ submissions in a neutral and detached manner, as well as explain any law for the panel in order to help it decide the question of guilt.

level leaders, would be capable and willing to overcome the political and tribal overtones of the current environment. International support, in the form of professional instruction, training and mentoring on the military justice process, international criminal law and human rights enforcement is much needed to empower these judge advocates in an otherwise top-down organization.

There is and has been a viable courts-martial process that has punished SPLA personnel for misconduct, often resulting in convictions and very serious punishments, including long-term imprisonment and even death. Given the fact that the military justice system is smaller and, according to many, better developed than the ordinary criminal justice system, further progress in the former might serve as a model and motivator for incremental improvements in the latter.

<b>Part Two: DOCUMENTATION AND INVESTIGATION AS STEPS IN SEEKING ACCOUNTABILITY</b>
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Human rights documentation and criminal investigation share many of the same goals, including reinforcing the state's responsibility to protect human rights by pursuing accountability. They both refer to systematic and strategic information-collection processes that provide accountability mechanisms, both now and in the future, with data and evidence necessary to ensure accountability. While they are related and often complementary, there is also a distinction between the two. Focusing on general monitoring and advocacy goals, human rights documentation has limited impact where it is necessary to establish criminal accountability in compliance with rules of evidence and procedure. Criminal investigations and evidence-gathering, which focus on establishing command and control, linkage to crimes or other misconduct and individual responsibility, are necessary to develop more sophisticated accountability cases against high-level political and military actors.

## **FINDINGS**

### **A. HUMAN RIGHTS DOCUMENTATION**

Prior to early March 2014, it appears that only limited and sporadic human rights documentation was taking place, as international organizations and South Sudanese CSOs were trying to catch up with events on the ground in a difficult environment, with significant security issues and limits on movement and access. Since mid-March 2014, human rights documentation efforts have improved, but are still substantially limited in virtually every aspect, in terms of resources, training, access, scope and reporting.

International and domestic observers alike criticized the lack of regular reporting from UNMISS and the absence of any recommendations, fact-finding or legal analysis in UNMISS's interim report. Since that time, UNMISS has issued its fuller report "based on human rights monitoring and investigations methodology developed by the United Nations Office of the High Commissioner for Human Rights (OHCHR)."<sup>31</sup>

Despite the issuance of the fuller report, the predominant feeling of those in both the international and national human rights community is that senior UNMISS leadership does not believe the UNMISS mandate includes carrying out documentation or investigation for purposes of producing

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<sup>31</sup> 2014 UNMISS HUMAN RIGHTS REPORT at ¶ 6.

admissible evidence for a future accountability mechanism. There have been reports that UNMISS has refused technical assistance to bolster its capacity in this regard. The UNMISS Human Rights Division (HRD) has not had a Chief Investigator for approximately 18 months, and appears to have limited documentation and investigation (as opposed to capacity-building) staff and insufficient forensic resources. It has not investigated suspected mass graves in Juba, and other field work, distinct from interviewing victims and witnesses, has been limited. Others interviewed stated that the UNMISS HRD has not received full support from the leadership and that UNMISS HRD has much more information than they have reported to date. Interviewees expressed a general desire that UNMISS HRD should publicly report its information more fully, in greater detail and more regularly.

Human Rights Watch has conducted a number of field missions in South Sudan since December 2013, has produced some longer press statements and short reports, and is currently working on a longer, fuller report. Amnesty International (AI) conducted a three-week mission to South Sudan in March 2014. In addition to Juba, AI managed to get to Bor, Bentiu and Malakal, or at least the UNMISS IDP camps in those areas. AI interviewed more than a hundred persons of various types, including victims and witnesses, government officials, SPLA members UNMISS officials, representatives of opposition forces, and others.<sup>32</sup>

The documentation efforts of South Sudan human rights-related CSOs have generally been quite limited, with Community Empowerment for Progress Organization (CEPO) probably having done the most such work, but still in only a limited way.<sup>33</sup> The Sudd Institute has also done some work, more at a policy level, but with some apparent information gathering.<sup>34</sup> While they have some dedicated staff and potentially the most natural contacts in the South Sudanese communities, interviewees stated they lack resources, training, mobility and access. Where information has been collected, there is a general sense, with some exceptions, that it is not well-reported. A desire has been expressed for, and some steps taken toward, additional training. Citizens for Peace and Justice (CPJ), a coalition of 40 South Sudanese CSOs formed “to secure durable peace through social, political and economic transformation,”<sup>35</sup> plans to carry out documentation work in Juba, supported by INGO No Peace Without Justice.

The only Government organization that has produced any public report to date about the conflict is the South Sudan Human Rights Commission (SSHRC). While its interim report issued in March 2014 was somewhat surprising (and positively received, at least by those outside the Government) in broadly confirming Government abuses,<sup>36</sup> interviewees noted that President Kiir appointed its chairman and the SSHRC cannot be seen as truly independent. Moreover, the SSHRC does not appear to have any enforcement powers of its own (other than to report and make recommendations), and seems to be limited in its ability to get outside of Juba. It appears to have some dedicated investigators but lacks financial and other resources. Despite follow-up inquiries to the Commission, ABA ROLI has not seen any additional SSHRC reports or follow-up actions, and must question its ability to operate independently and take effective action.

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<sup>32</sup> AI NOWHERE SAFE at 8.

<sup>33</sup> COMMUNITY EMPOWERMENT FOR PROGRESS ORGANIZATION (CEPO), JUBA 17<sup>TH</sup> DECEMBER 2013 POLITICAL CRISIS.

<sup>34</sup> JOK MADUT JOK, POLICY BRIEF.

<sup>35</sup> See, e.g., Letter from CPJ to Members of AU Commission of Inquiry on South Sudan (March 31, 2014).

<sup>36</sup> See, e.g., AI NOWHERE SAFE at 47 (“[D]espite constraints . . . , the SSHRC ma[de] strong recommendations.”).

There is limited information that some of the Monitoring and Verification Mission (MVM) teams established in connection with East Africa's Inter-Governmental Authority on Development (IGAD) peace process in South Sudan have engaged in some documentation work, particularly concerning the Bentiu and Bor attacks in April 2014. Its work is not publicly reported, but rather is reported strictly to IGAD. While not specifically an accountability mechanism, there is very little regard for the IGAD peace process in South Sudan, flowing in large measure from (1) the fact that the process only involves the warring elites, with no meaningful participation by a broader set of stakeholders, and (2) there is a serious lack of trust in IGAD's members, such as Uganda, which has intervened on the side of the Government, Ethiopia and Sudan.

All documentation (and investigation) efforts to date have been substantially limited by security conditions on the ground and significant limitations on freedom of movement. Most of the documentation to date, by all of the organizations, has taken place in IDP camps, in Juba and in some of the larger towns. There has been much less documentation in smaller settlements and the countryside. There have been no known efforts to document violations from among the huge outflows of refugee populations or other expatriate communities in Ethiopia, Uganda, Kenya and Sudan.

There is also currently no coordinating mechanism for South Sudanese and international actors that are already engaged in documentation of human rights abuses to share information with existing and future accountability and transitional justice mechanisms. Many interviewees expressed a need for international support toward a more coordinated documentation effort.

## **B. CRIMINAL INVESTIGATION AND EVIDENCE-GATHERING**

According to those interviewed, if documentation efforts have improved, but are still limited, then criminal investigation and evidence-gathering are even further behind the curve. It is best to collect and preserve evidence when it is as "fresh" as possible, and before it is lost to natural processes, inadvertently misplaced or intentionally destroyed or concealed. Interviewees stated there are already indications of bodies from mass killings being moved from one location to another and possibly concealed. One human rights worker reported that "a lot of evidence has already been 'cleaned up.'" Witness memories fade, physical evidence degrades and opportunities for the concealment or destruction of evidence multiply.

To ABA ROLI's knowledge, while some evidence is being gathered on an opportunistic or haphazard basis, no actors are currently engaged in focused or systematic investigations or professional gathering and preserving of evidence for accountability purposes.

On December 30, 2013, the African Union created the Commission of Inquiry (AU COI) to look into the events in South Sudan. According to the AU website, the COI is "tasked with [an] accountability investigation of the human rights violations and other abuses committed during the armed conflict in South Sudan with the aim of guarantee[ing] healing for sustainable peace and security in South Sudan." While a few of those interviewed expressed hope that the AU COI might play a productive role in connection with accountability, those interviewed generally had little to no enthusiasm for the process. A large majority of those interviewed, including community and tribal leaders, expressed serious concerns – even fears – that the AU COI would ultimately do very little in terms of accountability. The first mandate or term of the AU COI has already expired, and as of June, it had only conducted two missions in South Sudan. Those interviewed stated there are also questions

whether it has sufficient staff, resources and funding. The AU COI is due to make a report in June to the AU Peace and Security Council, and interviewees have low expectations for the result.

Given the current challenges with the AU COI, it is vital to get professional investigation teams in place and on the ground as soon as possible. Existing security conditions in the field and limits on freedom of movement, which will likely require a military or other protection component, are two obstacles to these efforts.

According to high-level international observers, the deployment of rapid response investigation teams has been achieved in South Sudan during the Second Sudanese Civil War prior to the Comprehensive Peace Agreement (CPA) in 2005, in a program established and originally funded by the US State Department. Two field investigation teams, known as Civilian Protection Monitoring Teams (CPMTs), were made up of former military persons, civilian experts and investigators, along with civil society participants from the home nation. The approximate 7-person teams were each provided with a small aircraft and conducted field interviews and collected evidence, sometimes in almost real-time situations. The same interviewees noted that the success of these teams was due to the high level of commitment by the people involved, high mobility and low levels of bureaucracy. The teams not only served a monitoring and accountability purpose, but also acted as a form of deterrence, as the warring factions were more aware that their actions were being closely observed.

### **Part Three: TRUTH-SEEKING AND RECONCILIATION MEASURES**

Criminal accountability is one of multiple transitional justice mechanisms. Truth-seeking mechanisms – such as the truth commissions of Sierra Leone, East Timor and South Africa – may be effective in establishing a full account of a conflict and the factors that contributed to it, and provide an opportunity for direct participation by a large number of victims. Truth-seeking mechanisms may also advance goals of restorative justice by focusing directly on the concrete needs of victims. Other transitional justice mechanisms may include vetting, reparations for victims and reconciliation procedures for lesser offenders.

## **FINDINGS**

### **A. TRUTH-SEEKING MEASURES**

When the assessment team asked interviewees about “transitional justice” mechanisms that fall outside of a criminal accountability lens, the majority, with a few strong exceptions, conceived of those mechanisms as “peace” and “reconciliation.” A voice that did include truth-seeking was CPJ, whose members stated that truth must come before reconciliation. The Sudd Institute has also examined South Africa’s Truth and Reconciliation Commission (TRC) as a possible model, drawing parallels between the TRC and elements of the South Sudanese traditional justice system, such as blood compensation.<sup>37</sup>

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<sup>37</sup> NHIAL TIITMAMER AND ABRAHAM AWOLICH, POLICY BRIEF, A SEARCH FOR LASTING PEACE: ENDING SOUTH SUDAN’S DEVASTATING CONFLICT (February 24, 2014) at 16-17 (writing “[t]he South African situation is similar in context to the South Sudanese in a sense that both societies [were] divided after many years of violent conflicts that pitted communities against communities and political groups against one another. . . It is in this context that South Sudanese should try the South African transitional justice model in an effort to right the many wrongs committed against one another in this crisis and the past.”).

Nearly all interviewees agreed that community consultations needed to occur as a first step to gather perceptions from South Sudanese on what they believe justice and truth to mean. More research needs to be done to understand how transitional justice principles and strategies could be integrated into existing mechanisms. One way, for example, might be for the National Platform for Peace and Reconciliation (NPPR), discussed *infra*, to include in its mandate a truth-seeking and documentation project, which could contribute to creating an impartial national record.

## **B. RECONCILIATION MEASURES**

A majority of interviewees were skeptical about the effectiveness of reconciliation efforts during an ongoing conflict and believed that reconciliation was a long ways away. However, a few things could be done now to lay the foundation for an eventual peace process, and interviewees differed on where that investment should be, with a majority indicating that true reconciliation has to begin at the local level, and these processes must be then embedded in a national peace process such as the NPPR. Both the NPPR and possible models for a local peace process are discussed, *infra*.

In 2013, the Government began trying to address South Sudan's history of conflict through the establishment of a Committee for National Healing, Peace and Reconciliation (CNHPR),<sup>38</sup> headed by Archbishop Dr. Daniel Deng Bul. In the wake of the current crisis, Archbishop Deng brought three national bodies working on peace and reconciliation, the CNHPR, the South Sudan Peace and Reconciliation Commission (SSPRC)<sup>39</sup> and the Specialized Committee on Peace and Reconciliation of the National Legislative Assembly (SCPR/NLA),<sup>40</sup> together for a joint statement on January 9, 2014. On April 5, 2014, the NPPR, a new initiative made up of those three bodies, was launched.

The Government and leaders of the NPPR have declared the NPPR to be independent of the Government. However, among those interviewed, several stated that there was some initial hope for the NPPR, but it was undermined by a militant speech given by the Vice President during the opening celebration of the NPPR. Other events by the NPPR have also been blatantly politicized. Since its launch, significant distrust of a perceived Government-led process among a majority of civil society members and the opposition has grown. Others have also criticized the NPPR for not having a clear mandate or timeline. Despite this skepticism, interviewees suggested that they are

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<sup>38</sup> The terms of reference for the CNHPR are "a) to develop objectives of National Peace and Reconciliation; b) to determine short term and medium term activities; c) to research modern and traditional conflict resolution; d) to liaise with the Government to provide security, financial support and mobility; e) to solicit funding from local and international bodies and to seek their expertise; and f) to form consultative body comprising of South Sudanese elders as advisory body." REPUBLIC OF SOUTH SUDAN REPUBLICAN ORDER NO. 05/2013 (April 22, 2013), § 3.

<sup>39</sup> Formerly the Ministry of Peace and CPA Implementation, the SSPRC is an independent government-constituted body first created by Presidential decree in 2011. Legislation concerning its mandate and legal foundations was published in 2012. The Peace and Reconciliation Commission Act of 2012 mandates the SSPRC "to assist the government in developing peace policies, inspiring peace initiatives and coordinating all peace and conflict prevention activities in the country." See <http://www.cmi.fi/en/media-2/news/africa/225-youth-dialogue-in-south-sudan/717-south-sudan-ssprc>.

<sup>40</sup> The SCPR/NLA is a parliamentary committee within the Legislative Assembly that is mainly responsible for planning, policymaking and formation of legislation to facilitate peace and reconciliation matters.



withholding judgment to see if, perhaps with proper implementing legislation and a clearer mandate, the NPPR may be able to accomplish something useful. A civil society leader summed up how torn civil society is in engaging with the NPPR:

On the one hand, [the NPPR] is a flawed institution . . . . Yet, in this context, one wants to be careful to avoid throwing out the baby with the bathwater. When institutions are flawed, we tend to want to scrap them and start all over, but if we don't change the fundamental conditions that led to the institution being flawed then it is very difficult to avoid recreating the same problems. Sometimes it's better to invest in strengthening the institution and clarifying its objectives rather than starting something completely new.

Some INGOs and South Sudanese CSOs stated that the NPPR could gain credibility among skeptics with international support and engagement. In this regard, a South African organization, The Institute for Justice and Reconciliation (IJR), which was launched in 2000 as a successor organization to South Africa's TRC, was recently brought on formally to provide assistance to one of the three bodies of the NPPR, the CNHPR, in an ambitious undertaking that is scheduled to begin later this year. The CNHPR is tasked with implementing a three-year national consultation process that will cover all ten states. The consultation process will be driven by 550 trained "peace mobilizers" who will travel throughout South Sudan to gather testimonies on how citizens envision a process that can attain true reconciliation, while beginning to create a space for national reconciliation at the grassroots level. The consultation process will culminate in a series of county conferences, which will feed into state conferences, and finally into a National Reconciliation Conference to take place in 2016. IJR will facilitate the roll-out and training of peace mobilizers, and plans to share experiences from South Africa's own truth and reconciliation process. IJR representatives stated that, while initial conversations will steer away from truth-telling, these conversations could happen at a later stage, pointing out that South Africa's TRC included a truth-telling component years after its creation, at the height of the reconciliation process in 1996.

When asked about local processes for justice and peace, interviewees spoke about desires for justice through a traditional reconciliation lens. Some cited the well-documented 1999 Wunlit Nuer-Dinka Reconciliation Conference (Wunlit), as a workable model, which, while imperfect, might have lessons that could apply in the current context. Facilitated by the New Sudan Council of Churches (NSCC) and a few donors, Wunlit was considered by many to be a home-grown initiative that took many years to come together. Its starting place was the 1998 Lokichogio Dinka-Nuer Chiefs meetings (Loki meetings) in Kenya.<sup>41</sup> According to an international advisor of the Loki meetings and Wunlit, various reconciliation rituals were observed after the Loki meetings, and during and after Wunlit, that were critical to build trust in the reconciliation process and make Wunlit a success.<sup>42</sup> Some have criticized Wunlit, however, as a process that did not yield long-lasting results.

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<sup>41</sup> The Loki meetings brought together church leaders and Dinka and Nuer chiefs from the east and west banks of the Nile to address inter-communal violence between the Dinka, of Barh el Ghazal and Nuer, of Western Upper Nile. They consisted of a nine-day process using indigenous reconciliation methods, including extensive storytelling, with simple ground rules of engagement and resulted in an agreement to end hostilities.

<sup>42</sup> The first of the traditional practices was led by the Chiefs to hold a series of meetings over eight months to mobilize for a wider peace process among communities of leaders, women and youth. The second were exchange visits between Dinka and Nuer Chiefs held to inspire confidence in the process. These community

INGOs and South Sudanese CSOs have attempted to replicate what was done with Wunlit with far less favorable outcomes. These subsequent efforts have failed because expedient processes, externally driven by donors and with unrealistic timelines, replaced traditional reconciliation rituals. There have also been failed government reconciliation attempts in recent years, and many interviewees cite the 2012 Jonglei Peace Initiative, led by Archbishop Deng, as an example.

Before another reconciliation process is recommended, it is important to analyze why past processes have failed to have a lasting impact and address the root causes of the conflict, and avoided accountability. More analysis is needed of efforts that predated the NPPR in Machar's Initiatives of Change project and the work done by the International Center for Transitional Justice in South Sudan prior to the referendum, as well of previous local peace processes, to understand why some processes were successful in some cases and not in others.

#### **Part Four: RECOMMENDATIONS**

Any pursuit for accountability for atrocities requires a multi-dimensional approach that combines multiple mechanisms that can investigate and prosecute perpetrators, establish the truth about how violations occurred and advance reconciliation efforts in the country.

##### ***Recommendation 1: Expand and Reinforce Human Rights Documentation.***

While most documentation efforts are not a substitute for criminal investigations, they can and do serve a number of important functions, documenting and recording atrocities for a number of purposes, including accountability. Existing efforts should be expanded and reinforced, with additional resources and training provided. In particular, South Sudanese CSOs should be trained and provided resources to conduct documentation on a broader and deeper scale, including outside Juba and the state capitals.

To facilitate consistency and maximum utility, those involved in documentation should be sufficiently trained to recognize and observe practices that will promote the collection and preservation of information and other material for possible accountability purposes. Ideally, information would be collected, recorded and compiled following consistent practices and similar format. While coordination of the two efforts (documentation and criminal investigations) may be required, we see them, in principle, as complementary and not in competition.

An important part of this effort should include documentation projects among refugee and expatriate populations. It is very likely that key witnesses are currently living or receiving

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meetings and Chief exchange visits culminated in the construction of a temporary village to house 360 delegates and more than 1,200 participants at Wunlit. The Wunlit conference opened with the ceremonial sacrifice of a Great White Bull, provided as a gift by the local Chief. The ceremonial opening meeting included Christian worship and welcoming addresses. The conference closed with the signing of the Wunlit Dinka-Nuer covenant, with its included resolutions, by 303 delegates. After Wunlit, Chiefs and spiritual leaders traveled to different holy sites and gathered people in the area to explain in storytelling what had happened and to reenact traditional reconciliation rituals, such as the sacrificing of the bull. Intellectuals from the Dinka and Nuer diaspora who were involved from the beginning also became part of the process and traveled throughout the world to enroll the diaspora into the peace process. Wunlit was also able to retain its independence from political and military involvement.

sanctuary outside the borders of South Sudan. Consequently, the recording of witness-victim testimony and documentation of evidence in Ethiopia, Uganda, Kenya and Sudan are readily achievable. Because refugee populations in each country are generally drawn from neighboring areas – for example, in Ethiopia’s Gambella region, refugees predominantly originate from Upper Nile State, and, in Uganda, the majority of refugees are from Central Equatoria State – documentation across refugee communities in order to capture the geographical spread of identified human rights violations appears feasible and would be worthwhile.

Documentation projects in South Sudan may be more difficult, given the ongoing conflict, limitations on movement, and security concerns, including for persons operating inside IDP camps. INGOs and South Sudanese CSOs can continue to carry out very helpful documentation efforts in less risky areas, including among the refugee and expatriate populations outside of South Sudan, as well as in more secure parts of the country inside South Sudan, where security measures can be devised for work in IDP camps, by regulating access, the use of secure facilities and possible security elements.

***Actions may include:***

- A. Establish, staff and fund a documentation training and technical assistance program, especially for South Sudanese CSOs, to assist documentation in secure areas both inside and outside South Sudan. Partnerships might be explored with INGOs that are most experienced in documentation projects. As part of this training, nurture links between South Sudanese CSOs and criminal law and accountability experts who could be actively consulted on (a) various evidence or information to look for to establish individual responsibility for atrocity crimes; and (b) practices that are consistent with and facilitate the use of such evidence and information in later accountability processes.
- B. Establish, staff and fund a program to create an “evidence unit” (essentially a conflict database and searchable archive) that would compile, organize and consolidate evidence gathered by actors conducting documentation to facilitate the use of that evidence in any future legal action. Consider using CaseMatrix, a program modeled on International Criminal Court (ICC) crimes, as a framework for creating the archive. This evidence unit could be housed within an INGO or, if possible, within a South Sudanese CSO with sufficient credibility. The evidence unit would complement, rather than duplicate, the efforts of UNMISS and the AU COI.
- C. Advocate for it to be made explicit within UNMISS’s mandate that its human rights reporting should include preservation of testimony and physical evidence for later accountability processes. Such a change would not require UNMISS to conduct investigations designed to establish individual criminal responsibility. It would, however, make clear that evidence collected by UNMISS should be collected in a way that it can be made available to later accountability processes. Should UNMISS leadership be open to receiving assistance, provide increased support to the UNMISS HRD to increase its capacity to conduct human rights documentation and investigation, including forensic documentation.

## **Recommendation 2: Put Professional Criminal Investigation Teams in the Field.**

In view of anecdotal information that the Government and opposition forces are already destroying and concealing evidence, it is vital to get investigation teams in place on the ground as soon as possible. Even more so than human rights documentation, establishing the individual criminal responsibility of perpetrators requires a professional, coordinated approach to gathering, inventorying and preserving evidence to establish the individual culpability of those most responsible. Because of its focus on accountability for high- and mid-level perpetrators, investigations also often carry increased security risks.

Because the existing international investigation mechanism – the AU COI – lacks credibility, and is perceived largely as an attempt to prevent or deflect an ICC process, this report’s recommendation is therefore to pursue an alternative international, professional investigative body. Such an alternative mechanism would not necessarily replace the AU COI but could augment and assist that effort, both by pressuring the AU COI to demonstrate a real commitment to accountability and, should the AU COI fail to do so, filling the accountability gap.

Developing alternative international investigation capacity could be accomplished in a number of ways. If necessary, and, as in other situations, the US could take the lead in organizing and funding such an effort, while still including significant international components. One example of such an effort is the CPMTs that operated in South Sudan prior to the 2005 CPA, discussed *supra*. While organized and funded by the US, the program was accepted as part of the overall international effort, produced helpful reports that were widely distributed and was generally considered highly effective.

If a more widely-based international effort is desired or necessary, with possibly more forceful investigation capabilities, such a program could be put in place by the UN Security Council, using its Chapter VII powers to give the program the maximum investigative powers supported by international law, with all UN Member States required to cooperate with and assist the investigative apparatus.

This international investigative capacity could and should be put in place, even if discussions about the most appropriate accountability mechanism continue for some time. At least one specific precedent for such an approach can be found concerning Lebanon, where Security Council Resolution 1595 established the International Independent Investigation Commission in April 2005, with the Special Tribunal for Lebanon not beginning to operate until March 2009. A similar commission or body can be established for South Sudan, augmented with full investigative powers.

An international investigation capacity would not need to be massive, and could focus its resources on the most major atrocity crimes and major suspected perpetrators. Many of the support functions (such as laboratory analysis) could be provided in-kind by national governments.

There is no requirement or pre-condition that such an investigative effort can only be undertaken once there is a durable ceasefire in place. A significant number of major investigations have been undertaken and accomplished (such as in Bosnia), and are going on now in continuing conflict situations (such as the Central African Republic). In this situation, investigation teams would likely require a significant protection element. Even if SPLA and opposition forces agree to respect and not to interfere with investigation teams, and even if they agree to provide some protection element for such teams, adequate security could not be sufficiently guaranteed without a dedicated and independent support framework of specialists able to secure investigators, witnesses, crime scenes

and evidence storage locations. The provision of security elements could potentially be arranged with a combination of peacekeeping forces, UN elements and possibly private security company licensed to carry weapons and with approved weapon storage facilities. Such a force would need to be closely supervised and trained by international military specialists with an agreed remit.

This international investigative capacity should have full recourse to the most advanced technological tools to accomplish its mission. It is already known that satellite imagery has been, and is being used in connection with monitoring situations in South Sudan. This capacity might be augmented with the use of unarmed surveillance drones, including those that can be hand-launched by investigation teams in the field. This would give such teams real-time monitoring of conflict situations while maintaining a reasonably safe distance from fighting or violence in the area.

We recommend that such an investigation body be established outside UNMISS, with its own specific mandate, resources and security arrangements.

***Actions may include:***

- A. Organize an international, professional investigative capacity and get it on the ground in South Sudan at the earliest possible moment, both as an accountability and deterrence measure.
- B. Options to create this investigative capacity and get it on the ground include:
  - (1) Organize this capacity or body either unilaterally (by the United States) or as a “coalition of the willing.”
  - (2) As necessary or helpful (or to make it as effective as possible), consider the formation of an International Commission of Inquiry, using all of the tools available under international law and practice. Use Chapter VII to create such a capacity and/or to give any such body the maximum investigative and law enforcement powers possible supported by international law, including subpoena power, search warrant authority and the ability to make official requests for assistance binding on UN Member States.
- C. Organize and deploy at least three 15-person core teams, with rapid response capabilities and the required protection element. Provide the effort with unarmed surveillance drones, including those that can be launched by on-the-ground teams. Provide a secure base of operations and secure facilities for the storage of evidence.
- D. Organize and operate this investigative capacity with maximum independence and, if organized within the UN system, separate from UNMISS.

***Recommendation 3: Combine Support for a Hybrid Tribunal with Efforts to Reconstruct the National Justice System.***

There has been widespread support within the international community for the creation of a hybrid tribunal in South Sudan. On May 12, 2014, UN Secretary General Ban Ki-moon called for an international hybrid tribunal to be established for South Sudan.<sup>43</sup> While the exact form may vary,

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<sup>43</sup> See “UN Chief Urges Special Tribunal for South Sudan,” ABC NEWS (May 13, 2014). See generally “Justice and Accountability Are the Missing Ingredient in South Sudan,” SUDAN TRIBUNE (February 24, 2014).

the call for a hybrid or mixed tribunal in South Sudan or in the region, involving both South Sudanese judges, prosecutors and staff and international judges, prosecutors and staff, has been endorsed by the International Crisis Group (ICG),<sup>44</sup> The Enough Project,<sup>45</sup> the South Sudan Law Society (SSLS),<sup>46</sup> the AU COI,<sup>47</sup> and by more than fifty members of the US Congress, including the co-chairs on the Congressional Caucus on Sudan and South Sudan.

Support for a hybrid tribunal is not surprising in view of the perceived weaknesses of the national justice system and the lack of appetite for an ICC intervention.<sup>48</sup> A hybrid tribunal represents in the short- and perhaps even medium-term the most realistic forum in which to hold high-level perpetrators accountable. High-profile public support for a hybrid tribunal also demonstrates to both the Government and the opposition that the international community is committed to breaking the cycle of impunity that has previously characterized South Sudanese politics, and demonstrates that the international community will push to integrate accountability mechanisms into the framework of a peace agreement. Among those interviewed, the most frequently mentioned accountability mechanism for atrocity crimes was a hybrid tribunal along the lines of the Special Court for Sierra Leone.

Although the idea of a hybrid tribunal has garnered significant support, the international community has not utilized the levers necessary to pressure the Government to agree to participate in, or at least comply with, any future accountability mechanism. The international community should therefore consider using the Security Council's Chapter VII powers to require the Government to cooperate with a hybrid tribunal. If the Government continues to refuse to agree to the creation of a hybrid tribunal, an ICC referral or the creation of an international tribunal under Chapter VII should at least be considered as an alternative accountability mechanism.<sup>49</sup>

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<sup>44</sup> ICG A CIVIL WAR BY ANY OTHER NAME at iv, item 13 (stating "A hybrid South Sudanese and international tribunal, such as has been used in Sierra Leone, should be considered as a means of building domestic judicial capacity to address long-term impunity, while providing justice in the short term.").

<sup>45</sup> PRENDERGAST PEACE MUST COME SOON at 10 ("Accountability should be a central part of the peace and reconciliation processes . . . . A most promising acceleration of judicial capacity could come in the form of a mixed chamber or hybrid court, where South Sudanese capacities would be supplemented by international personnel and support.").

<sup>46</sup> See generally DENG, SPECIAL COURT FOR SERIOUS CRIMES (providing a detailed proposal for a hybrid tribunal).

<sup>47</sup> Press Statement, "The Commission of Inquiry on South Sudan Undertakes Consultations in Nairobi," African Union, May 15, 2014.

<sup>48</sup> South Sudan is not a party to the Rome Statute and any jurisdiction of the ICC concerning South Sudan could only be accomplished by a Security Council referral, with the ICC currently facing substantial opposition in much of Africa.

<sup>49</sup> To the extent needed and helpful, the Security Council's Chapter VII powers are available to provide fully legal, binding authority and ample leverage for putting a tribunal and other accountability components in place, with or without the consent of the Government. The UN's Chapter VII powers predate and exist separately from the ICC, and just as the Security Council can refer non-ICC non-agreeing Member States to the ICC, it can also put Chapter VII mechanisms into place without Government agreement. Using these robust powers, South Sudan authorities should be encouraged to agree to, and cooperate with, determined international efforts to hold perpetrators of atrocity crimes to account.

In order to lay the groundwork for the creation of a hybrid tribunal, the international community should take steps now to strengthen the capacity of the South Sudanese national justice and military court systems. Although many international donors are currently eschewing direct or even in-kind assistance to the Government, further consideration could be given to supporting progressive South Sudanese lawyers and judges through trainings on international criminal law and evidence. This should include judge advocates within the SPLA military justice system. Further, if international donors decide to scale back up assistance to South Sudan, large-scale criminal justice reform will not necessarily be dependent on support for accountability from the Government. Criminal justice reform programs can be presented as part of a strategy to combat all forms of criminality, even if an incidental benefit is to strengthen courts' capacity to try atrocity crimes. In preparation for larger-scale assistance to South Sudan, international donors should assess the progress achieved in criminal justice reform prior to the current crisis, and should begin to consider how to adjust their interventions once political circumstances allow.

***Actions may include:***

- A. Consider a UN Security Council resolution under Chapter VII requiring the Government to agree to, and participate in, the creation of a hybrid tribunal.
- B. Support South Sudanese CSOs' efforts to advocate for accountability to be integrated into the framework of any peace agreement. This could include support for large-scale population-based studies to determine the attitudes of South Sudanese towards peace and justice. It should also include efforts to strengthen the role of women and other marginalized groups in peace negotiations.
- C. Lay the groundwork for the creation of a future hybrid tribunal if, in the short or medium term, it becomes politically feasible, that is, there is sufficient Government cooperation and transitional arrangements as part of any peace agreement are put in place. This could include: support for a South Sudanese CSO-led effort to draft a sample statute for a hybrid tribunal; study tours for South Sudanese lawyers, judges and CSOs to other jurisdictions which have hosted hybrid tribunals (e.g., Sierra Leone, Bosnia and Cambodia); and/or trainings on post-conflict justice for South Sudanese CSOs.
- D. Consider the creation of a hybrid tribunal pursuant to Chapter VII as the most effective and expeditious way to put a genuine accountability mechanism in place as soon as possible.
- E. Strengthen the capacity of the national justice and military justice systems. This could include efforts to train progressive South Sudanese lawyers and judges, including within the military justice system, on investigating violations of international criminal law. In preparation for larger-scale assistance to South Sudan, international donors should conduct an assessment of the capacity of the national justice system to administer a hybrid tribunal,

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The Security Council has already made repeated Chapter VII findings that the situation in South Sudan constitutes "a serious threat to international peace and security." Such findings have been made since at least July 8, 2011, and were confirmed on May 27, when the Security Council found once again that South Sudan is a threat to international peace and security, continued the UNMISS mandate to November 30, 2014, and prioritized, *inter alia*, the protection of civilians and human rights monitoring and reporting. That a conflict is ongoing is not a bar to creation of an international tribunal.

as well as of existing criminal justice reform efforts in order to identify potential areas of intervention.

***Recommendation 4: Provide International Subject-Matter Expertise and Financial Support to Strengthen the National Reconciliation Body and Local Peace Processes.***

In 2013, the Government began trying to address South Sudan's history of conflict through the establishment of the CNHPR. In April 2014, the NPPR, consisting of the CNHPR, SSPRC and SCPN/NLA, was launched. The CNHPR is responsible for an ambitious three-year undertaking, in which it will work closely with IJR to carry out large-scale community consultations to begin the reconciliation process. The consultation process will culminate in a series of county conferences, which will feed into state conferences, and finally into a National Reconciliation Conference to take place in 2016. At the same time, foundational work should be done now to support local peace processes.

***Actions may include:***

- A. Empower and help to mobilize moderate Nuer and Dinka leadership, including Chiefs and spiritual leaders, to carry out their own community consultations within their communities. International organizations, such as the Centre for Humanitarian Dialogue, should provide support to this work. Later, bring together Chiefs and spiritual leaders outside of South Sudan for a communal dialogue.
- B. Lay the groundwork for a future reconciliation process. As a first step, engage with the NPPR to draft implementing legislation to help clarify its mandate and strengthen independence. The NPPR could make a valuable contribution to an integrated approach to justice, accountability and reconciliation, but, to do so, it would need the support of the international community. Any reconciliation process must make provisions for justice and accountability. The NPPR could expand its mandate to include a truth-telling component that would provide a public platform for victims to tell their stories and perpetrators to confess to their wrongs.