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**ASSEMBLY OF THE UNION**  
**Twenty-Third Ordinary Session**  
**26-27 June 2014**  
**Malabo, Equatorial Guinea**

**Assembly/AU/19(XXIII)**

**INTERIM REPORT OF THE AFRICAN UNION COMMISSION OF  
INQUIRY ON SOUTH SUDAN (CISS)**

## INTERIM REPORT OF THE AFRICAN COMMISSION OF INQUIRY ON SOUTH SUDAN (CISS)

### EXECUTIVE SUMMARY

1. As part of its response to the crisis in South Sudan, the Peace and Security Council of the African Union (AUPSC), at its 411<sup>th</sup> meeting held at the level of Heads of State and Government, in Banjul, The Gambia, on 30 December 2013, mandated the establishment of the commission of inquiry on South Sudan (AUCISS).

2. In the said communiqué, the PSC requested the Chairperson of the African Union Commission (AUC), in consultation with the Chairperson of the African Commission on Human and Peoples' Rights (ACHPR) and other relevant AU structures, to urgently establish a Commission to investigate the human rights violations and other abuses committed during the armed conflict in South Sudan and make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities.

3. The AUPSC requested the AUCISS to submit its report to Council within three months, reckoned from March 12, 2004 when the Commission was formally constituted with the swearing of the Chairperson and members of the Commission. The Commission is chaired by H.E Olusegun Obasanjo, Former President of the Federal Republic of Nigeria. The Members of the Commission are: Professor Mahmood Mamdani (Professor and Executive Director, Makerere Institute of Social Research, Makerere University, Kampala, Uganda); Lady Justice Sophia A.B Akuffo (President of the African Court on Human and Peoples' Rights); Ms. Bineta Diop (AUC Chair's Special Envoy on Women, Peace and Development) and; Professor Pacifique Manirakiza (Member, African Commission on Human and Peoples' Rights).

4. The Commission has prepared an Interim Report detailing the work done so far. The purpose of the Interim Report is to highlight the missions, activities and engagements undertaken by the Commission towards fulfilling its fourfold mandate, which relates to healing, reconciliation, accountability and institutional reforms. The Interim Report also provides some findings and observations on issues and interactions that the Commission has been able to engage with during its visits to South Sudan and neighbouring countries. It leaves out the historical, political and economic background on South Sudan. The more detailed Final Report will include this aspect and provide more detailed discussions and analysis of relevant issues. It will also contain detailed findings and recommendations relating to the four mandate areas as well as an indication of how and where various actors and stakeholders can engage with a view to finding lasting solutions to the crisis in South Sudan.

### ***Work Undertaken and Achievements***

5. As of the date of June 15, the Commission has conducted several missions to South Sudan and neighbouring countries as follows: April 16 (Khartoum) April 23-30

(Juba); May 10-15 (Kenya); May 15-18 (Uganda); May 26-June 4 (South Sudan: Juba, Bor, Bentiu and, Malakal); June 5-7 (Kenya; Kakuma Refugee Camp) and Khartoum.

**6.** During these missions, the Commission met and held discussions with or conducted interviews with regional and international leaders, government and opposition officials, South Sudan citizens, victims, refugees, IDPs, members of civil society organizations and intellectuals. The Commission also visited various sites including IDP camps; refugee camps in Kenya; alleged scenes of crimes in South Sudan; government offices among others. The Commission has also received leaders and other stakeholders in Addis Ababa. The Commission's engagement with these stakeholders has so far been organized as Key Informant Interviews (KII); consultations and; Focus Group Discussions (FGDs).

**7.** With respect to all meetings held and consultations conducted, the objectives have been to: introduce the Commission and its mandate; familiarization of the Commission with the situation on the ground in South Sudan; obtaining some perspectives on the immediate and remote causes of the crisis and; soliciting views on specific aspects of the mandate of the Commission, including ceasefire arrangements, humanitarian situation, possibilities for interim government, reconciliation, healing, accountability and institutional reforms.

**8.** In totality, the majority of respondents – including members of the opposition, international partners, South Sudanese, members of civil society, women groups and South Sudanese intellectuals – have so far expressed a united voice on a range of issues: the need to end the violence and for the warring parties to respect cease fire engagements; the need to address humanitarian needs of those affected; the establishment of an inclusive transitional government of national unity; the necessity for a broad based and inclusive national dialogue to address issues of reconciliation, healing and charting a new socio-economic and political path for South Sudan; the need to establish a national constitutional review conference to finalise the constitution and organize credible elections after the transition.

**9.** With particular reference to views of civil society in its totality, among the issues they suggested require attention include: weak governance, weak leadership and institutions, militarization and ethnicization of public life. In addition, it has been emphasized that the exclusionary practices of the past in terms of which political and military elites have held the key to determining the future of South Sudan must end. The Commission holds the view that national healing and reconciliation processes must of necessity be inclusive, and that women and others that inhabit the periphery of public life must be brought into the fold to chart a collective future for South Sudan. The Commission, in its on-going engagements is particularly sensitive to the need to be inclusive. For these reasons, it plans to conduct consultations all over the country, particularly in areas beyond the immediate theatres of violence where attention has so far been focussed.

## **Preliminary Findings and Observations**

### ***On Ceasefire Agreement:***

**10.** The Commission notes that two ceasefire agreements have been signed between the Government of South Sudan and SPLM-in Opposition on 23 January and 9 May 2014 under the auspices of the Inter-Governmental Authority on Development (IGAD) mediation. The Commission notes that while the first ceasefire agreement was largely ignored, the second has held tenuously, with some breaches routinely recorded by the IGAD Monitoring and Verification Mission.

**11.** The Commission welcomes the United Nations Security Council Resolution 2155 (2014) adopted at its 7182<sup>nd</sup> meeting, on 27 May 2014 in which commitments are made to assist the IGAD ceasefire monitoring operations in South Sudan. The Commission also welcomes the March 2014 decision of the IGAD Head of States to deploy a regional force and urges that the process of force generation should be fast tracked, while taking into account requisite sensitivities in putting together such a multinational force.

**12.** In view of current efforts by the AU, UN and IGAD, the Commission urges allied forces to begin withdrawal from South Sudan to allow deployment of the IGAD force. The Commission also urges an end to any form of military support to the belligerents that fuel and encourage hardening of positions and continuation of hostilities. This will encourage a speedy resolution of the crisis in order to commence the process of stabilising South Sudan.

### ***On IGAD Mediation Process and the Situation in South Sudan:***

**13.** The Commission found that while the intense and widespread levels of violence witnessed in the early months of the crisis is no longer manifest, incidents of violence, deaths and destruction of property continue in various parts of the four states that formed the main theatres of violence. Women and children remain particularly vulnerable to attacks, abuse and harassment.

**14.** There is palpable tension and what can be described as an 'uneasy peace' in many parts of the four states that the Commission was able to visit. The Commission observes that this tension could be attributed to: survivors experience with violence; the ever-present threat of violence due to the posture of the warring parties and ineffective measures to guarantee safety of all, including vulnerable groups; ethnic animosity arising out of historical grievances and the manner in which violence has manifested due to instrumentalization of ethnicity and; the delay in reaching comprehensive political settlement in the on-going mediation process.

**15.** While there are efforts by government and others to restore services, normalcy is yet to fully return in the parts visited so far by the Commission. The Commission observed widespread destruction of public utilities, infrastructure and private buildings particularly in Malakal, Bentiu and Bor, some of which can rightly be regarded as 'ghost towns'.

16. The Commission commends IGAD for its ongoing mediation efforts particularly for securing a ceasefire arrangement between the warring parties. In addition, the Commission observes that there is a need to maintain momentum towards securing a political settlement and urges all those involved in the mediation process to expedite the process of finding a political solution to the crisis in South Sudan. This will contribute greatly in dissipating tensions observed on the ground among various communities and begin the process of national healing and reconciliation.

***On the Humanitarian Situation:***

17. The Commission urges the international community to increase funding and speed up efforts to provide the much needed humanitarian assistance to the affected communities in South Sudan and neighbouring countries.

18. The Commission urges the belligerent parties to continue abiding by commitments to allow unhindered humanitarian access to humanitarian agencies in areas under their control.

***On Healing and Reconciliation:***

19. Having heard from various respondents that that the war of liberation, the multiple conflicts that accompanied that effort as well as the subsequent conflicts have wrecked relations among South Sudanese communities, there is an urgent need for the institution of genuine national efforts at reconciliation to facilitate healing. The Commission will, once it has engaged further with grassroots communities, and drawing on successful past experiences, make comprehensive recommendations on reconciliation and healing. In the meantime, the Commission encourages the continuation of various initiatives that are ongoing within and among communities aimed at fostering harmonious coexistence.

***On Accountability:***

20. With respect to criminal accountability, while the Commission is still in the process of collecting information and investigating various allegations of human rights violations and violations of humanitarian law, and is not yet in a position to pronounce itself definitively on whether some of these amount to international crimes, the devastation of the armed conflict is manifest in some of the areas visited by the Commission. So far, the Commission has encountered some mass graves as well as many individuals who allege having suffered or witnessed commission of crimes, including sexual and gender based violence.

21. The Commission urges all parties to the conflict to cease violations of human rights and humanitarian law and draws their attention to the fact that responsibility will attach to such actions. In addition, the Commission urges individuals in positions of command to take all measures to ensure that those under their command do not engage in violations of human rights and humanitarian law.

***On Institutional Reforms:***

**22.** From the initial information received or accessed by the Commission, it is noted that weakness of national institutions such as the executive, legislature, judiciary and the security sector that have remained unaddressed after the referendum partly created the environment for the crisis that is unfolding in South Sudan. These weaknesses crystallized against the background of the particular history of the SPLA and the specific weaknesses of the CPA as a transitional process, and gave rise to a variety of inter-connected problems. These problems range from overconcentration of power within certain institutions, weak or lack of checks and balances, militarisation of civilian institutions, lack of appropriate democratic civilian oversight of the security sector, leaders' conflation of personal, ethnic and national interests, and inappropriate handling of political disputes.

***Challenges Facing the Commission***

**23.** The Commission has faced several problems, some of which are linked to the nature of the institution itself and where it is headquartered. The Commission was created in the midst of a crisis, which has meant that it had limited time to set up internal structures to enable it begin its work. Equally, the fact that the members of the Commission were not appointed on fulltime basis has posed some scheduling problems as members have had to find time within their regular engagements. While the nature of the work requires assemblage of varied expertise, this is not readily available within the AU. A fair amount of time was expended, in conditions demanding urgency, in procuring required expertise. The Commission has also been hamstrung by lack of adequate resources, which has among other things, resulted in inadequate logistical arrangements in the field. At an operational level, particularly in its engagements in South Sudan, the Commission has experienced some difficulties in securing meetings with key government officials that it believes can provide critical information that could shed light on various issues. The Commission hopes that these handicaps will hopefully be addressed to fast track its work towards completion.

***Justification for Extension of Time***

**24.** The Commission's Interim Report contains a justification for extension of time. The reasons given are several. First, a fair amount of time of the three months given to the Commission as expended on establishment and recruitment of secretariat staff. Second, for a variety of reasons, the Commission was unable to meet with key government officials as well as other key leaders that it believes can shed light on various important issues. Third, it is necessary that for inclusivity, for completeness of the record and a comprehensive approach geared towards making meaningful recommendations, the Commission engages a wider spectrum of South Sudanese society in all the 10 states. This requires more time. Lastly, on accountability, in respect of which the Commission has reserved conclusive and definitive pronouncement for a range of reasons, more time is required to conduct investigations.

***Concluding Remarks***

**25.** This Interim Report does not pronounce itself definitively on many key issues considered. As an Interim Report, it is by no means complete or conclusive. The report has highlighted some of the findings and observations on issues that the Commission has been able to engage with during our visits to South Sudan and neighbouring countries and our interactions with various respondents. There is no doubt that the situation in South Sudan calls for urgent action from various actors — South Sudanese, regional organizations and the broader international community — to address the concerns raised relating to the Commission's four mandate areas in ways that will lead to sustained peace in a united and stable South Sudan. The extension of time requested by the Commission will enable us to gather more information and to engage with more actors, including ordinary South Sudanese, with a view to making recommendations that will help move South Sudan forward.

**AU COMMISSION OF INQUIRY ON SOUTH SUDAN**  
**INTERIM REPORT**



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## AU COMMISSION OF INQUIRY ON SOUTH SUDAN INTERIM REPORT

### I. INTRODUCTION

1. As part of its response to the crisis in South Sudan, the Peace and Security Council of the African Union (AU), at its 411<sup>th</sup> meeting held at the level of Heads of State and Government, in Banjul, The Gambia, on 30 December 2013, mandated the establishment of the Commission of Inquiry on South Sudan (AUCISS).<sup>1</sup> In the said communiqué, the PSC requested:

“[...] the Chairperson of the Commission, in consultation with the Chairperson of the African Commission on Human and Peoples’ Rights (ACHPR) and other relevant AU structures, to urgently establish a Commission to investigate the human rights violations and other abuses committed during the armed conflict in South Sudan and make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities. Council requests that the above-mentioned Commission submit its report to Council within a maximum period of three months.”<sup>2</sup>

2. In specific terms, the AUPSC Communiqué mandates the AUCISS:<sup>3</sup>

- a) To investigate the human rights violations and other abuses committed during the armed conflict in South Sudan;
- b) To investigate the causes underlying the violations;
- c) To make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities with a view to deterring and preventing the occurrence of the violations in future; and
- d) To make recommendations on how to move the country forward in terms of unity, cooperation and sustainable development;
- e) To submit a report within a maximum period of three (3) months.

3. Pursuant to the AUPSC Communiqué, the Terms of Reference (ToR) detailed in the Concept Note Relating to the Establishment of the AUCISS are to:

- a) Establish the immediate and remote causes of the conflict;
- b) Investigate human rights violations and other abuses during the conflict by all parties from 15 December 2013;
- c) Establish facts and circumstances that may have led to and that amount to such violations and of any crimes that may have been perpetrated;
- d) Compile information based on these investigations and in so doing assist in identifying perpetrators of such violations and abuses with a view to ensuring accountability for those responsible;

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<sup>1</sup> See AUPSC, Communiqué PSC/AHG/COMM.1 (CDXI) dated December 31 2013.

<sup>2</sup> As above, para 8.

<sup>3</sup> See Concept Note Relating to the Creation of the AUCISS

- e) Compile information on institutions and process or lack thereof that may have aided or aggravated the conflict resulting in violations of human rights and other abuses;
- f) To examine ways on how to move the country forward in terms of unity, cooperation and sustainable development;
- g) Present a comprehensive written report on the overall situation South Sudan to the African Union Peace and Security Council within a period of three (3) months from the commencement of its activities.
- h) Make recommendations based on the investigation on the following:
  - appropriate mechanisms to prevent a recurrence of the conflict
  - mechanisms to promote national healing and cohesiveness, particularly focusing on the need for all South Sudanese communities to live together in peace;
  - modalities for nation building, specifically focused on building of a functional political order, democratic institutions and post-conflict reconstruction;
  - accountability mechanisms for gross violations of human rights and other egregious abuses to ensure that those responsible for such violations are held to account.

**4.** Considering the above, the Commission has interpreted its mandate to consist of four focal areas: healing, reconciliation, accountability and institutional reforms. The Commission approaches its mandate in a holistic manner. As the conceptual framework below demonstrates, the approach adopted by the Commission emphasizes the interrelatedness of the mandate areas.

**5.** Following consultations, the Chairperson of the AU Commission formally announced the creation of the AUCISS on 7 March 2014 at the Headquarters of the African Union. The Commission is constituted as follows:

The Chairperson:

- i) H.E. Olusegun Obasanjo, Former President of the Republic of Nigeria

Other members of the Commission:

- ii) Lady Justice Sophia A.B Akuffo, President of the African Court on Human and Peoples' Rights.
  - iii) Professor Mahmood Mamdani, Professor and Executive Director, Makerere Institute of Social Research, Makerere University, Kampala, Uganda.
  - iv) Ms. Bineta Diop, AU Chairperson's Special Envoy for Women, Peace and Security.
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- v) Professor Pacifique Manirakiza, Member of the African Commission on Human and Peoples' Rights

6. The Commission has constituted its secretariat, which is headed by Mr Olabisi Dare, Head of Humanitarian Affairs, Department of Political Affairs of the AUC. The Head of the Secretariat works under the auspices of the Office of the Legal Counsel. Other AU departments that have seconded staff to the commission are Department of Peace and Security, Department of Political Affairs, the Directorate of Women, Gender and Development and the Directorate of Information and Communications.

### ***Purpose of Interim Report***

7. The purpose of this Interim Report is to apprise the Chair of the African Union Commission (AUC), the Peace and Security Council (AUPSC) and Heads of State and Government (HOSG) on the progress made so far by the Commission in accomplishing its historic mandate, as well as its future plans towards completion. In particular, this report covers the following aspects: background to the creation of the Commission; constitution of the Commission and its Secretariat; work done so far (administrative meetings of the commissioners; conceptualisation of the mandate of the AUCISS; setting out methodology; development of systems, strategies and policies on various aspects of the AUCISS's work; data collection (brief description of missions undertaken; key informant interviews and consultations with leaders, key personalities and experts; Focus Group Discussions; and desktop research); request for extension of time and; financial report and work plan.

8. This Interim Report constitutes a summary of the work of the Commission. As an Interim Report, it is by no means complete or conclusive. The report highlights the missions, activities, engagements undertaken by the Commission so far as well as provides some findings and observations on issues and interactions that the Commission has been able to engage with during its visits to South Sudan and neighbouring countries. It leaves out the historical, political and economic background on South Sudan. The more detailed Final Report will include this aspect and provide more detailed discussions and analysis of relevant issues. It will also contain detailed findings and recommendations relating to the four mandate areas as well as an indication of how and where various actors and stakeholders can engage on the South Sudan.

## **II. WORK DONE AND ACHIEVEMENTS**

9. The following sections describe the work that has so far been undertaken by the Commission since its constitution on March 12, 2014.

### ***i). Administrative Meetings***

10. The Commission has held three administrative meetings so far at its seat in Addis Ababa, Ethiopia. The meetings were held on March 12, 2014; April 2-3, 2014 and June 10-11, 2014 respectively. The inaugural meeting was held soon after the Commission

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was created. Once the members of the Commission were sworn in (with the exception of Lady Justice Sophia Akuffo who was sworn in on April 2 at the Commission's second meeting), the Commission immediately embarked on its work with the preparation of a detailed work plan, which was revised at the Commission's second administrative meeting held on April 2-3, 2014. Once the work plan was finalized, the Commission commenced substantive work of engaging with various stakeholders. It held a half-day consultation with a group of experts on South Sudan. The last administrative meeting held on June 10-12 was to deliberate on, and finalize the Interim Report.

## ***ii) Conceptualisation of AUCISS's Mandate and Methodology***

11. Having developed a work plan, the second critical task accomplished by the Commission from a strategic perspective was the development of a Conceptual Framework and Methodology. The Conceptual Framework, which is summarised in this report, sets out the Commission's appreciation of its mandate including the focal areas of the commission's inquiry as well as key concepts and terms that frame the commission's work. These aspects include the Commission's understanding of its mandate as it relates to: healing & reconciliation, accountability and institutional reforms. The methodology sets out the Commission's working methods.

### **Conceptual Framework**

12. The following sections set out essential elements of the Conceptual Framework developed by the Commission. The framework details the Commission's appreciation of its mandate, setting out the areas of focus.

### **Temporal Jurisdiction**

13. The Commission appears to have an open-ended mandate that runs from December 15, 2013, the day that armed hostilities broke out in Juba. In this regard, the Concept Note on the Establishment of the Commission provides that the Commission shall 'investigate human rights violations and other abuses during the conflict by all parties from 15 December 2013'. The other aspects of the Commission's mandate — reconciliation, healing and institutional reforms — are understandably not time bound. The end of the Commission's mandate was originally set to end on June 12, 2014, 3 months from the date of its establishment on March 12, 2014.<sup>4</sup>

14. At the end of this report, the Commission makes a case for extension of time to enable it complete its work.

### **Substantive Focal Area 1 and 2: Healing and Reconciliation**

15. Reconciliation and healing are critical aspects of the work of the AUCISS. In relation to this focal area, the Commission was mandated, in terms of the PSC

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<sup>4</sup> See Concept Note, 'Mandate of the Commission', 3(e).

Communiqué, to 'recommend the best ways and means ... to ensure reconciliation and healing among all South Sudanese communities.'<sup>5</sup>

**16.** It is the Commission's view that healing and reconciliation cannot take place before the bleeding in south Sudan has ended. This means more than ceasefire. It is the Commission's firm view that the healing and reconciliation will not begin to take root until the conflict ends. This would entail, among others, finding political accommodation among the warring parties resulting in the institution of an appropriate transitional government.

**17.** In terms of how the Commission understands healing and reconciliation, the Commission has adopted the understanding that reconciliation is a complex term that includes several relationships, levels and actors. In terms of its meaning, 'reconciliation' is essentially about mending relationships, bringing together or squaring off after traumatic events such as armed conflict or such other traumatic events that damage relationships. It involves disclosure of truth about the past, acknowledgement of what has occurred, forgiveness, healing and a great measure of justice. It is in the relationship between all these that the totality of the Commission's mandate is expressed.

**18.** The challenge lies in exploring the relationship between what are often thought to be discrete processes: reconciliation, truth, justice and healing. The realization that there is not a single but different ways of articulating these processes makes clear that each way of articulating these processes will have profoundly different consequences for the society in question. The Commission understands that this articulation is a matter of choice. Rather than make it in a formulaic and textbook fashion, the choice should flow from an understanding of the historical and contemporary circumstances of South Sudan.

**19.** Reconciliation is both a goal and a process. As a goal, it is a short-term, medium term and long term goal. In the case of South Sudan, dialogue must be initiated at multiple levels, including at the local level. Of relevance to reconciliation, the Commission will inquire into the extent to which benign differences at the local level have been instrumentalized by the antagonistic parties to further the ends of war and the extent to which local differences define and propel the ensuing political conflict.

**20.** In the Commission's view, healing is closely linked to reconciliation. Healing invokes the idea of remedy, restoration, repair and mending. National healing will entail examining and restoring social relations among and between warring communities. At a personal level, healing takes various dimensions, but begins with acknowledgement of wrongs done, restoration of dignity of victims through reparations, including apology. At personal and community levels, traditional and customary methods must be employed in addition to judicial and other formal methods.

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<sup>5</sup> AUPSC Communiqué, para 8.

**21.** From a gender perspective, healing and reconciliation will entail examining social relations that have facilitated and entrenched gender inequalities and bred an environment for gender violations and abuses to thrive. The Commission holds the view that national healing and reconciliation processes must of necessity include women as key stakeholders with a central role to play in bringing people together at both national and local levels. In addition these processes must address systems and structures that enable exploitation and exclusion of women, and address sexual and gender based violence (SGBV) and the associated social stigma with a view to developing commonly agreed visions of new social structures where women's rights are upheld.

**22.** Informed by comparative experience and the context of South Sudan, the AUCISS places emphasis on the conceptual and practical links between reconciliation, national healing and justice, which includes redistributive justice, retributive justice and reparative justice. The goal of reconciliation at various levels will remain elusive unless those who have suffered are restored and repaired; unless those who were excluded in society are included in meaningful ways; and unless those who are materially deprived as a result of the legacy of war and marginalization are facilitated materially in order to reconstruct their lives.

### **Substantive Focal Area 3: Accountability**

**23.** One of the aspects of the mandate of the commission, which relates to the focal area of accountability, is 'to investigate the human rights violations and other abuses' committed during the armed conflict in South Sudan, and to make appropriate recommendations.

**24.** The Commission has adopted the understanding that accountability includes four aspects: criminal accountability; 'civil accountability' (reparations); 'administrative accountability' (administrative sanctions or lustration) and; truth telling.

**25.** With respect to criminal accountability, the Commission is investigating violations of human rights and humanitarian law and will make recommendations on how some of these violations that constitute crimes under national law as well under international law, should be dealt with. This is the most challenging aspect of the Commission's mandate.

**26.** With respect to 'civil accountability', the Commission notes that in international human rights law, the term 'reparations' is composite term representing 'all types of redress, material and non-material, for victims of human rights violations'.<sup>6</sup> Having reviewed various sources, particularly the UN Basic Principles on the Right to a Remedy and Reparation<sup>7</sup> as well as academic literature, the Commission conceives of

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<sup>6</sup> For a discussion of reparations, see Theo van Boven 'Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms' UN Doc E/CN.4/Sub.2/1993/8 of 2 July 1993, para 13. See also, GM Musila, *Restorative Justice in International Criminal Law: The Rights of Victims in the International Criminal Court* (2010) Cap 6. B Saul 'Compensation for unlawful death in international law: a focus on the Inter-American Court of Human Rights' (2004) 19 *American Univ ILR* 523-584 at 541.

<sup>7</sup> See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, GA Res., UNGAOR,

reparations as a composite term that encompasses several measures including compensation, restitution, rehabilitation and several other symbolic measures such as apologies and memorialisation as well as structural reforms that target laws and institutions to prevent repetition of violations.<sup>8</sup>

**27.** With respect to ‘administrative sanctions’, the Commission, informed by comparative experience, understands that in certain contexts, perpetrators who are public servants could be excluded from holding public office for a period of time in addition to other measures that may be taken against them. In view of the limited resources available to it, in addition to other constraints that include the scope and depth of its investigations, this aspect of the Commission’s work could be left to an appropriately empowered mechanism to be created following the completion of its work.

**28.** The Commission understands that truth is an essential component of accountability, whether criminal, civil or administrative. Part of this may involve identification of alleged perpetrators and uncovering the acts they are said to have committed as well as identifying their victims. The Commission is equally aware, and proceeds from the position that truth has significance for a broader range issues than for accountability alone: it is an essential ingredient for healing and reconciliation between and among all sectors of South Sudanese society, and is thus relevant for and indeed integral to the first and second focal areas of the Commission’s mandate.

**29.** As to the meaning of truth itself, the Commission is aware of the complexity that the notion involves. It has adopted the understanding that it includes versions or types of truth: personal or narrative truth, which consists of personal versions of truth by individuals, including victims and perpetrators; factual or forensic truth, which is achieved through investigations, verification and corroboration; social truth, which is the product of dialogue, interaction, discussion and debate; and healing and restorative truth.

**30.** Aware that SGBV is often dismissed as an unfortunate consequence of conflict, and keeping with its gender-sensitive approach, the Commission will investigate specific gender based violations and abuses and make recommendations that take into consideration gendered aspects of truth, healing, reconciliation and reparations.

### **Human Rights Violations and other Abuses**

**31.** In making recommendations in relation to accountability, the Commission is required to investigate ‘human rights violations and other abuses’ by all parties during

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60th Sess., UN Doc. A/Res/60/147 (16 December 2005) paras. 19-23. See also, Final Report of the Special Rapporteur, Mr. M. Cherif Bassiouni: The right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms. UNESCOR, 56th Sess. UN Doc. E/CN.4/2000/62, (January 18, 2000) which provides a comprehensive outline of reparations.

<sup>8</sup> See UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985) A/RES/40/34 29 November 1985 96th plenary meeting. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, Adopted and proclaimed by General Assembly Resolution 60/147 of 16 December 2005



the conflict in South Sudan. With respect to human rights and the applicable law, the Commission notes that South Sudan is yet to ratify any of the major human rights instruments, whether global or regional.<sup>9</sup> As a matter of international treaty law therefore, none of these instruments can be a source of binding obligations for South Sudan.<sup>10</sup> In relation to human rights therefore, the Commission's investigations are limited to a small cluster of human rights that constitute customary international law as well as those expressly contained in the Transitional Constitution of South Sudan, which contains a catalogue of fundamental rights, including life, human dignity, equality and non-discrimination, liberty and security of the person, freedom from arbitrary arrest and detention, fair trial and equal protection of the law.<sup>11</sup>

**32.** With respect to customary international law, the Commission is aware that major provisions in the Universal Declaration of Human Rights (UDHR) have attained this status. Equally, prohibitions against torture, cruel and degrading treatment, extrajudicial killings, slavery, recruitment and use of children in hostilities and arbitrary detention are binding on all parties to the conflict. As set out below, some or all of these acts, when committed in a certain context, or with a particular intent, also constitute international crimes: war crimes, crimes against humanity or genocide.

### **Violations of International Humanitarian Law and War Crimes**

**33.** The body of International Humanitarian Law (IHL) contained in various treaties as well as international custom, governs the conduct of armed conflict and protects those involved in, or affected by the conflicts. Of these, South Sudan is bound by the four Geneva Conventions of 1949, the two Additional Protocols of 1977 (both sets of treaties ratified by SS in 2012) and customary IHL.

**34.** When deciding which rules of IHL are applicable, the Commission is aware that the nature of the conflict — whether international or non-international — is important. Equally, while there is a wider array of possible violations of IHL, the most serious of these are regarded as war crimes, irrespective of the nature of the armed conflict. Having characterized the conflict as a non-international armed conflict opposing South Sudanese armed forces and opposition armed forces, the Commission is documenting all violations of IHL encountered but the narrower category of violations of IHL that constitute war crimes will receive greater attention.

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<sup>9</sup> These are: International Covenant on Civil and Political Rights (ICCPR); Covenant on Economic, Social and Cultural Rights (CESCR) and; the African Charter on Human and Peoples' Rights (ACHPR). The Commission has been informed that the process of ratifying the African Charter on Human and Peoples' Rights, the instrument that anchors the African human rights system, was at an advanced stage before the breakout of hostilities in Juba.

<sup>10</sup> See Law Society of South Sudan, 'Press Release: Final Letter on Ratification of African Charter' April 15, 2014. Available at <[http://www.sslawsociety.org/news&events\\_Final\\_Letter\\_on\\_Ratification\\_of\\_African\\_Charter.html](http://www.sslawsociety.org/news&events_Final_Letter_on_Ratification_of_African_Charter.html)> (accessed on May 23, 2014).

<sup>11</sup> See also Penal Code Act of 2008 and Sudan Peoples' Liberation Act of 2009 which reinforce these constitutional protections by criminalizing certain acts of relevance to the current inquiry.

**35.** In terms of the applicable law, it is the Commission's conclusion that government forces and all forces aligned with them as well as opposition forces are bound by Article 3 Common to the Geneva Conventions; Additional Protocol II<sup>12</sup> and customary IHL.<sup>13</sup>

### **Crimes Against Humanity**

**36.** The other category of core international crimes that the Commission is considering is that of crimes against humanity (CAH). CAH are essentially serious violations of human rights, sometimes referred to as gross violations of human rights, when committed in a particular context. This category of crimes exists for the protection of civilians from the excesses of the state as well as organisations such as rebel formations, both in peacetime and in times of armed conflict. In this regard, international law prohibits certain inhumane acts such as murder, torture, sexual violence etc which are part of a widespread or systematic attack against a civilian population. These acts must be committed pursuant to a state or organisational policy, which is an essential element of this category of international crimes.<sup>14</sup> In its analysis of the evidence in relation to crimes against humanity, the Commission adopts the definition contained in Article 7 of the Rome Statute and related case law.

### **Substantive Focal Area 4: Institutional Reforms**

**37.** Preliminary reports, and literature in general, as well as information so far received by the Commission indicate that the crisis in South Sudan, has roots in, and is indeed a crisis of weak governance, weak leadership and weak institutions, conflation of personal, ethnic and national interests. It also has roots in the problematic nature of the transition instituted by the CPA.

**38.** The Commission's work will cover these aspects and make appropriate recommendations. In particular, the Commission is inquiring into at least the following institutions: the security sector, including intelligence, military and police; the executive including structure and functions; judiciary; legislature; and; political parties. The Commission will also inquire into the role of: civil society, including ordinary South Sudanese citizens; women's organizations; Diaspora; community leaders and; previously marginalised groups; the media and the private sector in the conflict as well as in post-conflict national-building and the reconstruction of South Sudan.

**39.** Informed by the economic realities in South Sudan, the devastating effects of many years of war, neglect and state decay which include inordinately high levels of deprivation, displacement and inequalities in the country, the Commission has taken the view that the discussion on institutional reforms must include rehabilitation of society

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<sup>12</sup> The Commission is of the view that conditions for the application of AP2 have been met. These are: responsible command for opposition forces; control of territory by opposition forces; ability of these forces to conduct sustained operations. See Article 1 Additional Protocol II

<sup>13</sup> On the rules of customary IHL applicable to NIAC, see International Committee of the Red Cross, *Customary International Humanitarian Law Vol I* (Geneva, 2009)

<sup>14</sup> On crimes against humanity generally, see Cherif Bassiouni, *Crimes Against Humanity in International Law* (The Hague, 1999); Robert Cryer et al, *An Introduction to International Criminal Law and Procedure* (Cambridge, 2010) pp 230-266

and rebuilding of lives and livelihoods. The fate of hundreds of thousands, perhaps millions of refugees and IDPs is of particular interest. The Commission is of the view that the appropriate approach to these issues must involve an inquiry into the use of strategic resources such as oil and land.

**40.** Cognizant of the fact that questions regarding women's participation, their role in nation building and reconstruction, overall gender equality and upholding of women's rights are not new and are crucial to achieving the Commission's overall mandate, the Commission's approach and recommendations take into consideration and examine societal and state structures that have entrenched gender inequalities and marginalisation of women, as well as the role they have played in the past in South Sudan.

**41.** multiplicity of issues including: factors that facilitate or impede state building and reconstruction, issues of diversity and sectoral interests, the role of South Sudanese in state building as well as the limits of international state building, which appears to have been the predominant model adopted in the post referendum South Sudan.

## Methodology

**42.** This vital part details the Commission's working methods and a brief description of policies that have been developed to guide the Commission's work. Aware that process does determine outcomes, the Commission's working methods adopt a deliberate gender dimension.

**43.** On data collection, the Commission has adopted the following methods: Key Informant Interviews (KII) and consultations, including with experts; Focus Group Discussions (FGDs); limited hearings; on-site visits; investigation and desk-top research.

**44.** On research, the Commission has been able, in addition to reviewing some relevant academic literature,<sup>15</sup> to access reports of varying scope and depth published by other actors on the on-going crisis in South Sudan. These include reports published by South Sudanese organisations<sup>16</sup> as well as international organisations.<sup>17</sup>

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<sup>15</sup> John Young, *The fate of Sudan: The Origins and Consequences of a Flawed Peace Process* (Zed Books, 2012); Lam Akol, *SPLM/SPLA: The Nasir Declaration* (2011); Modimowabarwa H Kanyane , James Hoth Mai & Deng Abot Kuol, *Liberation Struggle in South Sudan: Critical Issues for Consideration* (Durban, 2009); VO Nmehielle and John-Mark Ikyi, 'Nation Building, State Reconstruction and Inclusiveness: Issues on south Sudan as a new State and Somalia as a Failed by Reemerging State' in Hassan Cisse, NRM Menon, MC Segger & VO Nmehielle (eds) *Fostering Development Through Opportunity, Inclusion and Equity World Bank Legal Review Vol 5* (World Bank, 2014) 483-505; Mahmood Mamdani, *Saviors and Survivors: Darfur, Politics and War on Terror* (Pantheon, 2009); Wafula Okumu & Augustine Ikelegbe, *Militias, Rebels and Islamist Militants: Human Insecurity and States Crises in Africa* (ISS, 2010).

<sup>16</sup> See South Sudan Human Rights Commission, ; The Sudd Institute, *Peace and Reconciliation in South Sudan: A Conversation for Justice and Stability* June 7, 2013; Development Policy Forum & Ebony Center for Strategic Studies, *The Foundation for Resilient Institutions and Effective Governance in Post Conflict South Sudan*, Juba, South Sudan, May 16, 2014; South Sudan Law Society, 'Special Court for Serious Crimes (SCSC): A proposal for Justice and Accountability in South Sudan' A Working Paper by David Deng, May 2014.

<sup>17</sup> United Nations Mission in the Republic of South Sudan (UNMISS), *Interim Report on Human Rights: Crisis in South Sudan (which covers period between December 15, 2013 and January 31, 2014)*; UNMISS, *Conflict in South*

45. To the extent that they document violations that occurred before April 2014, these reports focus largely on urban areas only, particularly in and around UNMISS protection sites in Juba (Central Equatoria), Bor (Jonglei), Bentiu (Unity State) and Malakal (Upper Nile). These places were visited by the Commission during its missions. The Commission is thus aware that violations that have taken place in rural areas as well as the situation of refugees in Uganda, Kenya and Ethiopia remain largely undocumented so far.<sup>18</sup>

46. What has emerged so far is that some kinds of data such as reports published on the crisis in South Sudan by international organisations have been easier to access. Other types of information, particularly reports published by South Sudanese organisations and intellectuals have been harder to come by. Even harder to access have been views from unorganized South Sudanese, due, in part, to logistical challenges facing the Commission, limitations of time as well as the dispersal of this category of respondents. It is partly for these reasons that the Commission makes a request for extension of time.

47. With this in mind, the Commission's approach is driven in part by the necessity to access all available information including from hard-to-reach sources and the need to engage with at least some of the information contained in the published reports, while filling gaps identified, the objective being to provide a fuller narrative of the situation and as complete as possible a picture of violations of human rights and humanitarian law that have occurred in South Sudan since the start of the armed conflict and to observe at first hand the situation on the ground to be able to buttress the Commission's findings and recommendations.

### **Policies**

48. In addition to the Conceptual Framework, the Commission has also developed various policies to guide various aspects of its work. These include: policy on operational modalities; policy on investigations; policy on gender; policy/strategy on communication (includes dissemination of the Final Report); security (of the Commission staff and those who interact with it, including witnesses) and policy on confidentiality which covers a range of related issues.

### **iii) Data Collection: Missions, Consultations, KIs, FGDs and Research**

49. As of the date of June 15, the Commission has conducted several missions to South Sudan and neighbouring countries as follows: April 16 (Khartoum); April 21-27

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*Sudan: a Human Rights Report* (May 8, 2014); International Refugee Rights Initiative (IRRI), *Conflict in South Sudan: Refugees seek protection in Uganda and a way home* (April, 2014). Amnesty International, *Nowhere safe: Civilians under Attack in South Sudan* (May 8, 2014); East and Horn of Africa Human Rights Defenders Project (EHAHRDP), *Change will not come until we talk about reality: The closing Space for Human Rights Defenders in South Sudan* (Kampala, December 2013); Enough Project

<sup>18</sup> On refugees in Adjumani District, Uganda, see International Refugee Rights Initiative (IRRI), *Conflict in South Sudan: Refugees seek protection in Uganda and a way home* (April, 2014). Amnesty International, *Nowhere safe: Civilians under Attack in South Sudan* (May 8, 2014);

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(Juba); May 10-15 (Kenya); May 15-18 (Uganda); May 26-June 4 (South Sudan: Juba, Bor, Bentiu and, Malakal) and June 5-7 (Kenya; Kakuma Refugee Camp).

**50.** During these missions, the Commission met and held discussions with or conducted interviews with regional leaders and international leaders, South Sudan citizens, victims, refugees, IDPs, members of civil society organizations, intellectuals. The Commission also visited various sites including IDP camps; refugee camps; alleged scenes of crimes; government offices among others. The Commission also received leaders and other stakeholders in Addis Ababa.

**51.** Informed by the need to provide opportunities for ordinary South Sudanese to express themselves on various aspects of its mandate, and to expand the geographic scope of its consultations, the Commission has planned trips to non-conflict areas in South Sudan as well as other countries. Consultations with South Sudanese diaspora are to be carried out as well.

**52.** In terms of research, the Commission has adopted a three-track approach to research: research to support and inform specific activities of the Commission including field missions, consultations and bilateral exchanges; research towards the Interim Report and; research towards the Final Report of the Commission. This approach aligns with the Commission's Work Plan and takes into consideration both short-term and long term research objectives and goals.

**53.** The Commission's engagement with various stakeholders has so far been organized as Key Informant Interviews (KII); Consultations and; Focus Group Discussions (FGDs). The following sections provide a thematic summary of the Commission's engagements with various stakeholders.

### **Consultations with Government Officials**

**54.** The Commission has engaged, during its two field missions to South Sudan, with various government officials in South Sudan, beginning with the President. Others include Dr Barnaba Benjamin Murial, Minister of Foreign Affairs of the Republic of South Sudan; Speaker of the South Sudan National Legislative Assembly (SSNLA); His Lordship Chan Reec, the Chief Justice; Ms Esther Ikere Eluzai Ladu, Under Secretary in the Ministry of Gender, Children and Social Welfare and; members of the South Sudan Peace and Reconciliation Commission.

**55.** The Commission regrets that it has been unable to meet key individuals within government that it believes possess important information that can assist the Commission. These include members of the Committees established by the President to inquire into the causes of the crisis as well as those established to investigate violations committed during the conflict; the head of Tiger Battalion (Presidential Guard); former and current Chief of Staff and other key current and former government officials associated by narratives so far with the crisis on the government's side.

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**56.** With respect to meetings held, the objectives of the engagements with government officials, as has been the case for other respondents, has been to: introduce the Commission and its mandate to key functionaries; familiarize itself with the situation on the ground in South Sudan; obtain some perspectives on the immediate and remote causes of the crisis and; solicit views on specific aspects of the mandate of the Commission, including ceasefire arrangements, humanitarian situation, possibilities for interim government, reconciliation, healing, accountability and institutional reforms.

**57.** From its consultations with various respondents, there is agreement on both sides of the political divide that the crisis currently unfolding in South Sudan is due largely to the inability of weak institutions to mediate and manage conflicts, an institutional weakness shaped in particular by the history of the SPLA/M and the nature of the transitional process known as the CPA. The result has been the militarization of state structures and state-society relations. In particular, the inability of party structures within the ruling SPLM to resolve questions around contestation for leadership spilt into the broader society with devastating results. Many, including the President described the crisis as 'avoidable'. All respondents from the government's side that the Commission has been able to meet expressed their desire for the conflict to end and committed to do their part in ending hostilities and finding a political solution to the crisis.

### **Consultations with Opposition Leaders**

**58.** On its first mission to South Sudan, the Commission held consultations with Dr Riek Machar, who now leads SPLM – In Opposition. On subsequent missions, the Commission also held consultations with political leaders in Addis Ababa, Nairobi and South Sudan. This included the group of former detainees and leaders of various opposition parties.

**59.** The political leaders addressed the Commission on a range of issues, but concentrated on what they perceived to be immediate causes of the crisis and what they thought were appropriate solutions to the political crisis as well as moving South Sudan forward.

**60.** All the opposition leaders expressed a united voice on various issues: the need to end the violence and for the warring parties to respect cease fire engagements; the establishment of an inclusive transitional government of national unity; the need for a national census to be followed by a national election; a broad based and inclusive national dialogue to address issues of reconciliation, healing and charting a new socio-economic and political path for South Sudan; the need to establish a national constitutional review conference to finalise the constitution.

### **Consultations with Civil Society**

**61.** In view of the historical reality that there has been a tendency in South Sudan to exclude civil society in its broadest conception from important decisions that have shaped that society, and that as an organized expression civil society has been limited to a section of the urban educated strata, the Commission has made a deliberate

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decision to facilitate participation of South Sudanese citizenry in its work, and to provide genuine opportunities through grassroots consultations for them to shape the its recommendations relating to all the focal areas of its mandate.

**62.** With respect to this category of respondents, the Commission has so far engaged, both in Sudan and neighbouring countries (Uganda and Kenya), with a substantial number of South Sudanese civil society leaders, community leaders, intellectuals and ordinary persons. These groups, which include religious leaders and several women groups, spoke to the Commission on various aspects of its mandate. Some submitted memoranda. For security reasons, this report does not provide the names of any of those in this category.

**63.** The Commission's engagement with civil society so far has disclosed a remarkable consistency in the narrative relating to immediate causes of the crisis; the chronology of events leading up to the breakout of violence on December 15, 2013 and a rich array of views of what should be done to reform fundamentally both the nature of the state and relations between state and society so as to get South Sudan out of the crisis.

**64.** Among the issues that require attention, they cited governance, weak leadership and institutions, militarization and ethnicization of public life as key concerns. They noted that apart from the fact that there has been a failure to institutionalize constitutional rule, the space for civil society has narrowed significantly over the years, weakening the voice of civil society. A manifestation of this weak voice is the remarkable absence of South Sudanese civil society organizations among those that have reported on the crisis as it has unfolded. The Commission interacted with a number of activists now living as exiles and refugees.

**65.** The Commission has received or accessed memoranda and position papers authored by South Sudanese intellectuals and members of civil society on various aspects of its mandate, in particular, the remote and immediate causes leading to the crisis the structure of a future transitional government, reconciliation, healing and accountability, including alleged violation of sexual and gender based violence (SGBV). The Commission also received views of varying depth on various aspects of institutional reforms. The Commission will engage with the various proposals made in its Final Report.

**66.** The women and groups of women that the Commission has interacted with so far placed significant emphasis on dialogue and inclusion in various initiatives for the achievement of lasting peace. They stressed the vital roles they could play in the on-going process of finding a political solution to the crisis, fostering healing and reconciliation and justice as well as reconstructing the country after the crisis. The majority called for truth and accountability and emphasized that any mechanisms and measures proposed by this Commission in relation to the four mandate areas should consider the roles of women while adopting a gendered approach.

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**67.** The Commission is aware of the gaps that so far exist in its engagement of civil society. The Commission hopes to engage with a broader spectrum of South Sudanese to obtain a rich body of views and perspectives on all aspects of its mandate. The individuals the commission plans to engage include community and religious leaders that have been involved in efforts of reconciliation among communities in the period that followed the last major wave of violence following the internal crisis in the SPLM in 1991 the signing of the CPA. The Commission believes that these and other individuals that have played important roles in the past could have a say in shaping the future of South Sudan. Equally, the Commission will engage with South Sudanese Diaspora, with a view both to understanding the reasons for its extremely limited role in shaping and rebuilding south Sudan and exploring ways to address these.

### **Consultations with International Partners**

**68.** In this category, the Commission has held consultations with, among others: The Troika consisting of the USA, UK and Norway; EU; African Diplomatic Corps in Juba; United Nations (UNMISS, UNDP, UN-Women) and; IGAD Monitoring and Verification Mission.

**69.** The partners expressed their views on the Commission's work, placing emphasis on different aspects of its mandate. On the causes of the crisis, those who expressed themselves on the issue appeared to attribute the current crisis to failed leadership among the South Sudanese political class as a whole as well as to weak institutions and a lack of good governance.

**70.** International partners appear united in the view that there is a need to end the violence, address humanitarian concerns and institute a broad-based transitional government taking into consideration legitimacy of its leadership. Those that expressed themselves on accountability noted there is a need to devise appropriate responses to reported widespread violations of human rights and humanitarian law.

**71.** On reconciliation, many noted that national reconciliation has not received appropriate attention from the leadership after the signing of the CPA and that the crisis is a reminder that South-South grievances that remained unaddressed post referendum should be prioritized and dealt with in an inclusive and comprehensive manner. On measures that ensure that the current crisis does not recur, international partners expressed the united view that institutional and legal reforms are necessary.

### **III. PRELIMINARY FINDINGS AND OBSERVATIONS**

#### *On Ceasefire Agreement:*

**72.** The Commission notes that two ceasefire agreements have been signed between the Government of South Sudan and SPLM-in Opposition on 23 January and 9 May 2014 under the auspices of the Inter-Governmental Authority on Development (IGAD) mediation. The Commission notes that while the first ceasefire agreement was largely

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ignored, the second has held tenuously, with some breaches routinely recorded by the IGAD Monitoring and Verification Mission.

**73.** The Commission welcomes the United Nations Security Council Resolution 2155 (2014) adopted at its 7182<sup>nd</sup> meeting, on 27 May 2014 in which commitments are made to assist the IGAD ceasefire monitoring operations in South Sudan.

**74.** The Commission also welcomes the March 2014 decision of the IGAD Head of States to deploy a regional force and urges that the process of force generation should be fast tracked, while taking into account requisite sensitivities in putting together such a multinational force.

**75.** In view of current efforts by the AU, UN and IGAD, the Commission urges allied forces to begin withdrawal from South Sudan to allow deployment of the IGAD force. The Commission also urges an end to any form of military support to the belligerents that fuel and encourage hardening of positions and continuation of hostilities. This will encourage a speedy resolution of the crisis in order to commence the process of stabilising South Sudan.

*On IGAD Mediation Process and the Situation in South Sudan:*

**76.** The Commission found that while the intense and widespread levels of violence witnessed in the early months of the crisis is no longer manifest, incidents of violence, deaths and destruction of property continue in various parts of the four states that formed the main theatres of violence. Women and children and ethnically targeted individuals remain particularly vulnerable to attacks, abuse and harassment.

**77.** There is palpable tension and what can be described as an 'uneasy peace' in many parts of the four states that the Commission was able to visit. The Commission observes that this tension could be attributed to: survivors experience with violence; the ever-present threat of violence due to the posture of the warring parties and ineffective measures to guarantee safety of all, including vulnerable groups; ethnic animosity arising out of historical grievances and the manner in which violence has manifested due to instrumentalization of ethnicity and; the delay in reaching comprehensive political settlement in the on-going mediation process.

**78.** While there are efforts by government and others to restore services, normalcy is yet to fully return in the parts visited so far by the Commission. The Commission observed widespread destruction of public utilities, infrastructure and private buildings particularly in Malakal, Bentiu and Bor, some of which can rightly be regarded as 'ghost towns'.

**79.** The Commission commends IGAD for its ongoing mediation efforts particularly for securing a ceasefire arrangement between the warring parties. In addition, the Commission observes that there is a need to maintain momentum towards securing a political settlement and urges all those involved in the mediation process to expedite the process of finding a political solution to the crisis in South Sudan. This will contribute

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greatly in dissipating tensions observed on the ground among various communities and begin the process of national healing and reconciliation.

*On the Humanitarian Situation:*

**80.** The Commission urges the international community to increase funding and speed up efforts to provide the much needed humanitarian assistance to the affected communities in South Sudan and neighbouring countries.

**81.** The Commission urges the belligerent parties to continue abiding by commitments to allow unhindered humanitarian access to humanitarian agencies in areas under their control.

*On Healing and Reconciliation:*

**82.** Having heard from various respondents that the war of liberation, the multiple conflicts that accompanied that effort as well as the subsequent conflicts have wrecked relations among South Sudanese communities, there is an urgent need for the institution of genuine national efforts at reconciliation to facilitate healing. The Commission will, once it has engaged further with grassroots communities, and drawing on successful past experiences, make comprehensive recommendations on reconciliation and healing.

**83.** In the meantime, the Commission encourages the continuation of various initiatives that are on-going within and among communities aimed at fostering harmonious coexistence.

*On Accountability:*

**84.** With respect to criminal accountability, while the Commission is still in the process of collecting information and investigating various allegations of human rights violations and violations of humanitarian law, and is not yet in a position to pronounce itself definitively on whether some of these amount to international crimes, the devastation of the armed conflict is manifest in some of the areas visited by the Commission. So far, the Commission has encountered some mass graves as well as many individuals who allege having suffered or witnessed commission of crimes, including sexual and gender based violence.

**85.** The Commission urges all parties to the conflict to cease violations of human rights and humanitarian law and draws their attention to the fact that responsibility will attach to such actions. In addition, the Commission urges individuals in positions of command to take all measures to ensure that those under their command do not engage in violations of human rights and humanitarian law.

*On Institutional Reforms:*

**86.** Form the initial information received or accessed by the Commission, it is noted that weakness of national institutions such as the executive, legislature, judiciary and the

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security sector that have remained unaddressed after the referendum partly created the environment for the crisis that is unfolding in South Sudan. These weaknesses crystallized against the background of the particular history of the SPLA and the specific weaknesses of the CPA as a transitional process, and gave rise to a variety of interconnected problems. These problems range from overconcentration of power within certain institutions, weak or lack of checks and balances, militarisation of civilian institutions, lack of appropriate democratic civilian oversight of the security sector, leaders' conflation of personal, ethnic and national interests, and inappropriate handling of political disputes.

**87.** Mindful of the preliminary observations on weaknesses in various institutions such as the executive, legislature, judiciary, and security sector in its broadest conception, the Commission will make comprehensive recommendations regarding specific institutional reforms in its Final Report. However, the Commission urges the necessity and immediate commencement of reforms, particularly—within the security sector.

#### **IV. CHALLENGES FACING THE COMMISSION**

**88.** The Commission has faced several problems, some of which are linked to the nature of the institution itself and where it is headquartered. The Commission was created in the midst of a crisis, which has meant that it had limited time to set up internal structures to enable it begin its work. Equally, the fact that the members of the Commission were not appointed on fulltime basis has posed some scheduling problems as members have had to find time within their regular engagements. While the nature of the work requires assemblage of varied expertise, this is not readily available within the AU. A fair amount of time was expended, in conditions demanding urgency, in procuring required expertise. The Commission has also been hamstrung by lack of adequate resources, which has among other things, resulted in inadequate logistical arrangements in the field. At an operational level, particularly in its engagements in South Sudan, the Commission has experienced some difficulties in securing meetings with key government officials that it believes can provide critical information that could shed light on various issues. The Commission hopes that these handicaps will hopefully be addressed to fast track its work towards completion.

#### **V. REQUEST FOR EXTENSION OF TIME**

**89.** Although the Commission was initially given three months running from March 12 2014 to complete its work, effectively, the Commission has had a significantly shorter period devoted to substantive work. A fair amount of time went into establishment of the Commission and recruitment of staff.

**90.** There is a need for the Commission to consult and engage with a wider spectrum of South Sudanese on the four mandate areas. So far, the Commission's consultations have been limited both in scope and depth: they largely targeted a limited number of key government officials and political leaders (including President Salva Kiir, former Vice President Dr Riek Machar) and; a small number of members of civil society including

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South Sudanese intellectuals located in the capitals of the states where violence was concentrated (Central Equatoria, Upper Nile, Unity and Jonglei) as well as the neighbouring countries of Kenya and Uganda. In view of the fact that the majority of South Sudanese have lacked opportunities in the past to meaningfully participate in shaping their future and in resolving major problems facing them (ref exclusionary nature of CPA and on-going IGAD talks), it is this Commission's view that it is critical that as many South Sudanese as possible be afforded an opportunity to express themselves on the crisis and the trajectory they would like their country to take. The Commission therefore requires time to visit and consult with various sections of South Sudanese society in all the 10 states beyond the immediate theatres of violence.

**91.** On the broad narrative relating to various aspects of the crisis in South Sudan, the Commission has accessed and reviewed several reports of varying breadth and depth published by several organisations. While the Commission has devised a way of using these reports, what emerges from the reports is that the recorded narrative remains incomplete. As a result, the human toll of the violence in these areas as well as the views of South Sudanese located in these areas on important questions touching on the mandate of the Commission remain unrecorded. For completeness of the record, it is critical that this Commission is empowered — in terms of both time and financial resources — to reach at least some of these areas that have been inaccessible for a variety of reasons including insecurity and the onset of the rainy season.

**92.** For a variety of reasons, the Commission was unable to meet with key government officials as well as other key leaders that it believes can shed light on various important issues. These leaders include some named in connection with specific incidents of violations of human rights and humanitarian law.

**93.** With respect to accountability, particularly criminal accountability, more time is required to conduct investigations. While the Commission has so far received some information relating to violations of human rights and humanitarian law, this information is deficient in a variety of ways. It is insufficient to lead the Commission to identify, with the required specificity the specific crimes allegedly committed as well as any presumed suspects.

**94.** This Interim Report does not pronounce itself definitively on many key issues considered. As an Interim Report, it is by no means complete or conclusive. The report has highlighted some of the findings and observations on issues that the Commission has been able to engage with during our visits to South Sudan and neighbouring countries and our interactions with various respondents. There is no doubt that the situation in South Sudan calls for urgent action from various actors — South Sudanese, regional organizations and the broader international community — to address the concerns raised relating to the Commission's four mandate areas in ways that will lead to sustained peace in a united and stable South Sudan. The extension of time requested by the Commission will enable us to gather more information and to engage with more actors, including ordinary South Sudanese and the diaspora, with a view to making recommendations that will help various actors engage on the crisis in South Sudan towards charting a new trajectory for that country.

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