

# SOUTH SUDAN

## “WE FEAR THE WORST”

MISSION REPORT

Breaking the cycle of violence and impunity  
in South Sudan to prevent chaos



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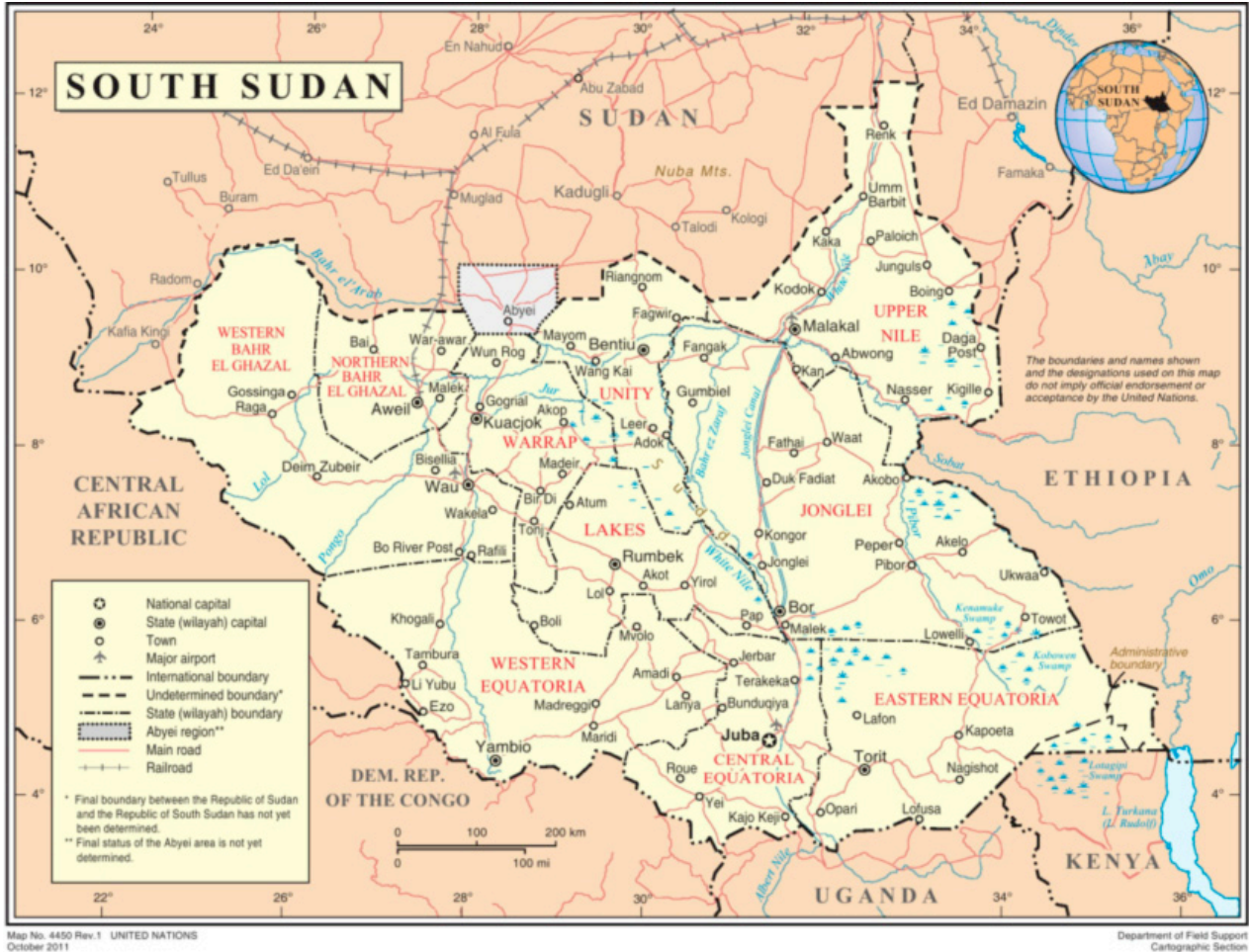


South Sudan, Juba: Residents of Juba arrive at the UN compound on December 20, 2013 where they sought shelter.  
© AFP PHOTO/Tony KARUMBA

# Acronyms

<b>ACHPR</b>	African Commission on Human and Peoples' Rights
<b>AU</b>	African Union
<b>AUC</b>	African Union Commission
<b>AUPSC</b>	African Union Peace and Security Council
<b>CPJ</b>	Citizens for Peace and Justice
<b>CSOs</b>	Civil society organisations
<b>EU</b>	European Union
<b>FIDH</b>	International Federation for Human Rights
<b>GRSS</b>	Government of the Republic of South Sudan
<b>HRD</b>	Human Rights Defender
<b>ICC</b>	International Criminal Court
<b>IDP</b>	Internally Displaced Person
<b>IGAD</b>	Intergovernmental Authority on Development
<b>JEM</b>	Justice and Equality Movement
<b>NSS</b>	National Security Service
<b>OHCHR</b>	United Nations Office of the High Commissioner for Human Rights
<b>SAF</b>	Sudan Armed Forces
<b>SPLM</b>	South Sudan Peoples' Liberation Movement
<b>SPLA</b>	South Sudan Peoples' Liberation Army
<b>SPLM/A-IO</b>	South Sudan Peoples' Liberation Movement/Army – In opposition
<b>SSHRC</b>	South Sudan Human Rights Commission
<b>SSLS</b>	South Sudan Law Society
<b>UNDP</b>	United Nations Development Programme
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNMISS</b>	United Nations Mission in the Republic of South Sudan
<b>UNSC</b>	United Nations Security Council

# Map of South Sudan



# Introduction

Civilians in South Sudan have been paying a huge price since the outbreak, on December 15, 2013, of the conflict which opposed the forces loyal to the President Salva Kiir and those supporting the former Vice President Riek Machar. In the immediate aftermath of the December 15 fighting, violence quickly spread across the country, in particular in Central Equatoria, Jonglei, Unity and Upper Nile states, where civilians were the main targets of extra-judicial killings, enforced disappearances, rapes and other forms of sexual violence, looting, destruction of property, arbitrary arrests and detention, forced recruitment of children.

The international community's response to ensure a rapid cessation of the hostilities and of the human rights abuses committed against civilians has been characterized by a sequenced and differentiated approach. The Intergovernmental Authority on Development (IGAD) took the lead on the political mediation; the United Nations re-centered the mandate of their mission in South Sudan (UNMISS) around the protection of civilians and humanitarian assistance; the African Union Commission (AUC) established a Commission of Inquiry mandated to investigate the human rights violations committed during the conflict and recommend accountability and reconciliation measures; and some States and institutions, including the United States, Canada and the European Union (EU), adopted targeted sanctions against those deemed responsible for the threatening of the peace process and the perpetration of human rights violations.

While those measures have permitted to mitigate the violence and to protect thousands of civilians, almost a year after the outbreak of the conflict, the Government of the Republic of South Sudan (GRSS) and the South Sudan Peoples' Liberation Movement/Army – In opposition (SPLM/A-IO) have not yet concluded any meaningful political agreement and civilians continue to live in a situation of extreme insecurity which threatens to worsen in the coming weeks. Sporadic armed clashes continue to be reported in the north of the country along with information claiming a proliferation of armed groups and continuous resupplying of weapons and recruitment of combatants. Against this backdrop, internally displaced persons (IDPs) and refugees remain unsafe, concerns are raising over the increasing hindrances to fundamental rights and freedoms and those responsible for serious crimes remain at large.

In order to prevent the country from re-sinking into chaos, the international community must strengthen the mediation efforts and put emphasis on the root causes of the conflict. A coordinated strategy must focus on addressing the country's governance challenges. This strategy must include the support to the reinforcement of State institutions (in particular the judiciary, the police, the army and the South Sudan Human Rights Commission); the reform of the legal normative framework, in line with regional and international human rights instruments; and it must also adequately address the challenges pertaining to the militarisation of society, including its polarisation around ethnic lines for political purposes and ensuring opportunities offered to every citizen to take part in the conduct of public affairs without any form of distinction.

Most importantly, and considering that years of impunity in South Sudan have been recognized as one of the key factors of the serious crimes committed since the outbreak of the conflict, a strong attention must be paid to the establishment of accountability mechanisms aimed at providing justice and redress to victims of human rights violations and at preventing further crimes. High expectations have been placed into the publication of the conclusions and recom-

mendations issued by the African Union Commission of Inquiry. Its report, which FIDH expects it will propose concrete and effective accountability mechanisms, must be released publicly without further delay and thus contribute to the efforts aimed at breaking the cycle of violence and impunity in South Sudan.

## **FIDH mission to South Sudan**

In order to assess the human rights situation prevailing in South Sudan, almost a year after the outbreak of the conflict, FIDH mandated a fact-finding mission in the country from 5 to 11 November 2014. The mission was composed of the lawyer Arnold Tsunga, Africa Director at the International Commission of Jurists (ICJ) and former FIDH Vice President, two representatives of FIDH member organisations, Mr. Mohamed Badawi, Researcher at the African Centre for Justice and Peace Studies (ACJPS) and Mr. David Cote, Coordinator of the Strategic Litigation Programme at Lawyers for Human Rights (LHR – South Africa), and Ms. Tchérina Jerolon, Deputy Director at FIDH Africa Desk. In South Sudan, the mission delegates met with representatives from national authorities, from human rights, humanitarian and intergovernmental organisations, journalists, lawyers and representatives from foreign diplomacies. The mission delegates also arranged phone conversations with representatives from SPLM-IO who were outside the country.

FIDH would like to thank all the persons met during the mission as well as those who provided their views and analysis prior and after the mission. FIDH would like in particular to thank the South Sudan Law Society (SSLS), for the support provided in the organisation of the mission.

# I. Political deadlock on the backdrop of the continuing plight of civilians

## a. Succession of hollow agreements

Since January 2014, under the auspices of IGAD, the Government of the Republic of South Sudan (GRSS) and the South Sudan Peoples' Liberation Movement/Army – In opposition (SPLM/A-IO) have concluded at least four successive agreements<sup>1</sup>. Both parties committed to “cease all military actions aimed at each other” (Agreement on Cessation of Hostilities, January 23, 2014; Recommitment on Humanitarian Matters in the Cessation of Hostilities Agreement, May 5, 2014; November 7, 2014 Agreement); to release remaining detainees (Agreement on the status of detainees, January 23, 2014); to cease hostile media and propaganda campaign; to refrain from attacks against civilians, including rape, summary executions, recruitment of child soldiers and more generally to protect human rights and support humanitarian assistance.

Peace agreements also included provisions on the establishment of a transitional government of national unity, which would be responsible for the constitutional and reform processes and for the organisation of new elections (Agreement to resolve the crisis in South Sudan, May 9, 2014). Within this agreement, parties also committed to involving various stakeholders into the process, including civil society organisations.

Justice and accountability mechanisms were also referred to during the negotiation process. The Protocol on Agreed Principles on Transitional Arrangements Towards Resolution of the Crisis, dated August 25, 2014, provided for the establishment, during the transitional period, of accountability mechanisms in the form of a hybrid “National Commission for Truth, Reconciliation and Healing” and of an “independent judicial body to investigate and prosecute individuals bearing the greatest responsibility for violations of international humanitarian law, and/or applicable South Sudanese law, committed since 15 December 2013.” The Protocol did not however specify the mandate and structure of both mechanisms, which were left to further negotiations among the parties. SPLM/A-IO refused to co-sign this Protocol which they considered to be too favorable to the GRSS.

Most of the agreements signed between GRSS and SPLM/A-IO have proven to remain only on paper, both parties having so far failed to implement their provisions. Between the January 23 Agreement and the end of October, both parties have regularly violated their cessation of hostilities commitment and have been responsible for the perpetration of human rights violations against civilians. The last agreement reached during IGAD's 28th Extraordinary Summit, held in Addis Ababa from 6 to 7 November 2014, has not proven to be fully respected either. While both parties re-committed to respect an “unconditional, complete and immediate end to all

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1. See the agreements on IGAD website, <http://igad.int/>

hostilities [...] to bring the war to an end [and] to the immediate cessation of the recruitment and mobilisation of civilians,” and despite the signing, on November 9 of an implementation matrix for the cessation of hostilities agreement, soon after the signature, SPLM/A-IO denounced attacks committed by the government armed forces of their positions in Jonglei, Unity and Upper Nile.

During the Summit, both sides failed to agree on the structure and composition of a transitional government and were given 15 more days by IGAD to pursue internal consultations. At the time of writing this report, parties had not finalized their consultations. Points of divergence exist not only on the structure and composition of a transitional government (with SPLM-IO calling for the establishment of a Prime Minister whom would have executive powers and GRSS refusing such option), but also on the system of governance itself (with SPLM-IO calling for the establishment of a federal system of governance which, in its view, would ensure equitable distribution of national resources, equitable share of power between all states and which would strengthen the effectiveness of public services to the population, while the GRSS denounces the risks of division of the society if such a system was adopted).

Irrespective of the points of divergence existing between the parties, the credibility of the negotiation process will depend on its effective inclusiveness. The ongoing discussions must involve independent civil society organisations (CSOs), in particular human rights organisations. While both parties committed to do so, since the start of the mediation, concerns have been raised over the lack of effective inclusion of CSOs into the process. On June 10, 2014, the Citizens for Peace and Justice (CPJ), a coalition of CSOs from South Sudan formed in January 2014, addressed an open letter to IGAD, denouncing the lack of transparency into the process which led to the selection of civil society representatives authorized to participate in the discussions<sup>2</sup>. In order to ensure that the negotiation process adequately addresses issues related to governance (with commitments to engage legal and institutional reforms) and accountability (with commitments to provide victims of crimes with justice and reparation), IGAD must provide room for the effective and full participation of independent CSOs, including women’s rights organisations, into the process and respect the provisions of the United Nations Security Council (UNSC) Resolution 1325 on the participation of women in peace processes.

## **b. Insufficient sanctions with limited impacts**

Regional and international organisations, together with some States have either imposed or threatened to impose sanctions against those deemed responsible for obstructing the peace process or those responsible for the perpetration of human rights violations.

The United States were the first to decide the adoption of economic sanctions and travel bans. On May 6, 2014, the US Department of Treasury decided to target Marial Chanuong Mangok (Commander of the South Sudanese Presidential Guard, Major General of the SPLA) and Peter Gadet (former Commander of SPLA’s 8th Division who defected in December). Chanuong is considered as being responsible for the execution of Nuer soldiers and civilians in Juba, in December 2013. Gadet is considered as being responsible for having conducted, in Unity state, indiscriminate attacks against civilians, in April 2014<sup>3</sup>. On September 18, the US Treasury department announced

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2. CPJ Letter to IGAD, June 10, 2014, [http://www.sslawsociety.org/news&events\\_cpj\\_letter\\_to\\_igad.html](http://www.sslawsociety.org/news&events_cpj_letter_to_igad.html)

3. “Treasury Targets Those Engaged In Violence And Atrocities In South Sudan”, May 6, 2014, <http://www.treasury.gov/press-center/press-releases/Pages/lj2386.aspx>



additional sanctions targeting Santino Deng (SPLA Major General and Commander of the 3rd Division) and James Koang Chuol (former Commander of the SPLA's 4th Division who defected in December 2013), for allegedly “prolonging the violent conflict in South Sudan and engaging in reprehensible violence.”<sup>4</sup> On October 30, 2014, Canada also announced its decision to adopt sanctions targeting Chanuong and Gadet<sup>5</sup>.

On July 10, 2014, the European Union decided to establish an embargo on arms and to adopt targeted sanctions – including travel restrictions and freezing of funds and economic resources – against Peter Gadet, for having allegedly conducted an attack on Bentiu from 15 to 17 April 2014 and having been responsible for the killing of more than 200 civilians. EU also adopted sanctions against Santino Deng, for having allegedly taken part in the recapture of Bentiu in May 2014<sup>6</sup>.

The African Union Peace and Security Council (AUPSC), the United Nations Security Council (UNSC) and IGAD all threatened to adopt sanctions without however implementing these threats. Soon after the outbreak of the conflict on December 15, 2013, AUPSC threatened to take “targeted sanctions against all those who incite people to violence, including along ethnic lines, continue hostilities, undermine the envisaged inclusive dialogue, hinder humanitarian operations, undermine the protection mandate of UNMISS and carry out acts of violence against civilians and unarmed combatants.”<sup>7</sup> While AUPSC reiterated these threats on several occasions, the Council left the responsibility for their implementation to IGAD. On November 4, 2014, UNSC issued a press statement confirming its “intention to commence negotiations, in consultation with relevant partners, including the IGAD and AU, on all appropriate measures, including targeted sanctions against those impeding the peace process.”<sup>8</sup> Following its November 2014 Extraordinary Summit, IGAD also threatened, for the first time, to impose sanctions – including asset freezes, travel bans and arms embargo – against those violating the newly concluded agreement on cessation of hostilities. IGAD further expressed its readiness to “directly intervene in South Sudan to protect life and restore peace and stability.”<sup>9</sup>

*“Sanctions may delegitimize those targeted as individuals, but they make little difference on the ground, especially when those targeted have no assets outside the region”* declared one human rights activist met during the mission. While most of FIDH interlocutors welcomed the adoption of such sanctions, they however questioned their concrete impacts on the cessation of hostilities and the protection of civilians against human rights abuses and raised the need for sanctions which would target higher-ranking figures and would also be implemented within the region. They also criticised the delay within which regional and international organisations, in particular IGAD and UNSC, threatened to adopt sanctions despite the succession of hollow agreements concluded between both warring parties. Serious concerns were also raised over the absence of sanctions – except for the EU – specifically aimed at reducing the circulation of arms in South Sudan. In a context where interlocutors denounce a continuous resupplying

4. “Treasury Targets Individuals Responsible for Attacks on Civilians and Ceasefire Violations in South Sudan”, September 18, 2014, <http://www.treasury.gov/press-center/press-releases/Pages/jl2639.aspx>

5. “Canada Imposes Sanctions Against Both Sides of South Sudan Conflict”, October 30, 2014, <http://www.international.gc.ca/media/aff/news-communiqués/2014/10/30d.aspx?lang=eng>

6. See European Council restrictive measures in view of the situation in South Sudan, July 10, 2014, [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.203.01.0100.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.203.01.0100.01.ENG) and [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2014.203.01.0106.01.ENG](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.203.01.0106.01.ENG)

7. AUPSC Communiqué, December 30, 2014, <http://www.peaceau.org/uploads/psc-com-411-south-sudan-30-12-2013.pdf>

8. Security Council Press Statement on South Sudan, November 5, 2014, <http://www.un.org/press/en/2014/sc11631.doc.htm>

9. Resolution by the 28th Extraordinary Summit of the IGAD Heads of State and Government, November 7, 2014 <https://drive.google.com/file/d/0B5FAwdVtt-gCU2ZsMnVHdWZrOGxpWTF6cUhEU0VfWUFrdURr/view?pli=1>



*SOUTH SUDAN, Malakal: Displaced South Sudanese women walk towards the United Nations Mission in South Sudan (UNMISS) base in Malakal on January 12, 2014. – © AFP PHOTO / SIMON MAINA*

of weapons by both parties and where small arms are increasingly circulating throughout the country, including among civilians, UNSC and IGAD must rapidly establish such an embargo. Both organisations must also take a harder stand against those impeding the peace process and most particularly against those responsible for human rights violations. IGAD, AU and UNSC must also ensure to refuse any peace agreement which would provide immunity and amnesties to those responsible for serious crimes, in violation of international law. To ensure effectiveness of these sanctions, IGAD, AU and UNSC must also guarantee that they are accompanied with mechanisms of justice (see Part III).

### **c. The risk of a conflict resumption**

Interlocutors met by FIDH have, almost unanimously, raised concerns over the serious risk of a resumption of conflict in the coming weeks. In a context where both parties continue to denounce respective attacks against their forces, fears were expressed over the option for a military rather than political and structural solution to the conflict.

Government forces have maintained control over all state capitals while the opposition has remained in control of the peripheries of Bentiu, Malakal and Bor. Fear of a resumption of conflict arises from the persistence of sporadic armed clashes which continue to be reported in these areas, the worrying proliferation of armed groups and militias, which chain of command appears to remain unclear, and the continuous resupplying of weapons and recruitment of combatants, including among children.

#### d. Civilians remain unsafe

Civilians in South Sudan have been paying a huge price since the outbreak of the conflict. According to the UNMISS May 2014 report on the human rights violations perpetrated during the conflict, “there are reasonable grounds to believe that violations of international human rights and humanitarian law have been committed by both parties [...]. These violations include extra-judicial killings, enforced disappearances, rape and other acts of sexual violence, arbitrary arrests and detention, targeted attacks against civilians not taking part in hostilities, violence aimed at spreading terror among the civilian population, and attacks on hospitals as well as personnel and objects involved in a peacekeeping mission.” UNMISS further indicates that, “in light of the widespread and systematic nature of many of the attacks, and information suggesting coordination and planning, there are also reasonable grounds to believe that the crimes against humanity of murder, rape and other acts of sexual violence, enforced disappearance, and imprisonment have occurred.”<sup>10</sup>

Women have not been spared during the conflict. UNMISS reports that “all parties to the conflict have committed acts of rape and other forms of sexual violence against women of different ethnic groups. Credible information suggests that sexual violence took place in connection with the occurrence of human rights and humanitarian law violations before, during, and after heavy fighting, shelling, looting, and house searches. [...] The forms of sexual violence used during the conflict include rape, sometimes with an object (guns or bullets), gang-rape, abduction and sexual slavery, and forced abortion. In some instances, women’s bodies were mutilated and, in at least one instance, women were forced to go outside of their homes naked.”<sup>11</sup> Incidences of broadcast hate speech and messages instigating sexual violence have also been reported.

Humanitarian workers met during FIDH mission reported the under-estimated scale of sexual crimes committed against women. The destruction, during the conflict, of health facilities, the lack of adequate structures (psychosocial or legal) to support women who faced sexual crimes, the lack of training of police and justice officers, the lack of confidence in the judiciary system and the fear of further stigmatisation have prevented women from reporting their case.

Following her October 2014 mission conducted in South Sudan, the Special Representative of the Secretary-General on Sexual Violence in Conflict, Ms. Zainab Hawa Bangura, recognized that “addressing conflict-related sexual violence in South Sudan continues to be a challenge.” During her visit, President Kiir committed to fight against this crime including through the fight against impunity; to develop action plans within the army and the police prohibiting sexual violence, ensuring timely investigation, training of personnel and accountability; to include provisions on sexual violence into the peace agreements; to ensure that those responsible for sexual violence are excluded from amnesty provisions; to improve access to justice for victims of sexual violence and provide them with medical and psycho-social support.

These commitments must be upheld by the authorities of South Sudan and must fit into broader efforts aimed at ending discrimination against women.

Despite a decrease in the intensity of the fights, civilians in South Sudan continue to live in a

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10. *Conflict in South Sudan, a Human Rights Report*, UNMISS, 8 May 2014

11. *Ibid.*

situation of extreme insecurity caused by the sporadic clashes between opposing forces. The recent fighting which took place in Bentiu and Rubkona from 27 to 29 October, have led to the death of one child and the injury of several civilians.

The situation of civilians within IDP camps and United Nations protection of civilians camps (PoC) also remains serious source of concerns. Over 1.4 million persons are still internally displaced while approximately 450,000 refugees remain in neighboring countries. Within the IDP camps and UN PoC, in particular in Upper Nile and Unity states, serious concerns have been raised over the proliferation of small arms, the intensification of inter-communal clashes and the continuing cases of sexual and gender-based violence against women. Humanitarian workers met by the FIDH delegation have described an overwhelming situation where thousands of IDPs are still in urgent need of food and medication while the government seems to have given priority to military expenses.

In addition to civilian casualties in the context of the conflict between the army and the SPLM/A-IO, civilians casualties have also been reported in the north west of the country where the authorities of Sudan would be targeting elements from the Justice and Equality Movement (JEM). FIDH was informed about aerial bombardments reported in Western and Northern Bar El Ghazal, carried out by the Sudan Armed Forces (SAF). 10 to 20 bombs were reportedly dropped by SAF in the night of 1<sup>st</sup> and 2<sup>nd</sup> November, in Kor Shaman (Raga County, Western Bahr el-Ghazal), causing the death of up to 12 civilians.

## **e. Increasing hindrances to fundamental rights and freedoms**

Within this context of security tensions, civilians in South Sudan are also the targets of increasing hindrances to their fundamental rights and freedoms. Serious concerns have been raised over the recurring threats to freedom of expression and the right to information observed over the past few months, in particular against journalists reporting on the conflict and the peace process. Arbitrary arrests and detentions of journalists have been reported along with confiscation of newspapers and suspension of radio stations (such as radio Bakhita, a station within the Catholic Radio Network, which was closed on August 16 for nearly a month). Security agents arrested Bakhita news editor, Mr. Ocen David, on August 16 for four days for having read a statement emanating from the rebel spokesman. According to the Committee to Protect Journalists (CPJ), there are numerous cases similar to that of Bakhita radio. CPJ reported to FIDH that the authorities also threatened to close another station in the Catholic Radio Network, Voice of Hope, in Wau (Western Bahr-EI Ghazal), in late September for continuing to report “political subjects” instead of focusing solely on faith-based reporting. FIDH mission was also informed of public declarations made by State representatives warning those reporting on the rebels’ statements or actions and about cases of looting of radio stations allegedly committed by opposition forces. In Malakal (Upper Nile), the radio station Saut al Mahaba has been off the air since February 2014 due to alleged looting by opposition forces. While most of the journalists arrested have been released and while radio Bakhita have recently been authorized to re-broadcast, these acts seem to be aimed at intimidating and at preventing any form of reporting on the conflict that would be critical to the government or the opposition.

These hindrances intervene in a context where recently adopted pieces of legislations aimed at regulating the media sector have been source of concerns within media practitioners. On September 9, 2014, the authorities confirmed the signing into law, by the President, of three media laws (the



*SUDAN, Topping: A sign reading "vulnerable people" is seen as women wait in line for food distribution at the UNMISS POC (United Nations Mission in the Republic of South Sudan for the Protection of Civilians) site on June 26, 2014 in Topping, South Sudan. – © AFP PHOTO / CHARLES LOMODONG*

Media Authority Act, the Broadcasting Corporation Act and the Right to Access to Information Act). While some of FIDH interlocutors welcomed the efforts aimed at regulating the media profession in South Sudan, they also expressed fears over the stranglehold of the executive on the sector considering that, under these new media laws, the heads and members of the Broadcasting Corporation, the head of the Media Authority and the Information Commissioner (in charge of monitoring the implementation of the Right to access to information Act) are all appointed and shall be removed by the President of South Sudan. Considering the recent attacks against journalists, fears have been expressed over the possible use of these new laws – which maintain reference to the criminalisation of defamation provided under section 28 of the South Sudan Penal Code Act, 2008 – to increase the targeting of those deemed too critical to the authorities.

Threats also target human rights defenders (HRD). Some defenders met during FIDH mission admitted leaving in fear, after having received death threats and anonymous orders to stop talking about the government within the media. FIDH 2012 mission to South Sudan had already alerted on the increasing infringements to freedom of expression targeting journalists and HRDs<sup>12</sup>. While the regulation of the media sector is legitimate, the process should not lead to censorship. Independent and professional media, that are able to document, to inform and to develop critical analysis on the political, social, economic and security situation prevailing in the country are essential for the building of democracy and the rule of law. Building the capacity of civil society organisations, guaranteeing HRD's rights to "promote and strive for the protec-

12. FIDH, *South Sudan, First Anniversary of Independence, Time to Act for Peace and Human Rights Protection*, July 2012 <https://www.fidh.org/IMG/pdf/sudsoudan591apdf.pdf>

tion and realisation of human rights and fundamental freedoms”, protect them “against any violence, threats, retaliation, [...] discrimination, pressure or any other arbitrary action”<sup>13</sup> and engage into a constructive dialogue with these actors is also fundamental to the building of a democratic society.

FIDH interlocutors were almost unanimous in their analysis on the functioning of the police and the army, pointing out the deficiencies within both institutions due to the lack of capacity, the lack of training and the lack of effective accountability mechanisms. Concerns have been raised over the violations perpetrated in the hands of the police, illustrated by the persistence of cases of arbitrary arrests and detentions of civilians and allegations of ill-treatments. These concerns have been reinforced with the passing, in early October this year, by the National Legislative Assembly, of the National Security Services Bill, 2014, which, in its current format, provides NSS with extensive powers, including the powers to investigate, arrest and detain those suspected of posing a threat to national security without however guaranteeing legal and procedural safeguards. FIDH reiterates its call upon President Salvar Kiir to refrain from assenting to such a repressive bill which would contradict provisions of the Transitional Constitution.

## **f. UNMISS and the protection of civilians**

National authorities have failed to uphold their responsibility to protect civilians.

The UNMISS has been in operation in South Sudan since independence of the country in July 2011. The original mandate was approved by the UNSC in Resolution 1996 (2011) which stipulated multiple roles for the mission including:

- Consolidating peace and security;
- Conflict prevention and mitigation as well as the protection of civilians; and
- Developing capacity in South Sudan to provide security and establish the rule of law by strengthening the security and justice sectors and reporting on human rights capacities and institutions.

UNMISS was therefore highly involved in reforms to the justice sector and assisting with the establishment of a civilian police force and other civilian security agencies. Of particular importance was the role of the Human Rights Division (HRD) in documenting the human rights situation in the country and strengthening institutions to protect human rights.

Following the outbreak of the conflict, on 15 December 2013, the UNSC narrowed UNMISS’s mandate under Resolution 2132 (2013) of 24 December 2013 which increased the military capacity of the mission and focused the mission’s activities under Resolution 2155 (2014) to the protection of civilians and deterring further violence against civilians by deploying international troops, monitoring and investigating human rights, creating conditions for humanitarian assistance and supporting the implementation of the Cessation of Hostilities Agreement between the conflicting parties. The Resolution 2187 adopted on November 25, 2014 by the UNSC renews the UNMISS mandate for another 6 months (until May 30, 2015).

All interlocutors applauded UNMISS for taking immediate action during the beginning stages of the crisis in December by opening their gates and allowing the establishment of Protection

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13. Articles 1 and 12.2 of the United Nations Declaration on Human Rights Defenders, 1998.

of Civilian (PoC) sites under the protection of the UN. Eight sites were established in total in UNMISS compounds around the country. According to the UNHCR, the largest in Juba currently has 31,000 IDPs, many of whom are Nuers who were attacked in the Gudele area west of the city. There are over 102,265 IDPs residing in PoC sites, however, this represents less than 10% of the total IDPs within the country.

Due to the occasional fighting and the gravity of the atrocities committed in the past year, most residents have not returned to their homes. FIDH was informed that camp residents have since started leaving the camp during the day to go to the market and go to work, but mostly return in the evening to sleep.

FIDH was also informed of the deteriorating conditions within the sites. Violence and conflict as well as general crime, have made the sites dangerous with little capacity and no mandate given to UNMISS to police the camps. This has led to widespread violence, and particular dangers in terms of gender-based violence and violence against children.

The Human Rights Division (HRD) within UNMISS was also applauded for their reporting on the violence. On May 8, 2014, the HRD issued a report regarding the violence that had taken place during the conflict, including against civilians as well as UNMISS personnel and other international humanitarian workers. The HRD has reported on the difficulties in documenting and verifying instances of violence and human rights abuses due to lack of access to sites and evidence. They reported that similar concerns will exist should there be other violent incidents in the future, particularly considering the large numbers of civilian casualties in the past year.

The UNMISS mandate will be set for another renewal in 6 months. Considering the immediate needs to ensure a safe environment, FIDH welcomes that the mandate has been renewed by the Security Council in much the same terms to maintain a sustained peace-keeping programme in the country. The volatility of the current situation and the pending peace agreement requires an UNMISS which is consistent and will continue to provide safety to civilians.

The UNSC must also look beyond the current six month mandate and reconsider the role of UNMISS at its next renewal. It will be vital to peace building and accountability mechanisms that the institutions protecting human rights and the rule of law within the country are bolstered and developed with the assistance of the international community. Although the UNDP is currently assisting the judiciary and other security related ministries, the current crisis has deflected attention away from rule of law programmes. Considering the importance that justice mechanisms will play in a durable peace, in whatever form those mechanisms may take, supporting rule of law and justice programmes should be reintroduced into the UNMISS mandate. This mandate should include programmes within not only the national government in Juba, but extending to all areas of the country where UNMISS has a presence.

Specific provision should also be made within a future mandate to provide for management of PoC sites and programmes to encourage IDPs to return to their homes. This will require further enquiry from the HRD to determine whether conditions prevail which will allow the safe return of IDPs, prioritising those in PoC sites.

## II. Breaking the cycle of violence and impunity: the urgent need for accountability mechanisms

***“Judicial power is derived from the people and shall be exercised by the courts in accordance with the customs, values, norms and aspirations of the people and in conformity with this Constitution and the law.”***

Section 123(1) of the Transitional Constitution of the Republic of South Sudan

Years of impunity in South Sudan have been recognised as one of the key factor of the serious human rights violations committed since the outbreak of the conflict in December 2013. Those responsible for the crimes perpetrated during the years of conflict which opposed the South to the North of Sudan have never faced prosecutions. The peace agreements concluded between warring parties – in particular the 2005 Comprehensive Peace Agreement, sealed under the auspices of IGAD – have remained silent on the need for justice for victims of serious crimes. Within South Sudan, massacres, abductions, rape and looting perpetrated during inter-ethnic and inter-communal clashes which have been recurring over the past years, have never been addressed through accountability mechanisms and thus never been deterred. In 2012, during FIDH previous mission to South Sudan, when the delegation met with the Deputy Minister of Justice, referring to the inter-ethnic clashes that occurred in Jonglei, he stated *“we are a traditional society. We have to settle our problems through traditional means. Justice in that case is not wise we’ve been told.”* This year, FIDH delegates were told that inter-communal clashes continued to be reported, in particular in the Lakes states, where citizens tend to seek justice by themselves in the absence of State administered justice processes.

During its mission, FIDH paid particular attention to the willingness and capacity of the authorities of South Sudan to shed light on the human rights violations perpetrated during the conflict and provide victims with justice and reparation. Since the outbreak of the conflict, FIDH called upon the establishment of mechanisms of justice aimed at ensuring that those responsible for serious crimes are held into account, that victims get justice and aimed at deterring further crimes.

### **a. Ongoing investigations on the human rights violations**

#### **National investigations**

To investigate the violence and human rights abuses which took place following the outbreak, on December 15, 2013, of the conflict, the authorities of South Sudan established a number of



investigative committees: on December 28, the Police established a committee mandated to investigate the allegations of human rights violations perpetrated against civilians by the police and other organised forces; on December 31, the army established two separate committees to investigate the causes of the shooting within the Republican Guard which occurred on December 15 and investigate the extra-judicial killings committed in Juba; in February 2014, President Salva Kiir also established a committee mandated to investigate the human rights violations perpetrated during the conflict.

During its mission, FIDH was informed that while both the reports of the police and the army had been finalised, they had, however, not been made public. Instead, it was reported to FIDH that the Presidential Committee was tasked with gathering the evidence collected by both the police and the army and merge the result of the four investigations into a consolidated report. During FIDH mission, interlocutors indicated that the authorities had announced a release of the consolidated report in mid November. At the time of writing this report, the report had not yet been made public. While those initiatives must be welcomed, some of FIDH interlocutors pointed out the weaknesses of the processes. They denounced the lack of independence and impartiality of the Presidential Committee which directly report to the President of the Republic. They also raised concerns over the lack of any adequate protection mechanism for victims and witnesses. One human rights activist declared to FIDH: *“Members of the Presidential committee established their offices in Juba and called upon people to come there and give their testimonies. But the lack of trust in the institution and the lack of mechanisms of protection for witnesses prevented people from going.”*

The South Sudan Human Rights Commission (SSHRC) also investigated the human rights violations committed during the conflict. In its report, released in March 2014, the Commission notes that “the recent conflict has resulted in major setbacks in the areas of human rights protection and respect for fundamental rights such as the right to life. Notable atrocities that have been committed on a wide scale include extra-judicial killing, arbitrary arrests in some areas, rape associated with persons in uniform is on the rise, culture of impunity is widespread on account of the conflict situation, recruitment of people including children (notably White Army) into the fighting forces by both government and the rebels are in progress. Media freedoms and freedom of speech have been scaled down.” The report also describes a situation where “the present conflict has rekindled and inflamed ethnic and tribal hatred to certain extent, to xenophobic levels particularly amongst the two numerically big tribes, the Nuer and the Dinka. [...] This reality is what has created the ethnic dimension of the conflict and cannot be wished away.” The report further states that “the Government and the rebel leadership bear equal responsibility to ensure that effective investigations into the atrocities are conducted without hindrance.”<sup>14</sup>

FIDH interlocutors applauded the work of the SSHRC and insisted on the need to continue supporting its work. When FIDH met with SSHRC representatives they described a situation where they are facing increasing constraints which prevent them from carrying further investigations on the current human rights violations. While the Commission used to have offices in the 10 states of the country, following the outbreak of the conflict, it had to close down most of its offices and to appoint focal points. The annual budget of the Commission amounts to 5.6 million South Sudanese Pounds (approximately 1,5 million Euros), in which up to 70% is dedicated to salaries.

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14. South Sudan Human Rights Commission, *Interim Report on South Sudan Internal Conflict*, December 15, 2013 – March 15, 2013.

Along with capacity challenges, concerns were also raised over the stranglehold of the authorities on the work of the Commission. Members of the Commission indicated that, while their last three annual reports were submitted to Parliament, they have not yet been tabled or discussed.

## **The regional and international investigations**

### **The African Union Commission of Inquiry on South Sudan**

The African Union Commission of Inquiry on South Sudan (Col) was established pursuant to an AUPSC decision. On December 30, 2013, the Council requested the AUC Chairperson, in consultation with the African Commission on Human and Peoples' Rights (ACHPR), to "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." The Council further requested the Commission to submit a report within three months. On March 7, 2014, the AUC Chairperson announced the establishment of a Commission of Inquiry headed by Olusegun Obasanjo, former President of Nigeria. On 27 June 2014, the Commission of Inquiry released an interim report where it detailed the work already done and requested more time to conduct further investigations. In its interim report, the Commission also pointed out the challenges it had to face with. These challenges included: the difficulties of the swift establishment and deployment of the Col, in a conflictual context; the fact that members were not appointed on a full-time basis; the lack of adequate resources to conduct the mission; the difficulties encountered to secure meetings with the authorities.<sup>15</sup>

Over the past few years, FIDH has been advocating for the African Union, including the ACHPR, to increase its involvement into the documentation and denunciation of human rights violations committed during conflicts as well as into the efforts aimed at providing justice and redress to victims either at national or regional/international levels. Building on the recent AU involvement into the documentation of human rights violations in Mali, Central African Republic and South Sudan, FIDH reiterates its call upon the AU to consider establishing a Human Rights Protection Unit, composed of persons who have expertise in international criminal law and documentation of serious crimes, including sexual crimes. This Unit should have the human and material capacity to carry out investigations in conflict and crisis situations. Such a structure would allow it to overcome the challenges encountered by the AU Col in South Sudan and the missions carried out, by the ACHPR, in Mali and Central African Republic.

The report of the Col on South Sudan is said to have been finalised and to be awaiting AUPSC's validation before its public release. FIDH noticed that the report is highly awaited in South Sudan and foreseen by many actors as having the potential to deter further violence. FIDH expects the report will propose effective mechanisms of justice and constitute the basis of a roadmap towards justice and long lasting peace and security in South Sudan.

### **UNMISS' report**

UNMISS also produced a report on the human rights violations committed during the conflict where it considered that there are reasonable grounds to believe that crimes against humanity have been committed (see above section I, d) and recommended that the "Government [...] ensure[s]

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15. *Interim Report* of the African Union Commission of Inquiry on South Sudan (CISS), Assembly of the Union, Twenty-Third Ordinary Session, 26-27 June 2014, Malabo, Equatorial Guinea, Assembly/AU/19(XXIII).

that its investigation committees are independent, transparent, credible, and meet international standards” and that accountability mechanisms “consistent with international standards” are established. In its recommendations, UNMISS called upon the establishment of “a credible accountability mechanism, consistent with international standards [...] to hold the perpetrators of violations individually accountable.”

## **b. Incapacity of South Sudan’s justice system to investigate the violations and to provide justice to victims**

### **The South Sudan Court System**

The Transitional Constitution of the Republic of South Sudan makes provision for a hierarchy of courts. The top court is the Supreme Court which has jurisdiction to hear appeals from lower courts, to settle disputes between states or between states and the national government with regards to competences of power, to hear criminal cases against the President and to uphold and protect human rights and fundamental freedoms, among other powers delineated by the Constitution. The next levels include the Court of Appeal and the High Courts of every state. The Constitution also makes provision for county and *payam* courts.

The jurisdiction of the different levels of courts is mostly defined in terms of The Judiciary Act, 2008 which provides for detailed jurisdiction of all levels of courts and refers to the jurisdiction granted in the Codes of Civil Procedure and Criminal Procedure Acts. The Act also provides for County and *Payam* Courts and the appointment of judges to those courts and the qualifications necessary for promotion. Section 45 of the Act provides for the secondment of judges to a foreign government or international organisation for a period of three years with the possibility of extension for another three years.

### **Composition of Courts**

While the exact number of judges is not available to the public, it was confirmed that there are approximately 200 judicial officers within the judiciary. Of those, 78 have been recently appointed and are finalizing their training as judges.

What was clear from conversations with members of the judiciary as well as other interlocutors is the lack of resources available to the legal system in general. Many felt that the court system was not given adequate resources in order to accomplish their constitutional mandate. This in turn led to a lack of confidence which many members of the public have in the court system, particularly outside of Juba. In many instances, we were informed that courts outside of Juba were served by circuit courts which were able to extend their reach, but were not permanently located in many areas.

This apparent gap in the court system has been occupied by the role of traditional leaders. Traditional leaders have customarily played an important role in the settlement of disputes between members of their communities as well as hearing criminal cases and handing out appropriate punishments. For many, these leaders are the only contact which local residents may have with any legal system. Some interlocutors commented that traditional leaders are still held in high esteem and have contributed to a sense of justice; however some criticism has been levelled against leaders who have begun to hear serious cases which the legislation reserves for higher

courts. These may be a symptom of the demand that ordinary citizens have for justice, but a lack of availability of judicial mechanisms.

### **Reform of the Legal System and Judiciary**

Reforms of the legal system were under consideration with the assistance of the international community, including the UNMISS under its previous mandate, and the legal profession when conflict broke out in December 2013. This has had an extremely negative effect on movements to reform the justice sector. As stated above, rule of law programmes, particularly those which were mandated to UNMISS before the conflict, were largely scrapped or transferred to other agencies like the United Nations Development Programme (UNDP). While UNDP was able to give an overview of the assistance they were providing to certain ministries, there was evidence of a lack of resources and political will to accept changes to the legal and judicial system. The current South Sudanese legal system is based on previous Sudanese sharia law with elements of common law. There is a move from government to move the legal system toward a system of Anglo-American styled common law system as the basis of legislation and legal precedent. This will not only require a review of numerous pieces of legislation, but it will likely also require additional skills to be provided to lawyers and jurists in legal English as well as training to police and prosecutors in the principles of common law. This progress has been hampered by a refocusing of energies on resolving the current conflict and political crisis, leaving reform of the legal system on the back burner.

### **The Legal Profession**

As more than one interlocutor noted, in order to have a strong and independent judiciary, it is necessary to have a strong and independent legal profession. Unfortunately, disputes within the profession have caused a weakening of the ability of lawyers to represent their clients. There have been leadership disputes with the South Sudan Bar Association (SSBA) which one hopes will be settled after recent elections of the new leadership. Young lawyers have complained that they are unable to obtain permits which allow them to practice. This is symptomatic of a broader problem within the South Sudanese economy where jobs and entry to professions are reserved for “soldiers” (or at least people who remained in South Sudan during the civil wars) to the exclusion of younger people who either resided in the north (present day Sudan) or were educated abroad. This tendency has unfortunately exacerbated a severe skills shortage both within the public and private sectors.

### **c. Need for specific transitional justice mechanisms**

Of particular importance following the current conflict which began on 15 December 2013 and the atrocities which have flowed from that event, has been the issue of bringing those guilty of atrocities, including murder, rape and torture, to account for the crimes which they have committed. A number of organisations, including the SSLS, have provided content to the debate of how to hold individuals accountable for those crimes. These include prosecutions in South Sudanese courts, hybrid courts, truth commissions, international courts or referrals to the International Criminal Court (ICC).

The ongoing investigation by various parties, including the police, the army, the Presidential Committee and the African Union, will likely reveal evidence of crimes perpetrated by individuals

and possibly organisations. While many interlocutors suggested that a peace agreement must be in place and “the guns must be silent” before any justice mechanism can begin to look at such crimes, FIDH considers that the two processes should not be seen as distinct from one another. Justice is not an obstacle to peace and the inclusion of a commitment to holding those guilty of atrocities to account will likely lead to more public confidence in the peace process itself and contribute to prevent further crimes. As stated above, tens of thousands of civilians remain in PoC sites while over a million IDPs are still afraid to return to their homes. Justice mechanisms must be in place before such individuals will consider leaving temporary shelters and feel safe enough to return to their homes.

While ending impunity and ensuring accountability was uncontroversial among all interlocutors, the method for ensuring such accountability was far from unanimous.

### **Domestic Courts**

South Sudan’s legal system remains under-developed and in a state of transition. New judges have been appointed and trained, but facilities across the country remain scarce. The militarisation of the policing service means that properly conducted investigations are elusive and the evidence necessary to secure a conviction will not be properly collected. Prosecutors are also under tremendous pressure and many do not have the skills to execute their mandate. This compounds the difficulties presented by a fractured legal community which is likely unable to provide the legal services necessary to ensure adequate defence.

What was made clear, however, was the opportunity which all stakeholders in the legal profession will now have to increase skills and knowledge. It is clear that the domestic legal system must be involved in whatever justice mechanism takes place. It may be an opportunity to transfer the skills necessary to build resources and knowledge in the nascent justice system.

### **Hybrid Courts**

The establishment of a purely international court with no South Sudan judiciary participation and allowing the international community to pass judgement on crimes which occurred during the conflict would present a number of challenges, including financial challenges. Such an option would not respond to the requests for involvement of the domestic legal system in any mechanism of justice. Thus, one option presented by many stakeholders was the idea of hybrid courts. Such courts can take many forms including but certainly not limited to:

- Appointments of foreign judges and prosecutors to assist with the assessment of evidence before domestic courts. Such officials would have specialised knowledge in international criminal justice and would provide support to their South Sudanese counterparts.
- Establishing special courts (or special chambers of courts) as provided by section 16 of The Judiciary Act, 2008 considering the “tribal or sectional conflict(s)” which resulted from the December 2013 violence.
- Establishing special courts to sit outside of the established judiciary by legislation which would provide jurisdiction to try cases of international crimes. Such judges or

adjudicators could be appointed from both within and outside of the South Sudan legal community.

- Establishing special courts to sit outside of the system in a neighbouring country with the support of the international community. The bench could again be a mixture of South Sudanese and foreign judges to adjudicate on charges of atrocities.

It was common among interlocutors, however, that simply removing the South Sudan judiciary from the process would be counter-productive and would likely lead to an increased sense of “victimisation” by government. It would also not allow skills transfer and an increase in resources which a court system within South Sudan would provide. It may even further erode confidence of the locals in their own judiciary which may have a long term negative impact on the building of a local judiciary in a young State.

What must be recognised, however, is the lack of confidence which the South Sudanese public appears to have in its legal system. Many interlocutors complained of perceptions of bias, corruption or partiality among judges and other judicial officials. There is also the concern regarding bias which judges of one tribe may have against another. Clearly, whatever system is chosen, it must have the backing and trust of the public. The public’s mistrust in any process at the moment is palpable. Distrust in the presidential investigation is compounded by the lack of protection offered to victims. In the current climate, victim/witness protection will not be available within the South Sudan conflict and it will likely require the support of the international community to ensure that witnesses do not become the victims of further violence.

### **Other mechanisms for transitional justice**

In addition to confrontational and accusatorial court process, a common feature in common law jurisdictions, it may be recommended to establish a Truth and Reconciliation Commission to ensure a truth revealing/memorisation process which will ensure that the truth about the incidents after December 2013 are recorded. Perpetrators may be encouraged to participate in such processes, although not through amnesties. As the level of violence has been varied depending on the state involved, it may be better to make it a local initiative feeding into a larger national initiative to ensure that victims who will likely not have the resources to travel and testify will be able to participate. It is essential to give communities a chance to rebuild trust and relations and learn to live together and build their country.

Trials before the International Criminal Court (ICC) could also be envisaged. While South Sudan is not a State party to the Rome Statute establishing the Court, the authorities could voluntarily accept the Court’s jurisdiction in accordance with article 12.3 of the Statute. In the absence of political will, from the South Sudan authorities, to establish credible and effective justice mechanisms, the situation in South Sudan may also be referred to the ICC through the UN Security Council.

# Conclusion and recommendations

Tensions are palpable in South Sudan and most of FIDH interlocutors have expressed fear at the possible escalation of fighting in the coming weeks and at the serious risks for the safety of civilians. Almost a year after the outbreak of the conflict, warring parties have not yet concluded any meaningful political agreement. To prevent the country from re-sinking into chaos, breaking the cycle of violence and impunity is vital to end the plight of those who have already suffered the most heinous crimes and must be set as a priority of the ongoing negotiations.

All FIDH interlocutors agreed that a culture of impunity and lack of accountability permeates the current climate in South Sudan. This is not a recent occurrence, however. Decades of civil war and violence have led to militarised institutions and a public resigned to violence. With independence at long last achieved, it may be possible to break the cycle of impunity by ensuring that any peace agreement between the parties includes a mechanism for justice. This time there has to be a departure from the practice of peace deals accommodating the protagonist while ignoring accountability for serious crimes. The practice of accommodation and not accountability has reinforced the notion that it may be profitable to be a warlord in the long run after all. It creates and reinforces the notion that being outstanding in fighting is potentially profitable as you get accommodated into a high position in government when a peace deal is struck and never face justice.

FIDH considers that any peace agreement must include a proposal for a special court system to be set up within the South Sudanese judiciary which would provide for South Sudanese and specially trained foreign judges to try perpetrators of international crimes. This will permit a skills transfer between such foreign judges and their South Sudanese counterparts.

Such legislation, however, should also provide for a skills transfer between domestic and foreign investigators. The militarisation of the police has limited the skills development to ensure that proper documentation and evidence collecting has taken place. This will also require cooperation with international donors and specially trained investigators who may take the opportunity to train their South Sudanese counterparts. The same will be true to prosecutors who may play an active or passive role in evidence collection, depending on the type of system adopted. If the overall goal is to establish a common law inspired criminal justice system, prosecutors may take on a passive and advisory role in the investigatory stages, but will need to be trained on the presentation of evidence.

Any system, however, to end impunity will likely require the cooperation and assistance of traditional leaders. Such assistance may be limited to trying local civilian perpetrators or taking an active role in truth mechanisms. In any event, with the clear importance of traditional leaders in the current criminal justice system, their cooperation with investigators and support for whatever mechanism is adopted will be vital for its success.

**FIDH addresses the following recommendations:**

## **To the Government of South Sudan**

### **To guarantee the protection of civilians to:**

- Fully implement the cessation of hostilities agreements;
- Ensure that members of the national army and security forces put an immediate end to all violations of international human rights and humanitarian law perpetrated against civilians;
- Publicly, systematically and firmly condemn the violations of international human rights and humanitarian law perpetrated against civilians by the army, the forces controlled by the opposition and other armed groups;
- Publicly commit to ensuring that those responsible for international human rights and humanitarian law violations will be held accountable before competent jurisdictions;
- Ensure that members of the army and security forces fully cooperate with the UNMISS, in particular with regard to the securisation of IDPs and PoC camps;
- Increase, within the national budget, the allocation of humanitarian assistance to the populations affected by the conflict, in particular IDPs and refugees;
- Take all necessary measures to ensure that humanitarian workers can operate without hindrances and threats to their security.

### **To ensure that the victims of serious crimes get justice to:**

- Support the establishment of special court system to be set up within the South Sudanese judiciary which would provide for South Sudanese and specially trained foreign judges to try perpetrators of international crimes;
- Support the establishment of a Truth and Reconciliation Commission which is independent, impartial and has the material and human resources necessary to the conduct of its mission;
- Ensure that these mechanisms of justice guarantee the participation of victims into the proceedings and ensure that they provide measures for their protection and the protection of witnesses;
- Ratify the Rome Statute of the International Criminal Court.

### **To prevent sexual crimes and ensure that the victims get justice to:**

- Publicly, systematically and firmly condemn violence against women, including all forms of sexual crimes, and call on political and religious leaders to do the same, and conduct awareness-raising actions on a national scale aimed at combating discrimination and violence against women in all spheres;
- Undertake comprehensive reforms of legislation to bring them into compliance with regional and international human rights instruments and adopt national strategies for combating violence against women, including all forms of sexual crimes, and eliminating all forms of discrimination against women, ensuring the effective consultation and involvement of women's rights groups and other civil society organisations throughout the process;
- Conduct independent and effective investigations into all sexual crimes, while ensuring that personnel in the criminal justice system (police, forensic examiners, prosecutors, lawyers, judges) receive adequate training on investigating and prosecuting these crimes and protecting the victim's dignity;



- Ensure the right to reparation to victims in its different forms – restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition – and address the consequences of violence against women in a comprehensive manner;
- Consider the possibility to award transformative reparations, in order to address the causes of sexual crimes, and discrimination against women in general;
- Identify the causes and consequences of sexual crimes and to take all necessary measures to prevent and eradicate it.

**To strengthen the administration of justice to:**

- Provide the judiciary with sufficient human, financial and material resources to recruit a sufficient number of judges and court support staff;
- Promote women’s representation in the judiciary and use expertise on gender-based and sexual crimes as a recruitment criteria;
- Ensure that the Constitutional Review Commission develops a constitutional framework that sets up the judiciary of South Sudan to be truly legally and practically independent, impartial from and accountable to the Constitution;
- Pass legislation that creates a basis for the judiciary to have effective oversight over all arrests and detentions in South Sudan ; and ensure that any person arbitrarily detained be immediately released;
- Build courtrooms and other necessary infrastructure to make the courts accessible in the whole country;
- Take appropriate measures to ensure women’s access to justice, especially in rural areas;
- Come up with legislation that establishes a truly legally and practically independent professional body to independently regulate the legal profession;
- Develop and implement in collaboration with the legal profession a system of legal aid.

**To professionalise the defence and security sector to:**

- Strengthen the defence and security forces through the training on human rights and ensure proper vetting of those responsible for international crimes;
- Ensure that members of the defence and security forces responsible for human rights violations, including sexual crimes, are held accountable;
- Refrain from assenting the National Security Services Bill passed in early October by the National Legislative Assembly.

**To guarantee the protection of fundamental rights and freedoms to:**

- Strengthen the capacity of the South Sudan Human Rights Commission (SSHRC) through the allocation of human and material resources; ensure that SSHRC can document human rights violations committed throughout the country; ensure that the last three annual reports of the SSHRC are tabled, discussed and adopted by Parliament;
- Fully respect freedom of association, the right to information and expression as enshrined in the Transitional Constitution;
- Respect and implement the UN 1998 Declaration on the protection of human rights defenders;
- Publicly recognise the role and importance of the work of human rights defenders and journalists and strengthen its cooperation with these actors;
- Protect the physical and psychological integrity of human rights defenders and journalists;

- Open investigations on all cases of threats and harassment against human rights defenders and journalists.

**To guarantee the protection of women’s rights to:**

- Abolish all discriminatory laws and adopt laws protecting women’s rights in the private and public spheres in accordance with regional and international human rights standards;
- Strengthen laws and policies to protect women from all forms of violence by adopting a specific law to prohibit all forms of violence against women, including domestic violence and marital rape;
- Adopt all necessary measures to reform and eliminate discriminatory cultural practices and stereotypes, by disseminating simplified versions of legal texts to the general public and adopting awareness-raising programmes aimed at men and women, including government officials and religious, traditional and community leaders;
- Ensure the full participation of women in peace negotiations and peace-building, in accordance with UN Security Council Resolution 1325 and subsequent resolutions on women, peace and security.

**To strengthen the legal and normative human rights framework, FIDH calls upon the Government of South Sudan to ratify and/or to deposit the instruments of accession to regional and international human rights instruments, and ensure full implementation of their provisions. FIDH calls upon South Sudan to, without further delay, ratify and/or to deposit the instruments of accession to the:**

- African Charter on Human and Peoples’ Right;
- Protocol to the African Charter on the Rights of Women in Africa;
- Protocol to the African Charter on the Establishment of the African Court on Human and Peoples’ Rights and make the declaration under article 34.6 allowing individuals and NGOs to directly seize the Court;
- African Charter on the Rights and Welfare of the Child;
- African Charter on Democracy, Elections and Governance;
- African Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol;
- Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment.

**The SPLM/A-IO to:**

- Fully implement the cessation of hostilities agreements;
- Ensure that their forces put an immediate end to all violations of international human rights and humanitarian law perpetrated against civilians;
- Publicly, systematically and firmly condemn the violations of international human rights and humanitarian law perpetrated against civilians by their forces;
- Take all necessary measures to ensure that humanitarian workers can operate without hindrances and threats to their security;

- Ensure that independent human rights organisations, including women’s rights organisations, are fully involved into the peace negotiations.

### **The IGAD to:**

- Strengthen its mediation efforts and ensure that it does implement targeted sanctions in the event of resumption of fighting;
- Ensure that these sanctions include an embargo on arms;
- Support the establishment of special court system to be set up within the South Sudanese judiciary which would provide for South Sudanese and specially trained foreign judges to try perpetrators of international crimes;
- Support the establishment of a Truth and Reconciliation Commission which is independent and impartial and which has the material and human resources necessary to the conduct of its mission;
- Ensure that these mechanisms of justice are impartial and independent from any political interference;
- Ensure that these mechanisms of justice guarantee the participation of victims into the proceedings and ensure that they provide measures for their protection and the protection of witnesses;
- Refuse any agreement which would provide immunity and amnesties to those responsible for international crimes, in violation of international law;
- Publicly, systematically and firmly condemn the violations of international human rights and humanitarian law perpetrated against civilians by the army, the forces controlled by the opposition and other armed groups;
- Ensure that monitors of the Monitoring and Verification Mechanism publicly and regularly report on the violations of agreements concluded between both parties, with particular attention to violations of international human rights and humanitarian law;
- Ensure that independent human rights organisations, including women’s rights organisations, are fully and effectively involved into the peace negotiations.

### **The African Union Peace and Security Council to:**

- Call upon IGAD to strengthen its mediation efforts;
- Call upon IGAD and AU to implement targeted sanctions in the event of resumption of fighting and ensure that these sanctions include an embargo on arms;
- Publish the report of the AU Commission of Inquiry on South Sudan;
- Support the establishment of special court system to be set up within the South Sudanese judiciary which would provide for South Sudanese and specially trained foreign judges to try perpetrators of international crimes;
- Support the establishment of a Truth and Reconciliation Commission, independent and impartial, and which has the material and human resources necessary to the conduct of its mission;
- Ensure that these mechanisms of justice are impartial and independent from any political interference;
- Ensure that these mechanisms of justice guarantee the participation of victims into the proceedings and ensure that they provide measures for their protection and the protection of witnesses;

- Refuse any agreement which would provide immunity and amnesties to those responsible for international crimes, in violation of international law;
- Publicly, systematically and firmly condemn the violations of international human rights and humanitarian law perpetrated against civilians by the army, the forces controlled by the opposition and other armed groups;
- Call upon IGAD to ensure that independent human rights organisations, including women’s rights organisations, are fully and effectively involved into the peace negotiations;
- Support the establishment, within the African Union Commission, of a Human Rights Unit which would coordinate the deployment of commissions of inquiries in conflict situations where international crimes are committed;
- Strengthen its cooperation with human rights organisations in particular through the organisation of hearings on the situation in South Sudan, in accordance with Article 20 of the Protocol establishing the AUPSC.

### **The African Commission on Human and Peoples’ Rights to:**

- Strengthen its dialogue with South Sudan authorities in order to ensure that it does ratify regional and international human rights instruments;
- Support the establishment, within the African Union Commission, of a Human Rights Unit which would coordinate the deployment.

### **The United Nations Security Council to:**

- Call upon IGAD to strengthen its mediation efforts;
- Implement targeted sanctions in the event of resumption of fighting and ensure that these sanctions include an embargo on arms;
- Support the establishment of special court system to be set up within the South Sudanese judiciary which would provide for South Sudanese and specially trained foreign judges to try perpetrators of international crimes;
- Support the establishment of a Truth and Reconciliation Commission which is independent and impartial and which has the material and human resources necessary to the conduct of its mission;
- Ensure that these mechanisms of justice are impartial and independent from any political interference ;
- Ensure that these mechanisms of justice guarantee the participation of victims into the proceedings and ensure that they provide measures for their protection and the protection of witnesses;
- Refuse any agreement which would provide immunity and amnesties to those responsible for international crimes, in violation of international law;
- Publicly, systematically and firmly condemn the violations of international human rights and humanitarian law perpetrated against civilians by the army, the forces controlled by the opposition and other armed groups;
- Call upon IGAD to ensure that independent human rights organisations, including women’s rights organisations, are fully involved into the peace negotiations;
- Call upon the authorities of Sudan to put an immediate end to its aerial bombardments in Northern and Western Bar El Gazal;

- Ensure that the next UNMISS mandate includes support in the strengthening of the Rule of Law;
- Consider to seize the International Criminal Court on the situation in South Sudan in the absence of political will from the South Sudanese authorities to establish credible and effective mechanisms of justice.

### **The UNMISS to:**

- Strengthen its monitoring and reporting on the human rights violations committed throughout the country;
- Strengthen in particular its documentation and report on the violations of international human rights and humanitarian law committed by warring parties, including armed groups and militias; on the civilian casualties caused by the aerial bombardments committed by the Sudan Armed Forces; on the cases of sexual and gender-based violence; on the cases of arbitrary arrests and detentions and allegations of ill-treatment in detention centres; on the threats and other forms of hindrances to the right of human rights defenders and journalists.

### **The United Nations Human Rights Council to:**

- Address human rights violations and abuses committed in South Sudan in a manner which reflects the gravity of the situation, i.e. through creating, at its 28th session (March 2015), a Special Rapporteur mandate with a full monitoring and reporting capacity, under its agenda item 4, and request the mandate holder to work in close cooperation with other international mechanisms;
- Publicly, systematically and firmly condemn the violations of international human rights and humanitarian law perpetrated against civilians by the army, the forces controlled by the opposition and other armed groups;
- Refuse any agreement which would provide immunity and amnesties to those responsible for international crimes.

### **The European Union to:**

- Consider the adoption of further individual sanctions in the event of a resumption of the fightings;
- Maintain its embargo on arms;
- Support the establishment of special court system to be set up within the South Sudanese judiciary which would provide for South Sudanese and specially trained foreign judges to try perpetrators of international crimes;
- Support the establishment of a Truth and Reconciliation Commission which is independent and impartial and which has the material and human resources necessary to the conduct of its mission;
- Publicly condemn any agreement which would provide immunity and amnesties to those responsible for international crimes, in violation of international law;
- Publicly, systematically and firmly condemn the violations of international human rights and humanitarian law perpetrated against civilians by the army, the forces controlled by the opposition and other armed groups;

- Call upon IGAD to ensure that independent human rights organisations, including women's rights organisations, are fully involved into the peace negotiations;
- Ensure that the EU Delegation in South Sudan does implement the EU guidelines on the protection of women's rights and human rights defenders;
- Provide support, through the strengthening of their capacities, to human rights organisations, in particular those documenting the human rights violations and focusing on governance and the rule of law;
- Support legal and institutional reforms in South Sudan which are conform with regional and international human rights instruments;
- Continue humanitarian aid in order to tackle emergencies but also maintain social services affected by the conflict; integrate human rights concerns in the planing and implementation of this aid to tackle such issues as gender-based violence in camps; foresee a linkage with future development aid once it is reinstalled;
- Ensure that the economic activities of EU based companies and Member States, notably concerning oil deals, do not lead to further human rights violations or fueling of existing tensions;
- Ensure that the development policies of EU Member States – notably support to the Judiciary of South Sudan and to the police – contribute to the above-mentioned objectives;
- Support the implementation of FIDH above-mentioned recommendations related to legal and institutional reforms in South Sudan.

## Establishing the facts

### Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

## Supporting civil society

### Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

## Mobilising the international community

### Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## Informing and denouncing

### Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

**FIDH**  
represents **178**  
**human rights organisations**  
on **5 continents**

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## **ABOUT FIDH**

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

### **A broad mandate**

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

### **A universal movement**

FIDH was established in 1922, and today unites 178 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

### **An independent organisation**

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

**fidh**

Find information concerning FIDH's 178 member organisations on [www.fidh.org](http://www.fidh.org)