



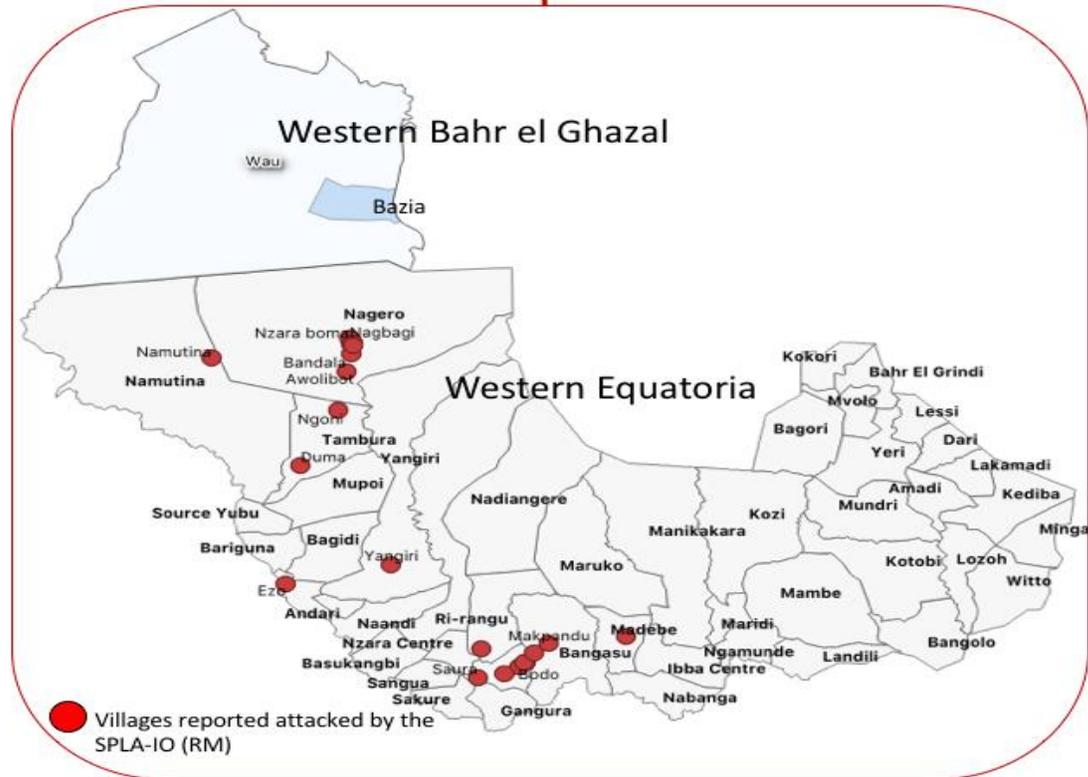
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**VIOLATIONS AND ABUSES AGAINST CIVILIANS IN GBUDUE  
AND TAMBURA STATES (WESTERN EQUATORIA)  
APRIL-AUGUST 2018  
18 October 2018**

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## 1. Executive summary

1. This report is jointly published by the United Nations Mission in South Sudan (UNMISS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), pursuant to United Nations Security Council resolution 2406 (2018).<sup>1</sup> The report presents the findings of an investigation conducted by the UNMISS Human Rights Division (UNMISS HRD) into violations and abuses of international human rights law and violations of international humanitarian law reportedly committed by the pro-Machar Sudan People's Liberation Army in Opposition (SPLA-IO (RM)) and the Government's Sudan People's Liberation Army (SPLA) against civilians in the states of Gbudue and Tambura, in Western Equatoria, between April and August 2018.
2. In April 2018, a fresh supply of arms and increased logistical support emboldened SPLA-IO (RM) to intensify attacks against Government security forces and civilians living in Western Equatoria.<sup>2</sup> This spike in violence coincided with other associated political and military activities at a local and regional level. In Addis Ababa, Ethiopia, there were high-level negotiations underway between the leaders of the various warring parties to secure a revitalized peace agreement for South Sudan. At the same time, there was an aggressive SPLA-led offensive to clear opposition forces from southern Unity<sup>3</sup>, while at a local level in Western Equatoria, there were ongoing efforts to improve the relationship between some SPLA-IO (RM) commanders and Government representatives through interfaith initiatives.
3. Despite these positive grass-roots efforts towards reconciliation, SPLA-IO (RM) commanders used predatory tactics against local communities in Western Equatoria to bolster their own standing within their military ranks and to attract new recruits. Their actions included the abduction of women and girls, who were subjected to sexual violence, including rape and sexual slavery, by commanders and fighters. They also committed looting, forced displacement and recruitment of adults and children as well as unlawful killings.
4. Between April and August 2018, UNMISS HRD documented attacks on at least 28 villages, one settlement of internally displaced persons (IDPs), and one refugee camp, in the states of Gbudue and Tambura in the Western Equatoria region (*established under Republican Order 36/2015 and Republican Order 2/2017*). Some of these locations were attacked several times.
5. During these attacks, at least 887 civilians were abducted, mostly women (505) and girls (63). Considering the high prevalence of rape in cases of abduction by SPLA-IO (RM) forces, UNMISS HRD and OHCHR are concerned that these women and girls have been raped and/or sexually enslaved. They are also concerned that the men (278) and boys (41) have been forcibly recruited to take part in hostilities.

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<sup>1</sup> According to this resolution, UNMISS is mandated to monitor, investigate, verify, and report on violations and abuses of human rights and violations of international humanitarian law, including those that may amount to war crimes or crimes against humanity, and specifically on violations and abuses committed against children and women, including those involving all forms sexual and gender-based violence in armed conflict.

<sup>2</sup> According to witnesses' and victims' accounts, as well as information provided by key informants.

<sup>3</sup> Besides bolstering its ranks, after losing much territory in southern Unity, the SPLA-IO (RM) attempted to scale up dominance and relevance. Refer also to OHCHR & UNMISS report, *Indiscriminate attacks against civilians in southern Unity. April-May 2018*, July 2018, available at [https://www.ohchr.org/Documents/Countries/SS/UNMISSReportApril\\_May2018.pdf](https://www.ohchr.org/Documents/Countries/SS/UNMISSReportApril_May2018.pdf).

6. At the same time, SPLA forces carried out their own military operations to dislodge the SPLA-IO (RM) from areas under their influence. These operations were characterized by serious violations of international human rights and humanitarian law, such as unlawful destruction of civilian property and forced displacement. In many instances, SPLA forces became more aggressive towards civilians at security checkpoints or during reconnaissance patrols, often considering them as potential supporters of SPLA-IO (RM).
7. Caught between the operations of SPLA-IO (RM) and SPLA forces that did not distinguish between civilian and military objectives, local communities bore the brunt of these repeated attacks. As a result, over 24,000 people were forcibly displaced across the states of Gbudue and Tambura between April and August 2018.
8. On 12 September 2018, warring parties signed the Revitalized Agreement of the Resolution of the Conflict in South Sudan (R-ARCSS) which retains the provisions and obligations already outlined in the Cessation of Hostilities Agreement of 21st December 2017 regarding the full compliance with international humanitarian law, the protection of human rights of civilians at all times and the accountability for breaches of this agreement. The R-ARCSS reiterates the commitment to establish a hybrid court to investigate and where necessary prosecute individuals bearing responsibility for violations of international law and/or applicable South Sudanese law, committed since 15th December 2013.
9. This report documents acts that constitute serious violations and abuses of international human rights law, and serious violations of international humanitarian law, which in many cases may amount to war crimes. Its recommendations could also serve as a test to assess the willingness of the signatory parties to implement the justice and accountability-related provisions in the R-ARCSS, as UNMISS HRD's investigation has identified three SPLA-IO (RM) commanders who may bear the greatest responsibility for abuses committed during this period.
10. UNMISS and OHCHR urge SPLA-IO (RM) and SPLA to comply with international human rights and international humanitarian law and to ensure that any military operations are conducted in strict compliance with the principles of distinction, precaution and proportionality. International law prohibits the use of unlawful killing, sexual violence and other forms of torture and inhuman treatment, and pillage. All parties to the conflict are also urged to abide by the R-ARCSS<sup>4</sup>. Additionally, SPLA-IO (RM) should immediately release all civilians who have been abducted during the conflict, first and foremost, the children. The Government of South Sudan is strongly urged to hold the perpetrators of violations and abuses of international human rights and humanitarian law committed in Western Equatoria since April 2018 to account.
11. International partners and donors are being encouraged by UNMISS and OHCHR to build on the United Nations Joint Programme for Recovery and Resilience in Yambio.<sup>5</sup> This programme was initiated in early 2018 to re-establish access to basic services, particularly medical and psychosocial support for survivors of conflict-related sexual violence, and to provide an economic alternative for young fighters. Finally, the international community and the United Nations should continue to

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<sup>4</sup> This Agreement also requires the disengagement of all forces and a cessation of hostilities.

<sup>5</sup> Yambio is the capital of Gbudue state.

support conflict resolution and reconciliation efforts at the sub-national and grassroots levels, particularly those led by faith-based organizations. This will help address the root causes of the conflict in Western Equatoria, which is driven by a struggle for power and natural resources, as well as support broader efforts to build durable peace in South Sudan.<sup>6</sup>

## 2. Methodology

12. In order to investigate, verify and corroborate the violations and abuses of human rights and violations of international humanitarian law documented in this report, UNMISS human rights officers' presence was strengthened across Western Equatoria between June and August 2018. They conducted several visits to affected areas, such as Tambura, Nagero, Li-rangu, Rimenze, Makpandu, Saura, and Nzara, despite encountering access denial from SPLA in several locations. UNMISS HRD focused on the states of Gbudue and Tambura, which were most affected by the activities of SPLA-IO (RM) and SPLA. The investigation did not cover other states of Western Equatoria, such as Amadi and Maridi, where there were more minor incidents between April and August.
13. In total, between 21 June and 24 August, UNMISS human rights officers conducted 104 interviews with victims and eyewitnesses from 28 villages.<sup>7</sup> Some of them had recently escaped from SPLA-IO (RM) captivity. These interviews were carried out in the affected areas and in other locations. UNMISS HRD also met with SPLA-IO (RM) and SPLA local commanders and local state authorities. Furthermore, UNMISS HRD analyzed various materials, including photographic evidence and documents, to assess whether abuses and violations, including those that may amount to international crimes, were committed.
14. UNMISS HRD employed the standard of proof of *reasonable grounds to believe* in making factual determinations about the violations, incidents, and patterns of conduct of the perpetrators.<sup>8</sup> Unless specifically stated, all information in the report has been verified using several independent, credible and reliable sources, in accordance with OHCHR's human rights monitoring and investigation methodology.

## 3. Contextual Background

### 3.1 Historical Context

15. When the conflict broke out in Juba in December 2013 and spread across the northern part of the country, the Western Equatoria region was not directly affected. Although initial incidents, including ambushes and abductions, first occurred in mid-2014, it was not until the period between

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<sup>6</sup> The conflict in Gbudue and Tambura states of Western Equatoria revolves around ethnic undertones involving the Azande and Balanda communities. Gbudue and Tambura are predominantly inhabited, respectively, by members of the Azande and Balanda communities. Both communities belong to the Bantu ethnic group that extends into Western Bahr el Ghazal and Western Equatoria in South Sudan, bordering eastern parts of Central African Republic, and north-east of the Democratic Republic of Congo.

<sup>7</sup> The interviewees included 72 females and 32 males, including seven minors.

<sup>8</sup> One major challenge during this investigation was to establish the number and breakdown of victims abducted. To reach this number, UNMISS HRD relied primarily on testimonies and details provided by witnesses and victims who had been held captive in different SPLA-IO (RM) bases for several weeks, and then cross-checked the number obtained with accounts obtained from victims and witnesses of attacks in villages and settlements.

the first and third quarter of 2015 – prior to the signing of Agreement on the Resolution of the Conflict in South Sudan (ARCSS) – that full-blown conflict reached this region.<sup>9</sup>

16. Between February and June 2015, there was a rise in traditional conflicts between local farmers in Western Equatoria and migrating Dinka cattle keepers from Jonglei and Lakes over use of grazing land and destruction of crops and farms.<sup>10</sup> Many of the cattle camps were under SPLA protection and, in late May 2015, these disputes escalated and led to clashes between SPLA and armed local defence groups – former “Arrow Boys” – led by Alfred Fatuyo,<sup>11</sup> and the South Sudan National Liberation Movement (SSNLM), led by Victor Wanga. Given the overall community unhappiness with the encroachment of the cattle keepers and accompanying SPLA, there was wide support for the local defence groups initially. The clashes between the SPLA and the defence groups resulted in high civilian casualties, sexual violence, wanton destruction of property and the displacement of nearly 40,000 civilians from Mundri town and the surrounding area. Government forces also started a brutal military campaign during which local communities and civilians were not spared. Widespread burning and looting of property, killings, and enforced disappearances were regularly reported<sup>12</sup> around Maridi, Yambio, and Ezo.<sup>13</sup>
17. In November 2015 and April 2016, SSNLM signed two peace deals with the Government of South Sudan, mediated by faith-based institutions. These peace deals were intermittently implemented up to 2018, leading to the integration of some SSNLM elements into the Government’s various organized forces. However, Fatuyo and his forces joined SPLA-IO (RM) in late 2015. Fatuyo was reportedly appointed Major General of SPLA-IO (RM) in December 2015 and granted command of SPLA-IO Division VI in Western Equatoria.
18. Ahead of the return of Riek Machar to Juba in April 2016 as part of ARCSS, there was a surge in the mobilization of armed elements in Western Equatoria to join SPLA-IO (RM) and benefit from an elusive integration into SPLA.<sup>14</sup> The collapse of ARCSS in July 2016 led to a further

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<sup>9</sup> The need to establish SPLA-IO (RM) recognizable presence, bolster ranks and cantonment in Western Equatoria largely contributed to initial spikes in violence. While some Western Equatoria elites joined the SPLA-IO (RM), others remained loyal to the Juba Government – portraying Western Equatoria and Greater Equatoria as divided. See <https://www.crisisgroup.org/africa/horn-africa/south-sudan/south-sudan-s-south-conflict-equatorias> as viewed on 18 August 2018.

<sup>10</sup> Many Western Equatorians have a longstanding resentment against the Dinka for two main reasons: cattle-keepers’ encroachment and unequal distribution of resources including human resources at all levels of Government – especially at the national level and in the security sector. See [http://www.upeace.nl/cp/uploads/hipe\\_content/The%20Legacy%20of%20Kokora%20in%20South%20Sudan%20-%20Briefing%20Paper.pdf](http://www.upeace.nl/cp/uploads/hipe_content/The%20Legacy%20of%20Kokora%20in%20South%20Sudan%20-%20Briefing%20Paper.pdf) – last accessed on 20 August 2018.

<sup>11</sup> The Arrow Boys, a vigilante group, emerged in 2009 to fight the Lord’s Resistance Army (LRA), which was preying on local communities in the region as a result of the incapacity or unwillingness of SPLA and the Ugandan People’s Defence Forces (UPDF) to provide effective protection for local residents. LRA remained very active in the area until 2010.

<sup>12</sup> Human Rights Watch, *South Sudan: Army Abuses Spread West*, March 2016.

<sup>13</sup> In the same period, the Governor of Western Equatoria, Joseph Bakasoro, was removed from his position and arrested by security forces for his alleged support to rebel forces. He left the country after being released on 27 April 2016.

<sup>14</sup> According to some analysts, the ambiguous provisions of ARCSS on security arrangements and cantonments were amongst the main drivers of this mobilization. In order to increase his political influence and leverage, Riek Machar reportedly continued to promise cantonment sites and positions to his Equatorian-aligned forces while SPLA

deterioration of the human rights situation in Western Equatoria as SPLA-IO (RM) forces fled Juba to Western Equatoria and the Democratic Republic of the Congo, with the SPLA in pursuit, targeting local communities they considered to be supporting and/or harbouring the fleeing SPLA-IO (RM) forces. Again, the brunt of the violence was borne by civilians. With the integration of the SSNLM, small pockets of SPLA-IO remained as opposition in the western/central part of the state, and were largely dormant, with a lack of logistical support. While there were extensive SPLA offensives against SPLA-IO positions in Mundri and Maridi in the last quarter of 2017, the rest of Western Equatoria remained relatively calm from mid-2017 until early 2018.

### **3.2 Recent Context**

19. The period between March and April 2018 was a watershed moment in the recent conflict in Western Equatoria. The return of some SPLA-IO (RM) commanders after several months of absence led to a tactical shift by SPLA-IO (RM). It then intensified attacks against civilians, in particular in the states of Gbudue and Tambura, due to new logistical support and arms supply from the SPLA-IO (RM) group based in Western Bahr el Ghazal, known as the Fertit group.<sup>15</sup>
20. This change in SPLA-IO (RM) approach coincided with a series of associated events at the national and regional levels: the High-level Revitalization Forum (HLRF) process for South Sudan in Addis Ababa; the violent SPLA-led offensive to clear the opposition presence in southern Unity; and the beginning of a *rapprochement* between some Western Equatoria-based SPLA-IO (RM) commanders and State Government representatives through interfaith organizations.<sup>16</sup>
21. In early and mid-April 2018, coming from Western Bahr el Ghazal, SPLA-IO (RM) elements, led by their commanders from Western Equatoria, were spotted in the area of Namutina, in the county of Nagero (Tambura state), where abductions of civilians were reported. These elements were seemingly heading to their base in Nadiangere (Gbudue state), with supplies of weapons and ammunition ferried on donkeys and horses.
22. At the end of April 2018, an SPLA-IO (RM) general [identified as G4]<sup>17</sup> and his forces reportedly arrived in Li-rangu payam (Gbudue state) to resupply. On 28 and 29 April, 12 kilometres south of Li-rangu, there were clashes between SPLA-IO (RM) and SPLA in the payam of Saura (Gbudue state), during which SPLA-IO (RM) elements looted civilian property and abducted civilians, including women and girls. One UNMISS male staff member was among the civilians abducted. SPLA forces were also involved in the looting of civilian property after the withdrawal of SPLA-IO (RM) elements. From May 2018 onwards, in the state of Gbudue, SPLA-IO (RM) carried out attacks and ambushes along the Yambio-Tambura and Yambio-Maridi roads, targeting humanitarian workers and civilians, including Congolese and Ethiopian refugees and IDPs hosted in Rimenze and Makpandu (Gbudue state).

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constantly rejected this. See Small Arms Survey, *Human Security Baseline Assessment (HSBA) for Sudan and South Sudan, Conflict in Western Equatoria*, July 2016.

<sup>15</sup> "Fertit" is used as a catch-all word for Bantu tribes in Western Bahr el Ghazal that belong to non-Dinka and non-Arab groups, such as the Balanda. Even though the Fertit tribes have different ethnic backgrounds, they have become more unified over time, mostly out of opposition to the perceived Dinka-dominated SPLA.

<sup>16</sup> To remain relevant in Western Equatoria, and especially to show presence and dominance necessary to continue maintaining momentum at the negotiation table, SPLA-IO (RM) needed to gain more ground and territories, especially in non-Nuer areas.

<sup>17</sup> See para 4.3 on Responsibility. Identification established by UNMISS HRD.

23. Meanwhile, in the state of Tambura, SPLA-IO (RM) continued looting and abducting civilians in the area of Yangiri around 12 and 15 May 2018. On 17 May, with the support of Fertit pro-Machar armed elements from Western Bahr el Ghazal, SPLA-IO (RM) launched an offensive against SPLA deployed in Nagero, took control of the town and its surroundings for three days, and abducted civilians, including local state administration officials. Inhabitants who had initially fled Nagero at the start of the offensive returned to town during this period and had to flee again on 20 May, when SPLA retook Nagero. On its way into Nagero from Tambura, and in Nagero town, SPLA also indiscriminately attacked civilians and destroyed their homesteads.
24. Following the retake of Nagero on 28 and 29 May 2018, SPLA forces attacked Nadiangere – SPLA -IO (RM) base – without taking control of the area. SPLA-IO (RM) left the base and moved into Bariguna, located about 15 kilometres north-east of Ezo town (Tambura State). The presence of SPLA-IO (RM) in Bariguna led to further forced displacement of civilians fearing attacks.
25. Between mid-June and early July 2018, SPLA attempted to attack Li-rangu from Yambio. However, SPLA-IO (RM) forces held ground and repelled SPLA in the villages south of Li-rangu, including Nambia. SPLA reportedly sustained huge casualties. Since then, SPLA-IO (RM) has maintained control over several known and unknown makeshift bases across the states of Gbudue and Tambura, from where they continue to operate and prey on civilians.<sup>18</sup> They have also managed to infiltrate some areas of Yambio town, which is under the control of the Government, and abduct civilians, as witnessed in the area of Napere (Yambio town) on 20 June 2018. As a consequence of the breakdown in law and order, there were also isolated instances of rogue elements and/or criminal gangs engaging in criminal activities, primarily around Makpandu and Rimenze, throughout this period. However, in these instances, assailants mainly extorted money and harassed civilians.

#### 4. Findings

##### *4.1 Human Rights Abuses by SPLA-IO (RM)*

26. In April 2018, with the return of some of its commanders and new logistical support and arms supply, SPLA-IO (RM) forces intensified attacks, including against civilians, across the states of Gbudue and Tambura. Using predatory tactics, these attacks were characterized mainly by the abduction of adults and children for forced recruitment and sexual violence, including rape and sexual slavery, the looting of civilian property and forced displacement. In some instances, unlawful killings were also carried out.
27. The UNMISS HRD investigation established two broad types of *modus operandi* used by SPLA-IO (RM). Firstly, there was the use of relatively organized attacks on villages and/or road ambushes to abduct and loot. Secondly, there was the use of random and opportunistic attacks against civilians carried out by roaming SPLA-IO (RM) elements.
28. Attacks against villages or settlements were mostly carried out at night or in the dark hours of the morning to surprise villagers in their sleep. SPLA-IO (RM) elements, often dressed in a mix of law enforcement service and military uniforms and/or civilian clothes, snuck into the villages from the cover of the forest, in separate small groups, carrying AK-47 rifles, machetes, clubs and sharpened wooden sticks. Some attackers masked their faces or part of their faces to hide their identities, as

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<sup>18</sup> UNMISS HRD identified six SPLA-IO (RM) camps and at least one transit point.

some of them are locals from the areas that they prey on. After the attacks, they would bring back their loot and abductees to their camps or transit points.

#### ***4.1.1 Abduction of Civilians***

29. UNMISS HRD documented that SPLA-IO (RM) attacked at least 28 villages, one IDP settlement, and one refugee camp in the states of Gbudue and Tambura. Some of these locations were attacked several times. During these attacks, SPLA-IO (RM) abducted over 887 civilians, mainly to increase the number of fighters through forced recruitment, while women and girls were subjected to sexual violence. The victims included 505 women, 278 men, 63 girls and 41 boys. The high numbers of women and girls abducted, and of victims of sexual violence, indicate the gendered dimension of the conflict in Western Equatoria and in South Sudan more generally.

##### ***4.1.1.1 Abduction and Forced Recruitment***

30. Corroborated victim and witness accounts indicate that SPLA-IO (RM) forces used abduction to bolster their own standings within the military ranks as well as the size of their force. In that regard, fighters were reportedly selective while abducting civilians, particularly taking only young and fit adults as well as children. Used as porters to carry the loot, young adults were told while walking to the bases that they should join SPLA-IO (RM) to fight the “*Dinka hegemony*.” They were also promised new AK-47 rifles and “*wives*.” Additionally, victims said that on several occasions, while addressing abductees at Nadiangare and Momboi bases, SPLA-IO (RM) commanders, such as the general identified as [G4], stoked ethnic grievances and justified the coercive behaviour of their fighters against civilians by the need to “*build an army*” to defend the Azande community.<sup>19</sup>
31. Victims of abduction by SPLA-IO (RM), who had recently escaped captivity, described how they had seen men being provided with an AK-47 rifle and other types of firearms with ammunition after undergoing orientation and basic training on combat tactics and firearms familiarization. They reported that some young women were also trained alongside male recruits and issued with firearms. These civilians were forced to be fighters and had no possibility of getting out of this enlistment. After training and arming, there was only one choice for recruits: to obey and to participate in combat. A former combatant, interviewed by UNMISS HRD, explained how obedience to superior orders was rewarded with promotion, regardless of age, while questioning authority was punishable. Lashing and killings were reportedly used to discourage any attempt to escape, defect or not comply with orders.

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<sup>19</sup> Most of the population affected by the coercive nature of the conflict including abduction and forced recruitment is Azande in Gbudue state, while most of SPLA-IO (RM) elements involved in these abuses are also Azande.

32. Six victims of forced recruitment, including three boys, who were held in four different SPLA-IO (RM) bases<sup>20</sup>, told UNMISS HRD that abducted boys, some under the age of 15 years, and some girls over the age of 15 years, were also provided with basic training on how to hold and use AK-47 rifles in order to be fighters or guards for the security of the bases, or to provide protection for commanders. During a field mission in the opposition-controlled area of Li-rangu, in August 2018, UNMISS HRD observed the presence of at least two boys below the age of 18 carrying an AK-47 rifle. Through its investigation, UNMISS HRD established that at least 26 of the 41 abducted boys were recruited as child soldiers by SPLA-IO (RM).

*“Young boys became soldiers too. ... they were taught how to hunt and slaughter a goat. They were told that slaughtering a goat is similar to killing a man. So, if they managed to kill a goat, they are ready to slaughter a man. They were trained as spotters for possible looting targets, and as a scout for ambush targets. They were advised to climb a tree and remain inconspicuous while providing signals to adult soldiers on possible targets (...)”*—  
17-year-old former child soldier.

33. SPLA-IO (RM) used children in different functions according to their age. For instance, UNMISS HRD was informed that boys below 15 years of age were used as spotters before conducting looting or road ambushes. These cases were reported by truck drivers along the Yambio-Ezo and Yambio-Rimenze roads. In other situations, commanders reportedly used boys and girls as aides in chores, such as cooking and cleaning.

34. Former child soldiers who were enlisted for several years but had recently escaped from SPLA-IO (RM), confirmed that children were also used in the conduct of hostilities, including attacks against civilians. One of them, abducted in 2014 at the age of 14, told UNMISS HRD that he had been involved in conducting armed operations in villages around Li-rangu, under the command of an SPLA-IO (RM) major general [identified as G1], until at least June 2018.

#### ***4.1.1.2 Abduction and Sexual Violence***

35. In addition to forced recruitment to boost their numbers and strength, SPLA-IO (RM) commanders and fighters abducted women and girls whom they subjected to different forms of sexual violence, including as a way of exercising ownership over victims and survivors.

36. Accounts from survivors indicate that the ordeal of women and girls would start during attacks on villages. UNMISS HRD documented 43 cases of rape/gang rape which occurred during these attacks. For instance, a survivor from Bazungua explained how she was tied to a tree and raped by two fighters until she passed out due to pain and bleeding. When she regained consciousness, she was threatened with rape again.

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<sup>20</sup> Li-rangu, Nadiangere, Kasia, and Momboi.

37. The ordeal would continue as abductees would walk from the villages and settlements to SPLA-IO (RM) bases through the forest. Tied to each other in small groups, they were used as porters to carry the loot. Along the way, attackers would start to pick out girls and women to rape. According to victims, anyone who tried to run away was whipped or shot at.

*“They had forcibly inserted their penis inside my vagina (...) tearing apart my underwear. I was very exhausted and in extreme pain and fainted after I was raped. When I gained back my consciousness, one of them talked to me in Azande and told me ‘You are just pretending to be in pain!’ (...) because I was moving very slowly (...) I stumbled, they whipped my back until I fell on the ground and fainted again (...) when I regained consciousness, with difficulty, I forced myself up because my captors told me ‘the next time you will pretend fainting, we will rape you again’ (...).”*—15-year-old survivor from Bazumburu.

38. Findings by UNMISS HRD’s investigation indicate that upon reaching SPLA-IO (RM) transit points or bases such as Momboi and Nadiangere, women and girls as young as 12 would be paraded and lined up for the commanders to choose as “wives.” Those who were not chosen would be left for other fighters who would subject them to repeated rapes. Two women witnessed the forced marriage of young girls to commanders at Momboi and Nadiangere bases. According to former female fighters interviewed by UNMISS HRD, women and girls taken as “wives” were forced to stay with the same commander for several weeks before being given to other fighters. Sexual abuses would reportedly stop only once abducted women became fighters. However, former abductees were unaware of any victims being released. Victims had to try to run away during attacks if they wanted to escape their captors.

39. Throughout its investigation, UNMISS HRD interviewed nine female victims of abduction who had managed to escape. Only one of them reported not being raped during her captivity because of her medical condition. In total, UNMISS HRD verified that at least 505 women and 63 girls were abducted between April and August 2018. Considering the high prevalence of rape in cases of abduction by SPLA-IO (RM), UNMISS HRD and OHCHR are concerned that these women and girls have been raped and/or sexually enslaved.<sup>21</sup>

#### ***4.1.2 Ill-treatment and Killing during Looting of Civilian Property***

40. Another feature of the tactics employed by SPLA-IO (RM) is the looting of civilian property. UNMISS HRD’s investigation established that during attacks on villages and settlements, fighters would round up civilians for abduction and then immediately begin demanding money and looting food items, valuables, clothes and livestock. They also laid ambushes on civilian convoys, mainly along the Yambio-Tambura and Yambio-Rimenze roads. According to victims’ and witnesses’ accounts, no civilian categories were spared. In that regard, UNMISS HRD documented attacks on transport vehicles, commercial trucks, humanitarian convoys<sup>22</sup> and ambulances.

<sup>21</sup> [Http://undocs.org/S/2018/250](http://undocs.org/S/2018/250) Report of the Secretary-General on conflict-related sexual violence, 23 March 2018

<sup>22</sup> See para 4.16, Attacks on humanitarian actors.

41. According to information received by UNMISS HRD, while attacking villages, SPLA-IO (RM) elements would terrorize civilians by threatening to kill and/or harm them. At times, they beat civilians with wooden sticks, machetes, whips or gun butts to coerce them into giving away their possessions. Civilians were also subjected to other forms of cruel or inhuman treatment, such as in Bazungua village, where fighters allegedly burnt a civilian using melting plastic. According to a witness, this was done in short intervals to force the victim to give money. Beating and other forms of cruel or inhuman treatment were also intermittently used to discourage civilians' cooperation with the local authorities and SPLA, or to extract information about the presence and/or movement of Government forces.
42. In at least four separate incidents that occurred in Makpandu, Rimenze and Bazumburu, SPLA-IO (RM) elements shot and killed nine civilians, including foreign nationals, reportedly because they attempted to run away, failed to give money, or came from a country accused of supporting the Government of South Sudan. The victims included seven men, one woman and one boy.

#### ***4.1.3 Forced Displacement***

43. The predatory nature of the attacks carried out by SPLA-IO (RM) and, in some circumstances, of the military operations led by SPLA, forced civilians to leave or flee their villages to locations considered safer, such as urban centres or IDP settlements – mainly in Yambio, Makpandu, and Rimenze.<sup>23</sup>
44. Thus, between April and July 2018, several villages around Yambio town, such as Bazungua, Saura and Bazumburu, were abandoned by civilians. According to the Yambio-based South Sudan Relief and Rehabilitation Commission (SSRRC)<sup>24</sup>, between April and August 2018, 1,287 IDPs were registered in Yambio town, and some were yet to be registered.
45. In Yambio town, as in other locations in Gbudue and Tambura states, IDPs have been living in dire conditions, doing menial jobs to buy food. Those who attempted to reach their farms outside Yambio to gather their produce became easy targets for both SPLA-IO (RM) and SPLA forces. This was the case especially around Nambia, Saura and Ndavuro. In addition, the circumstances increased risks of sexual violence for women and girls, particularly those walking alone or in small groups.
46. SPLA-IO (RM) has also targeted Makpandu and Rimenze camps. Since April 2018, Rimenze has been attacked at least three times, and Makpandu has witnessed regular infiltration of SPLA-IO (RM) elements.

#### ***4.1.4 Attacks on Humanitarian Actors***

47. During their operations, SPLA-IO (RM) elements did not spare humanitarian actors. Just as local civilians were victims of abduction, so too were humanitarian personnel. In May 2018, in two separate ambushes in Yangiri, Ezo County (Tambura State), 10 national and international

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<sup>23</sup> See also, para.4.2.3 on forced displacement of civilians by SPLA.

<sup>24</sup> SSRRC is a department of the Ministry of Humanitarian Affairs and Disaster Management.

humanitarian workers (including one woman) were abducted and brought to Nadiangere, where they were held captive for four days and subjected to extortion. They were released on 18 May 2018, following intense pressure from the humanitarian community. Fighters under the command of [G4] were reportedly behind this abduction.

48. Convoys of humanitarian actors transporting assistance also fell into road ambushes and were looted, particularly in the areas around the Tambura-Yambio road. UNMISS HRD documented at least two attacks on humanitarian vehicles, including an ambush of an INGO ambulance transporting one female patient and a six-month-old infant from Makpandu refugee camp to Yambio hospital on 23 May 2018. While the attackers let the driver of the ambulance go with the baby, they abducted the female patient in the ambulance, which was eventually left in Rimenze for lack of fuel. The patient was allegedly raped for six consecutive days by her abductors before being released. The infant died before reaching Yambio hospital.
49. These attacks against humanitarian organizations led to the relocation of personnel and a corresponding reduction in their service delivery. Those remaining on the ground operate under extreme threat of physical harm, including ambushes and targeted attacks on their premises and facilities.

#### ***4.2 Violations of International Human Rights and Humanitarian Law by SPLA***

50. As of April 2018, in response to the spike of attacks by SPLA-IO (RM), SPLA resorted to a few military offensives while becoming more aggressive towards civilians at security checkpoints or during reconnaissance patrols. SPLA military operations documented by UNMISS HRD did not comply with the principles of distinction between military objectives and civilian objects, as well as between civilians and combatants. This led to serious violations of international human rights and international humanitarian law, including unlawful killings of civilians, as well as looting and destruction of civilian property, such as in Nagero.

##### ***4.2.1 Unlawful Killings, Enforced Disappearance, Arbitrary Arrests and Detentions and Ill-Treatment of Civilians***

51. Violations committed by SPLA forces were mainly reported during the counter-offensive operation conducted in Nagero on 20 May 2018 to dislodge SPLA-IO (RM) elements who had taken over the town two days earlier. Accounts from eyewitnesses indicate that the method of warfare employed by SPLA did not distinguish between military and civilian objects. Ground troops shot indiscriminately at civilians while destroying their property in Nagero town and in villages along the road from Tambura to Nagero.
52. SPLA elements on foot pursued civilians and continued shooting throughout the town, forcing them to flee into the bush. At least 14 civilians, including three women, were reportedly killed by bullets during the retaking of Nagero. UNMISS HRD managed to establish the exact circumstances in which four of these civilians were allegedly unlawfully killed by SPLA elements in Nagero town and its surroundings. One was reportedly executed while the other three, who were elderly or persons with disabilities and thus unable to flee, were burnt alive in their homesteads.
53. Accounts of victims and witnesses also described how SPLA forces aggressively prevented civilians from returning to their village from 20 May onwards, ill-treating and detaining those who attempted to return to Nagero, accusing them of being supporters of SPLA-IO (RM). One victim told UNMISS HRD that SPLA elements were telling them: *“You are the ones feeding the people in the bush. You are the allies of Machar!”*

54. Around Yambio, civilians who had sought refuge in town to escape the predatory tactics employed by both SPLA-IO (RM) and SPLA forces informed UNMISS HRD that they had been held and ill-treated by SPLA elements at checkpoints and/or during reconnaissance patrols. This occurred particularly when people were returning home from their farms and gardens in the vicinity of Yambio town.
55. In specific instances, some civilians were subjected to enforced disappearances and/or killed. In at least three incidents involving three male victims, families and witnesses informed UNMISS HRD that, days after their relatives or people they knew went missing, they had found their bodies with bullet marks or with their throats slit, in areas controlled by Government forces, such as in Saura and Ndavuro.
56. UNMISS HRD received information indicating that in Rimenze and Makpandu, Government forces had deployed to the area in early July 2018 to protect refugees and displaced persons from SPLA-IO (RM) attacks. However, the SPLA troops arbitrarily arrested and detained refugees and IDPs. In at least six incidents, the SPLA reportedly took from their shelters 10 civilians, including five women who remained missing at the time of reporting.
57. UNMISS HRD has been made aware of the arbitrary detention of two individuals by the National Security Service (NSS) in Yambio town on suspicion of being associated with SPLA-IO (RM). As UNMISS HRD and family members have no access to NSS and SPLA detention facilities, their whereabouts cannot be confirmed.

#### ***4.2.2 Unlawful Destruction of Property and Looting***

58. In their counter-offensive operations along the way from Tambura to Nagero, and on the outskirts of Nagero town, the SPLA forces engaged in large-scale unlawful destruction of civilian property and public facilities, and looted property, including livestock. These acts were not justified by military necessity. While visiting Nagero on 27 July 2018, UNMISS HRD saw that a high number of civilian properties had been completely destroyed and burned, and recorded the ransacking and looting of eight humanitarian-run health facilities and five primary schools.
59. Civilians who were present when SPLA forces attacked the town on 20 May 2018 described how the ground forces had stormed into the town and burned and destroyed their homes, while opening fire indiscriminately to instill fear among civilians.
60. Similarly, UNMISS HRD was informed by victims and witnesses from the villages of Bandala, Duma, Maringindo, Makpanangbara, and Nbage, near Nagero, that their houses were also burned or destroyed.
61. Outside the scope of this major military operation in Nagero, the SPLA elements adopted a *modus operandi* similar to that of SPLA-IO (RM), targeting civilians in small-scale incidents. For example, around Yambio and in the area of Rimenze, SPLA elements entered villages and settlements, such as in the Rimenze IDP settlement, to loot and extort civilians whom they accused of supporting SPLA-IO (RM).

#### ***4.2.3 Forced Displacement***

62. Forced displacement of civilians by SPLA was mainly documented in Nagero and Tambura. The violent counter-offensive of 20 May 2018 in and around Nagero led to the displacement of

thousands of civilians from Nagero to Tambura and Bazia (in Western Bahr el Ghazal), while others fled to the bush and surrounding villages. Nagero and surrounding villages were consequently emptied of their populations.

63. IDPs from Nagero and surrounding villages started arriving in Tambura on 26 May 2018. By mid-June, humanitarian actors estimated their number at around 18,000. Meanwhile, more than 2,000 displaced people fled to Bazia Payam in Wau County. On their arrival in Tambura town, the state Governor of Tambura, who is also the senior-most SPLA commander in Western Equatoria, began accusing the IDPs of supporting SPLA-IO (RM).<sup>25</sup>
64. Invoking security reasons, notably the possibility that they could assist SPLA-IO (RM) to attack Tambura, the Governor urged IDPs to move to Mabia, a desolate location about seven kilometers south of Tambura on the Tambura-Ezo road. To that end, in early July 2018, he prevented the delivery of humanitarian assistance in Tambura. Following advocacy by humanitarian actors and UNMISS in the same month, humanitarian assistance (food and non-food items) was eventually distributed to the IDPs.
65. However, this did not stop the Governor from relocating the IDPs. On 11 August 2018, over 4,000 IDPs were moved to Mabia, followed several days later by more than 17,000 additional IDPs. By the end of August, according to SSRRC, Mabia was officially hosting 21,229 IDPs from Nagero. UNMISS HRD has not been able to determine whether the relocation to Mabia was voluntary and organized in safety and dignity. In July 2018, when human rights officers interviewed IDPs in Tambura, two of them described being torn between going back to Nagero, which was insecure, and staying in Tambura, where they feel discriminated against and exposed to harassment by Government security forces.

#### ***4.3 Responsibility for violations and abuses of international human rights law and violations of international humanitarian law***

##### ***4.3.1 Relationships within SPLA-IO (RM) in Western Equatoria***

66. While conducting its investigation, UNMISS HRD identified elements indicating that armed groups involved in the abuses documented in this report were under the overall hierarchical structure and chain of command of SPLA-IO (RM), and therefore making them an integral part of SPLA-IO (RM).
67. The overall command of SPLA-IO (RM) in Western Equatoria is under a major-general [identified as G1]. Open sources report that he was appointed by Riek Machar in 2015 as an SPLA-IO (RM) major-general and has remained associated with SPLA-IO (RM) since that time, acting as the overall commander of the SPLA-IO (RM) in Western Equatoria. In late 2017, he was reportedly detained in Raja<sup>26</sup> by SPLA-IO (RM), ostensibly for redirecting supplies that were meant for SPLA-IO (RM) in Western Equatoria and Western Bahr el Ghazal. He was reportedly released in March 2018, without being stripped of his rank.
68. Under [G]1, two generals, one identified as [G2] and another as [G3], have been conducting operations in Gbudue and Tambura states. UNMISS HRD also identified brigadier generals,

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<sup>25</sup> Almost all the IDPs displaced from Nagero and surrounding areas are from the Balanda community, while the Governor belongs to the Azande community.

<sup>26</sup> Raja is the capital of Lol State (Western Bahr el Ghazal region).

colonels and platoon commanders operating under the command of these two generals. However, most people interviewed by UNMISS HRD did not identify these mid-ranking commanders by their full names, due to fear of reprisals, referring to them instead by nicknames.

69. In addition to these two generals, reliable information indicates that a third major-general [identified as G4] was deployed as chief of operations in the area of Nadiangere as of mid-April 2018. G4 has reportedly been taking instructions and orders from G1, therefore bypassing G2 and G3 for the command of operations in villages or laying ambushes<sup>27</sup>. UNMISS HRD was also informed of possible disagreements between G2 and G4 in the area of Li-rangu since late April 2018, when the first attacks in Saura were reported. In addition to clan differences and power struggles, the control of territory and resources such as teakwood could also be factors in disagreements within the SPLA-IO (RM) structure.
70. SPLA-IO (RM) in Western Equatoria appears to have received support from the SPLA-IO (RM)-aligned Fertit group based in Western Bahr el Ghazal, which was reportedly involved in the attack on Nagero, on 17 May. UNMISS HRD was informed by a confidential source in Western Bahr el Ghazal that donkeys and horses coming through Raja were reportedly used to cart weapons and ammunition from or through the Fertit group to G4. This was confirmed by some victims and witnesses abducted and held in Nadiangere.

#### **4.3.2 Command responsibility for SPLA-IO (RM)**

71. Within the hierarchical structure and chain of command of SPLA-IO (RM) operating in Western Equatoria, UNMISS HRD has reasonable grounds to believe that three commanders (G1, G2 and G4) are among those who had authority and effective control over those committing the abuses documented in this report.
72. Accounts from three former fighters corroborated the fact that in Li-rangu and Nadiangere, on several occasions between April and August 2018, G2 and G4 gave direct orders to junior commanders to conduct operations with the primary objective of abduction and forced recruitment, and that their orders were followed with operations. G2 and G4 reportedly exercised effective control over their fighters, particularly when they came back to their bases with their loot and abductees.
73. In addition, testimonies from nine victims who were held captive between April and August 2018 in different SPLA-IO (RM) bases indicated that G2 and G4 were not only giving instructions and orders to the rank and file but were also presented to victims by junior officers and other ranks at their bases as the senior commanders exercising overall authority over others. After introducing themselves by their names, they would deliver speeches to newly arrived abductees to explain why they had been taken by SPLA-IO (RM) fighters and recruited to join their forces.

*"Sometime in April 2018, the instructions changed. A delegated order from top came down to my level, and apparently, apart from looting, the abductions were to be resumed. During operations, at least 300 rebels would go in different smaller groups of 15 to 20. Upon reaching the area of operation, there were groups to mainly loot, there were groups to abduct people, and there were groups to block the possible exit routes. When you were caught and going to be abducted and you tried to run away or escape — then you will be shot instantly." — 15-year-old former female child soldier.*

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<sup>27</sup> Confidential meeting

74. According to victims and witnesses, G2 and G4 were also engaged in the commission of abuses, particularly sexual violence. Eight survivors, victims and witnesses revealed these two commanders' involvement in rape and forced marriage with women and girls after their forces brought them to the bases.
75. Since April 2018, G2 and G4 knew that their fighters were committing serious abuses of international human rights law and violations international humanitarian law, but there is no indication that they took measures to address these abuses or to punish individuals involved in the forced recruitment of adults and children, the rape and sexual slavery of women and girls, or the looting of civilian property.
76. In addition, there is no indication that G1 made any effort to stop or hold accountable these commanders and members of their forces for these abuses against civilians. During its investigation, UNMISS HRD was shown a confidential security report addressed to Riek Machar, dated 9 August 2018, written and signed by G2, underscoring that G1 had repeatedly been informed of abuses committed by G4 but that no action had been taken to stop him. According to this report, he had likened reporting abuses committed by G4 as a matter that had "*fallen on deaf ears.*" According to reliable information and victims' accounts, G1 was himself involved in the recruitment of child soldiers, including those under the age of 15, since at least 2014.

#### ***4.3.3 Command Responsibility for SPLA***

77. During their counter-offensive in Nagero in May, SPLA forces were also responsible for the killing of civilians, looting and burning of civilian property. UNMISS HRD was informed that this attack was reportedly led by elements from the SPLA Division VI based in Tambura, with the possible support of SPLA Commando elements based in Nzara. These two SPLA units seem to respond to two different chains of command.
78. UNMISS HRD was informed of the name of at least one SPLA Division VI commander among the officers who reportedly supervised this operation. In addition, there are reasonable grounds to believe that the SPLA General HQ and the Commando command from Nzara and Juba would have known, ordered and/or directed these attacks. UNMISS HRD is not aware of any actions taken by the SPLA leadership to hold to account those responsible for the violations documented in Nagero.
79. Regarding the violations committed around Yambio, UNMISS HRD was also informed of the name of the senior-most SPLA Division VI commander in charge of this area during the period under review. There are reasonable grounds to believe that the SPLA Division VI troops would not carry out operations in villages on the outskirts of Yambio town – such as Saura, Njam, Li-rangu and several other villages to the north – without the orders of this commander based in Yambio town.

#### ***4.4 UNMISS Response***

80. In light of the escalation of conflict-related violence in Western Equatoria, and of increased violations and abuses by both parties to the conflict between April and August 2018, UNMISS adopted a four-pronged approach, which took into consideration resilience-related actions and strategies that other United Nations agencies have been implementing since 2016.

##### ***4.4.1 Political Engagement***

81. UNMISS has supported multiple peace initiatives through the mediation of interfaith organizations to end hostilities between armed opposition groups and the Government in Western Equatoria. According to UNICEF, these efforts have notably led to the release, in 2018, of over 745 children

associated with the armed conflict.<sup>28</sup> UNMISS also pursued sustained advocacy efforts to address abuses and violations by parties to the conflict, and respect for humanitarian principles and workers, particularly those abducted in May 2018. In July 2018, the Special Representative of the Secretary-General in South Sudan (SRSG) and his Deputy travelled to Gbudue and Tambura states to meet with local authorities to address the protection and humanitarian concerns of IDPs and refugees. In early September, the SRSG had a meeting with the leader of SPLA-IO (RM), Riek Machar, in Khartoum, during which he expressed concern regarding the reported abuses perpetrated by SPLA-IO (RM) elements in Western Equatoria. The UNMISS Head of Field Office in Western Equatoria also engaged, through meetings and telephone conversations, with SPLA-IO (RM) commanders and the SPLA leadership to express concerns about the reported scale of violence, and to remind them of their obligations to respect international human rights and humanitarian law.

#### ***4.4.2 Humanitarian Response***

82. In accordance with its mandate, UNMISS has been facilitating and providing protection escorts to humanitarian convoys, as well as protection to humanitarian assistance hubs in Yambio town. During the reporting period, when there was a spike in the abduction and looting of humanitarian facilities and workers, UNMISS dedicated its protection force to escort convoys as a matter of priority, to ensure that humanitarian assistance and services reached displaced populations in various locations.

#### ***4.4.3 Promotion and Protection of Human Rights***

83. With the escalation in violence, UNMISS HRD strengthened its presence in Western Equatoria through the deployment of human rights officers to investigate allegations of violations and abuses by the parties to the conflict, and to advocate for the respect of their international human rights and humanitarian law obligations. On 24 July and 10 August 2018, UNMISS HRD met with one of the SPLA-IO (RM) commanders to raise concerns and seek information on ongoing abuses of human rights. UNMISS HRD also expressed concerns and sought information from the Government of South Sudan on violations committed by its forces, during several meetings with the Gbudue Minister of Local Government and the Governor of Tambura. UNMISS HRD advocated for action to halt harassment, extrajudicial or unlawful killings, burning of civilian houses, and attacks on civilians in Saura, Yambio, and on the Makpandu-Rimenze road by SPLA-IO (RM) and SPLA forces.

#### ***4.4.4 Protection by Presence and Visibility***

84. UNMISS is continuing to conduct short- and long-duration patrols to maintain a military and civilian presence in established hotspots to protect civilians, deter violence, support reconciliation and build durable peace. These patrols enable UNMISS HRD to continue monitoring, investigating and reporting on violations and abuses in the affected areas.
85. Despite restrictions on movement imposed by the parties to the conflict, and the allocation of most of the Mission's resources in the area to facilitating humanitarian services, UNMISS conducted 27 short- and long-duration patrols in the affected areas and to places of displacement between April and August.

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<sup>28</sup> These children included 483 boys and 262 girls. Among them, 116 (86 boys and 30 girls) were associated with SPLA-IO (RM). The remaining children were associated with SSNLM.

## 5. Conclusion

86. Between April and August 2018, civilians have borne the brunt of repeated attacks by SPLA-IO (RM) and SPLA forces, caught between their predatory tactics. At least 28 villages, one IDP settlement and one refugee camp, in the states of Gbudue and Tambura (Western Equatoria) were attacked. A decrease in attacks was recorded from August onwards.
87. Through its investigation, UNMISS HRD found that at least 887 civilians were abducted. Most of the victims were women (505) and girls (63). Considering the high prevalence of rape in cases of abduction by SPLA-IO (RM) forces, UNMISS HRD and OHCHR are concerned that these women and girls have been raped and/or sexually enslaved, consistent with trends of sexual violence documented in South Sudan since 2014. They are also concerned that abducted men and boys have been forcibly recruited to “*build up an army*”, as claimed by an SPLA-IO (RM) commander. In addition, UNMISS HRD documented extensive looting of civilian property and forced displacement. Humanitarian organizations, particularly their convoys, have been targeted in armed ambushes and their personnel abducted for several days before being released, unlike most local civilians who are still held captive.
88. Driven by political interests and personal agendas, and taking advantage of the local grievances of Western Equatoria communities against a national Government perceived as non-inclusive, the SPLA-IO (RM) commanders have engaged and led their elements in the commission of acts that constitute serious abuses of international human rights law and serious violations of international humanitarian law, which in many cases may amount to war crimes. In that regard, the UNMISS HRD investigation has identified three SPLA-IO (RM) commanders who allegedly had the effective command and control of forces committing these abuses, and therefore may bear the greatest responsibility for the violations and abuses committed during the period examined by the report.
89. SPLA forces carried out a few counter-offensives against SPLA-IO (RM), while becoming more aggressive towards civilians at security checkpoints or during reconnaissance patrols. In particular, during the Nagero offensive in May 2018, SPLA elements did not comply with the principles of distinction between military objectives and civilian objects, as well as between civilians and combatants. This led to serious international human rights and humanitarian law violations, resulting in unlawful killing of civilians, looting and destruction of civilian property.

## 6. Recommendations

### *6.1 Conduct of operations and release of civilians*

- a) All parties to the conflict must abide by international human rights law and international humanitarian law; they should reiterate and enforce orders to ensure the conduct of any military operations in strict compliance with international law, in particular the principles of distinction, precaution and proportionality, and the prohibition of unlawful killings, sexual violence and other forms of torture and inhuman treatment and pillage.
- b) All parties to the conflict must adhere to the conditions of the revitalized Agreement on the Resolution of the Conflict in South Sudan.

- c) SPLA-IO (RM) should immediately release all civilians it has abducted, first and foremost the children.

## **6.2 Accountability**

- d) The Government of South Sudan should conduct a prompt, effective, independent and impartial investigation into all allegations of violations and abuses of international human rights and humanitarian law in Western Equatoria.
- e) The Government of South Sudan should prosecute all those allegedly responsible for crimes committed, including those in positions of command and authority. Where the Government is unable or unwilling to do so, other accountability mechanisms should be invoked – including through the Hybrid Court for South Sudan, when established.
- f) The Government of South Sudan is urged to sign the Memorandum of Understanding on the Hybrid Court with the African Union as a meaningful step towards the establishment of this Court.

## **6.3 Protection of and assistance to victims**

- g) The Government of South Sudan should ensure the protection of victims, including access to basic services. Victims should also receive an adequate and full reparation.
- h) Donors and international partners should build on the UN Joint Programme for Recovery and Resilience in Yambio to support the local governments of Gbudue and Tambura, as well as humanitarian and development organizations, to re-establish access to basic services, particularly medical and psychosocial assistance, including for survivors of conflict-related sexual violence, and to provide an economic alternative for young fighters as part of their reintegration.
- i) All parties to the conflict are obliged to grant unhindered access to humanitarian organizations and UNMISS to reach displaced civilians and victims.

## Annex: Legal Framework

### 1. *International Human Rights Law*

90. Under the international human rights law framework, which applies both in times of peace and armed conflict, the Government of the of South Sudan is obliged to respect, protect, promote, and fulfil the human rights of all persons within its territory or under its control.<sup>29</sup> South Sudan has *inter alia* the obligation to prevent all acts of killing, torture and inhuman or degrading treatment, abductions, rape and other forms of sexual violence, as well as the pillage and destruction of villages; to take effective measures to promptly investigate violations and abuses of international human rights law and violations of international humanitarian law; and to ensure full accountability for the perpetrators of these violations and abuses.
91. Under international human rights law, South Sudan is also responsible for the wrongful conduct of individuals or groups not formally integrated into its security forces when the latter act on its instructions or under its direction or effective control. It is also obligated to take necessary action to prevent, protect against, and respond to violence against women, whether perpetrated by private or public actors. It is important to highlight that SPLA and SPLA-IO (RM) have previously been listed by the United Nations for committing sexual violence in conflict and grave violations against children, including killing and maiming, recruitment and use of child soldiers, abduction and rape.<sup>30</sup>

### 2. *International Humanitarian Law*

92. International humanitarian law applies to the non-international armed conflict in South Sudan.<sup>31</sup> In addition, all parties to the conflict are obligated to abide by the relevant rules of customary international law applicable in non-international armed conflicts, including the principles of distinction, proportionality and precaution. Under this legal framework, and in particular, Common Article 3 of the Geneva Conventions, SPLA and SPLA-IO (RM) forces are bound to distinguish at all times between civilians (including humanitarian relief personnel) and combatants, and to treat humanely all persons taking no active part in hostilities.
93. International humanitarian law also prohibits unlawful killing, torture, cruel or inhuman treatment and outrages upon personal dignity, in particular, humiliating and degrading treatment, rape and other forms of sexual violence, destruction of property, pillage, enforced disappearance, arbitrary deprivation of liberty and forced displacement. In addition, children, the elderly, people with disabilities and the infirm affected by armed conflict are entitled to special protection. According

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<sup>29</sup> The Republic of South Sudan is a State party to the African Charter on Human and Peoples' Rights (ratified in 2016) and five United Nations human rights treaties: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Optional Protocol; the Convention on the Elimination of All Forms of Discrimination against Women, and its Optional Protocol; and the Convention on the Rights of the Child (all ratified in 2015). South Sudan is also bound by provisions of international human rights law that have attained the status of customary law.

<sup>30</sup> See the 2018 Report of the Secretary-General on Conflict-Related Sexual Violence, available at <http://undocs.org/en/S/2018/250>.

<sup>31</sup> See ICRC Annual Report 2013, at p. 200; ICRC press release of 6 January 2014, <https://www.icrc.org/eng/resources/documents/news-release/2014/01-06-south-sudan-juba-petermaurer-president-visit.htm>; ICRC Annual Report 2014, at p. 204; the Intercross blog interview with the ICRC of 12 June 2015, <http://intercrossblog.icrc.org/blog/interview-with-head-of-delegation-in-southsudan>; ICRC Annual Report 2015, at p. 208; and ICRC Annual Report 2016, at p. 195. The Republic of South Sudan is also a State party to the four Geneva Conventions of 1949, and the two Additional Protocols of 1977 (acceded to in 2013).

to customary international law, humanitarian relief personnel and objects must always be respected and protected.

94. States are responsible for all violations of international humanitarian law committed by their armed forces or those acting under their direction or control. Under international law, the Government of South Sudan is obliged to investigate serious violations of international humanitarian law and to ensure full and adequate reparation for loss or injury caused.

### ***3. International Criminal Law***

95. Under international criminal law, individuals can be held individually criminally responsible for, amongst other international crimes, war crimes and crimes against humanity
96. The August 2015 Agreement on the Resolution of Conflict in South Sudan (ARCSS) envisioned the establishment of a Hybrid Court, which, according to its draft statute, will have jurisdiction over war crimes as well as crimes against humanity, and other serious crimes under international law. The Hybrid Court should have primacy over national jurisdictions to prosecute individuals, both civilian and military, who have allegedly committed such crimes. To date, the Government of South Sudan has not signed the Memorandum of Understanding with the African Union for the establishment of this Court.
97. In many cases, acts documented in this report may constitute war crimes and crimes against humanity under international criminal law.