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**Letter dated 19 September 2016 from the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 (2015) addressed to the President of the Security Council**

The members of the Panel of Experts established pursuant to Security Council resolution 2206 (2015), whose mandate was extended pursuant to Council resolution 2290 (2016), have the honour to transmit herewith, in accordance with paragraph 12 (e) of resolution 2290 (2016), the Panel's 120-day report.

The report was provided to the Security Council Committee established pursuant to resolution 2206 (2015) on 7 September 2016 and was considered by the Committee on 16 September.

The Panel would appreciate it if the present letter and the report were brought to the attention of the members of the Security Council and issued as a document of the Council.

*(Signed)* Payton **Knopf**  
Coordinator

Panel of Experts on South Sudan

*(Signed)* Andrews **Atta-Asamoah**  
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## **Report of the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206 (2015)**

### *Summary*

In paragraph 12 (e) of its resolution 2290 (2016), the Security Council called upon the Panel of Experts on South Sudan to provide a report on the current security threats facing the Transitional Government of National Unity, and its need to maintain law and order in South Sudan, as well as provide further analysis of the role of transfers of arms and related materiel coming into South Sudan since the formation of the Transitional Government of National Unity (TGNU) with respect to the implementation of the Agreement on the Resolution of the Conflict in the Republic of South Sudan and threats to the United Nations Mission in South Sudan and other United Nations and international humanitarian personnel. Following the outbreak of large-scale fighting in Juba in early July 2016, the flight of the opposition leader, Riek Machar, from Juba and his subsequent arrival in Khartoum in late August, and the de facto collapse of the transitional government envisaged in the Agreement, the dynamics within South Sudan remain complex and fluid.

The evidence gathered by the Panel suggests that the most severe security threats to TGNU and to the implementation of the Agreement are not external but internal to South Sudan, and primarily result from the actions and policies of the two major parties to the Agreement: the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A) in Government, led by the President, Salva Kiir, and SPLM/A in Opposition, led by Riek Machar. These threats include the continued belligerence of SPLM/A in Government and SPLM/A in Opposition; the intensification of the tribal undercurrent of the conflict; the collapse of the economy; and the continuing importation of arms and related materiel. In addition, the evidence obtained by the Panel suggests that threats against the United Nations and international humanitarian personnel are increasing in scope, number and degree of brutality, in a context in which senior figures of the Government, including Salva Kiir, are intensifying their rhetoric against and hostility towards the United Nations, regional bodies and the broader international community.

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\* The annexes are being circulated in the language of submission only and without formal editing.

\*\* Owing to its confidential nature, annex V was circulated separately and is not included in the present document.

## I. Security threats to the Transitional Government of National Unity<sup>1</sup>

1. The Panel has concluded that the most severe security threats facing the Transitional Government of National Unity (TGNU) arise from the deliberate policies and tactics of both major parties to the Agreement on the Resolution of the Conflict in the Republic of South Sudan, which have exacerbated the political, tribal and ethnic drivers of the war. The continued belligerence of the parties, their commitment to military rather than political means to achieve their aims and the lack of political will to implement the Agreement pose the most significant security threats to the transitional government. These threats are evident in the outbreak of violence in Juba on 8 July 2016, resulting in the flight of Riek Machar from the capital and subsequently the country; the continuation and escalation of armed conflict in other parts of South Sudan; the increasingly tribal nature of the violence in Juba and elsewhere; and the collapse of the national economy owing to government mismanagement and diversion of funds to procure weapons and to prosecute the war.

2. In particular, the arming of communities by the parties on the basis of tribal affiliation continues to fuel widespread violence, and neither party has demonstrated a willingness to maintain basic law and order in areas under its respective control. There is no evidence to suggest that more weapons are required in South Sudan for the transitional government to achieve a stable security environment. Rather, the continued influx of weapons, as described in section II below, contributes to the spread of instability and the continuation of the conflict.

3. The external security threats to the transitional government are comparatively minimal. While the Sudan has provided small arms, ammunition and some logistical support to the Sudan People's Liberation Movement/Sudan People's Liberation Army (SPLM/A) in Opposition since December 2013 (see S/2016/70), the Panel has found no evidence to date that the Sudan — or any other neighbouring country — has provided it with heavy weapons, which has limited the opposition's ability to mount large-scale operations.

### **Continued belligerence of the parties**

4. The formation of the transitional government in April 2016 notwithstanding, widespread armed conflict has persisted throughout the country, including the outbreak of large-scale violence in Juba in July. From Western Bahr el Ghazal state to the greater Upper Nile region to the greater Equatoria region, escalating insecurity is evinced by the increase in the number of reported conflict incidents and displacements.<sup>2</sup> More than 121,000 South Sudanese have fled to neighbouring countries since the formation of TGNU; over 105,000 since 8 July alone.<sup>3</sup> New

<sup>1</sup> The information in the present report was current as at 6 September 2016 when it was submitted to the Security Council Committee established pursuant to resolution 2206 (2015).

<sup>2</sup> A total of 1.61 million South Sudanese are currently internally displaced and more than 958,000 have fled to neighbouring countries (data as at 21 August 2016). Office of the United Nations High Commissioner for Refugees, "UNHCR South Sudan situation regional emergency update 15-21 August 2016", available from <http://data.unhcr.org/SouthSudan/regional.php>.

<sup>3</sup> Office of the United Nations High Commissioner for Refugees, "South Sudan — refugees in and from South Sudan map, April 2016", 10 May 2016. Available from <http://data.unhcr.org/SouthSudan/regional.php>.

arrivals from South Sudan have reported continuing violence against civilians, looting, forced recruitment, rape and armed actors preventing civilians from leaving the country.<sup>4</sup> Owing to intense fighting in the town of Wau, Western Bahr el Ghazal state, in June, 41,000 civilians remain displaced within the town, including more than 24,000 living adjacent to the United Nations Mission in South Sudan (UNMISS) compound,<sup>5</sup> and 37,000 people are displaced outside the town.<sup>2</sup>

5. The Secretary-General, the Peace and Security Council of the African Union, the Intergovernmental Authority on Development (IGAD) and the Joint Monitoring and Evaluation Commission, jointly charged with monitoring the implementation of the Agreement, have on multiple occasions — both before and after the fighting in Juba in July — highlighted the lack of progress in the implementation of the Agreement and condemned the continuing hostilities.<sup>6</sup>

6. The Chair of the Joint Monitoring and Evaluation Commission, Festus Mogae, specifically warned about the political stalemate two weeks before the outbreak of violence in Juba, saying: “I regret to report that the progress I had expected has not materialized ... It leaves us with no option but to suspect that perhaps there is a serious lack of commitment towards peace ... This deliberate and institutionalized impediment to the implementation of the Agreement is totally unacceptable”.<sup>7</sup> At a subsequent meeting in Khartoum of the Agreement’s guarantors on 31 July, he stated: “We know that forces of both parties and others allied to them continue to clash throughout the country, with a likelihood of larger battles increasing every day.”<sup>8</sup>

7. During a visit to South Sudan from 23 to 29 June, the Panel met members of the Cabinet, representing all four signatory parties to the Agreement.<sup>9</sup> Without exception, they described a situation in which the economy had collapsed; there had been little

<sup>4</sup> Office of the United Nations High Commissioner for Refugees, “South Sudan situation regional emergency update 8-14 August 2016”. Available from <http://data.unhcr.org/SouthSudan/regional.php>.

<sup>5</sup> United Nations Mission in South Sudan, “UNMISS PoC update No. 136”, 29 August 2016. Available from <http://reliefweb.int/report/south-sudan/unmiss-poc-update-no-136>.

<sup>6</sup> See, among others, the remarks of the Secretary-General, 16 July 2016, available from [www.un.org/press/en/2016/sgsm17932.doc.htm](http://www.un.org/press/en/2016/sgsm17932.doc.htm); the communiqué of the 609th meeting of the Peace and Security Council of the African Union, 30 June 2016, available from [www.peaceau.org/en/article/communique-of-the-609th-meeting-of-the-psc-on-the-situation-in-south-sudan](http://www.peaceau.org/en/article/communique-of-the-609th-meeting-of-the-psc-on-the-situation-in-south-sudan); the statement of the IGAD Chairperson, Hailemariam Dessalegn, on the situation in South Sudan, 11 July 2016, available from [http://igad.int/index.php?option=com\\_content&view=article&id=1386:igad-chairpersons-statement-on-the-situation-in-south-sudan&catid=47:communique&Itemid=149](http://igad.int/index.php?option=com_content&view=article&id=1386:igad-chairpersons-statement-on-the-situation-in-south-sudan&catid=47:communique&Itemid=149); and the communiqué of the 616th meeting of the Peace and Security Council of the African Union, 11 August 2016, available from [www.peaceau.org/en/article/communique-of-the-peace-and-security-council-psc-of-the-african-union-au-at-its-616th-meeting-on-the-situation-in-south-sudan](http://www.peaceau.org/en/article/communique-of-the-peace-and-security-council-psc-of-the-african-union-au-at-its-616th-meeting-on-the-situation-in-south-sudan).

<sup>7</sup> Opening statement by the Chair of the Joint Monitoring and Evaluation Commission during the plenary session of the Commission, held on 23 June 2016 in Juba. Available from <http://jmecsouthsudan.org/news.php?id=31>.

<sup>8</sup> Statement by the Chair of the Joint Monitoring and Evaluation Commission to a meeting of partners in Khartoum, 31 July 2016. Available from [www.jmecsouthsudan.com/news.php?id=40](http://www.jmecsouthsudan.com/news.php?id=40).

<sup>9</sup> Currently, only two of the four signatories remain in the Transitional Government — one major party, SPLM/A in Government, and one minor party, the G-10/“former detainees”. The leader of SPLM/A in Opposition, Riek Machar, was controversially removed and replaced as First Vice-President in late July.

substantive progress in the implementation of the Agreement; the Sudan People's Liberation Army (SPLA) and other military forces aligned with Salva Kiir had not redeployed outside Juba, as required under chapter II of the Agreement; and the failure to pay the armed forces was exacerbating tensions among military personnel. The near-universal expectation presented to the Panel was that fighting would resume unless there was a significant change in the behaviour of the parties to the Agreement.

8. While its investigations into the subsequent violence in Juba in July are continuing, on the basis of numerous interviews with first-hand witnesses and multiple other findings sources (see annex I), the Panel has reached the following preliminary findings.

9. First, the relatively large scale of the hostilities, which featured the deployment of Mi-24 attack helicopters, in coordination with ground forces and reinforced by armoured units, supports the conclusion that the fighting was directed by the highest levels of the SPLA command structure. Many senior SPLA officers have confirmed to the Panel that only Salva Kiir and the Chief of General Staff of SPLA, Paul Malong, have the authority to order the deployment of those helicopters, and the Panel has received numerous reports from senior SPLA personnel and South Sudanese political figures citing Malong, with Kiir's full knowledge, as having directed the fighting on 10 and 11 July.<sup>10</sup>

10. Second, not all SPLA units in Juba participated in the fighting. The Panel received credible reports from several senior SPLA officers that some units had refused orders issued by Malong to engage in the fighting.

11. Third, witnesses in Juba pointed to an evident ethnic dimension to the fighting and some ethnically motivated killings, with SPLA and security forces from the Dinka tribe more heavily involved in the events than other groups. Numerous reports indicate that Equatorian militias became engaged in the fighting in Juba on the side of SPLM/A in Opposition.

12. Fourth, the indiscriminate use of weapons by both SPLA and SPLM/A in Opposition in densely populated areas, including the deployment of Mi-24 attack helicopters by SPLA, displayed a flagrant disregard for the lives of civilians and the inviolability of United Nations premises.<sup>11</sup>

#### **Intensification of tribal conflict**

13. The violence in Juba in July recalled the patterns of ethnic targeting in the capital and elsewhere when the war broke out in December 2013, as documented by the African Union Commission of Inquiry on South Sudan.<sup>12</sup> The situation is also symptomatic of the tribal dynamic engulfing the country as the war has evolved into a violent contest between elements of the Dinka tribe and many of the country's

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<sup>10</sup> Source: multiple confidential interviews conducted by the Panel with senior SPLA officers, South Sudanese political officials and United Nations officials.

<sup>11</sup> Source: multiple confidential interviews conducted by the Panel with United Nations officials and international observers. In addition to the fatalities and injuries, significant damage was inflicted upon both United Nations bases in Juba, with at least 100 United Nations accommodation units reportedly being damaged at the United Nations House facility alone by heavy artillery and small arms fire.

<sup>12</sup> See [www.peaceau.org/uploads/auciss.final.report.pdf](http://www.peaceau.org/uploads/auciss.final.report.pdf) and annex I to the present report.

other tribes.<sup>13</sup> There has been a consequent rise in perception among Dinka political and military elites, including Salva Kiir and Paul Malong, that their people are being unfairly targeted and threatened, which is fuelling a cycle of mutual resentment and revenge.<sup>14</sup>

14. Several of Salva Kiir's recent appointments to the transitional government have further inflamed these tensions. On 23 July 2016, he replaced Riek Machar as First Vice-President with Taban Deng Gai, an ethnic Nuer from Unity state. The breadth of Deng Gai's political and military constituency outside his home area of Guit is questionable and, as a result of his previous tenure as governor of Unity state, he is deeply unpopular among many Nuer. On 29 August, 14 paramount chiefs representing Nuer in Upper Nile, Unity and Jonglei states issued a statement in which they condemned the appointment.<sup>15</sup> The Bul, a Nuer subclan that had been allied with SPLM/A in Government, are also enraged by the appointment and may defect to the opposition.

15. Salva Kiir's appointment of Stephen Dhieu Dau as Minister of Finance and Economic Planning on 28 July is another example of inflammatory appointments. As the Panel documented in its report of January 2016, Dhieu Dau was involved in arming the Dinka Padang militia in Upper Nile state using funds from the Ministry of Petroleum and Mining when he served as Minister, exacerbating violence between the Dinka, the Shilluk and the Nuer in Upper Nile state (S/2016/70, para. 56). The Panel subsequently obtained further documentary evidence proving that, as Minister of Petroleum and Mining, Dhieu Dau directed the national oil company, Nilepet, to cover military-related expenses, circumventing national budget and financial management processes. Shilluk militias allied to SPLM/A in Opposition are using these developments to mobilize young people in western Upper Nile state in advance of an anticipated return to fighting in the coming months.<sup>16</sup>

16. In the first half of 2016, the cycle of intertribal violence, escalation and reprisal has been particularly pronounced in the Bahr el Ghazal and Equatoria regions. Large-scale tribal-based violence erupted in Raja and Wau in May and June, culminating in three days of widespread killings in the town of Wau between 24 and 26 June.<sup>17</sup> A government investigation into the event reached the following conclusion: "Wau state is extremely polarized on tribal lines, and tribalism has reached a level whereby the social fabric of society has been affected."<sup>18</sup> Opposition elements and anti-Government militias have sought to exploit the insecurity and tribal tensions to mobilize and engage in military operations to advance local political aspirations, conduct reprisal attacks and cattle raids and, in some instances, to seek integration into SPLA, not to disarm but rather to gain access to the resources associated with membership of the armed forces.

<sup>13</sup> Source: Panel interview with a former high-ranking government official in Nairobi, 15 August 2016.

<sup>14</sup> Source: Panel interviews with four senior government officials in Nairobi, 15 August 2016.

<sup>15</sup> "Nuer chiefs disown new FVP Taban Deng", *Sudan Tribune*, 29 August 2016. Available from [www.sudantribune.com/spip.php?article60072](http://www.sudantribune.com/spip.php?article60072).

<sup>16</sup> Source: interviews with SPLM/A in Opposition sources and a high-ranking Shilluk officer.

<sup>17</sup> Fighters from the Darfuri Justice and Equality Movement were reported to have taken part in fighting in Raja in June in support of the Government. See <https://radiotamazuj.org/en/article/jem-forces-enter-raja-governor-back-town>.

<sup>18</sup> Government of the Republic of South Sudan, "Report of the investigation committee on Wau incident of 24th-26th June 2016" (Juba, 1 August 2016, pp. 18-19). Available from <https://radiotamazuj.org/sites/default/files/Wau%20Report.pdf>.

17. In Western Equatoria state, the attempts to broker peace agreements between the government and local defence forces notwithstanding, violence has been persistent, with frequent reports of forced disappearances and widespread killings by government forces of local civilians and individuals suspected of anti-government activities.<sup>19</sup> The opposition has mobilized forces in the Equatorias as it has shifted the focus of its operations closer to Juba since the fighting in the city in July. SPLM/A in Opposition and other armed groups have conducted raids and attacks throughout Central Equatoria state in an attempt to fuel an insurgency, further destabilizing the security situation. The deployment in these areas of Dinka soldiers, who have conducted much of the counter-insurgency operations and the associated violence, has aggravated tensions with local communities.

18. The most prominent tribal organization to mobilize opposition to the Agreement is a self-appointed body of Dinka politicians calling itself the Jieng (Dinka) Council of Elders, which is led by a former Chief Justice of the Supreme Court, Ambrose Riiny Thiik. The Vice-Chair is Joshua Dau Diu. Salva Kiir meets the group's leaders regularly.<sup>20</sup> Shortly after IGAD circulated the proposed peace agreement in July 2015, the Jieng Council declared its opposition, claiming in a written statement that it represented a "glaring appeasement of hell-bent coup plotters" and was "tailor made for Riek Machar and his followers and so this alone is sufficient to warrant opposition to the tenets of the whole agreement ... We are now convinced that the IGAD-led mediation has failed; we advise the parties to seek alternative mechanisms".<sup>21</sup>

19. Many of the Jieng Council's specific objections to the proposed agreement, including to the Joint Monitoring and Evaluation Commission, foreshadowed the 16 reservations issued by Salva Kiir's government when he signed the Agreement in August 2015 and which the Jieng Council claimed credit for drafting. The Jieng Council has since been the source of several initiatives to undermine the Agreement, including writing an initial version of Kiir's decree of 2 October 2015 to increase the number of states in South Sudan from 10 to 28, which the IGAD Council of Ministers subsequently determined was "inconsistent" with the terms of the Agreement.<sup>22</sup>

<sup>19</sup> Source: multiple confidential interviews with South Sudanese politicians and United Nations officials; Human Rights Watch, "South Sudan: army abuses spread west", 6 March 2016, available from [www.hrw.org/news/2016/03/06/south-sudan-army-abuses-spread-west](http://www.hrw.org/news/2016/03/06/south-sudan-army-abuses-spread-west).

<sup>20</sup> The most recently publicly acknowledged meeting between Salva Kiir and the Jieng Council was on 9 August 2016.

<sup>21</sup> "The position of the Jieng Council of Elders on the IGAD-Plus Proposed Compromise Agreement, 21 July 2015", South Sudan Nation, 4 August 2015. Available from [www.southsudannation.com/the-position-of-jieng-council-of-elders-on-the-igad-plus-proposed-compromise-agreement/](http://www.southsudannation.com/the-position-of-jieng-council-of-elders-on-the-igad-plus-proposed-compromise-agreement/).

<sup>22</sup> In an interview with *Al-Mawqif* newspaper in Juba on 28 October 2015, Ambrose Riiny Thiik admitted that the group had initiated the proposal to the Presidency to create additional states in South Sudan. See also the statement attributed to a prominent member of the Council, Aldo Ajou Deng, who described international opposition to the 28-states decree as "the regime change agenda ... being presented in different forms" (see <https://radiotamazuj.org/en/article/jieng-official-blasts-igad-says-changing-28-states-regime-change>) and the communiqué of the 55th extraordinary session of the IGAD Council of Ministers, held in Addis Ababa on 30 and 31 January 2016, available from [http://igad.int/attachments/1275\\_55COM\\_Communique.pdf](http://igad.int/attachments/1275_55COM_Communique.pdf).



### **Collapse of the national economy**

20. After 33 months of war, the South Sudanese economy has effectively collapsed as a direct result of government policies, leading to an inflation rate of 661.3 per cent in August 2016,<sup>23</sup> the severe disruption of markets, the erosion of law and order and a rise in criminal activity, due in large part to the decrease in access to basic commodities, including food, especially in the cities.<sup>24</sup>

21. The government has not undertaken any of the potentially transformative economic reforms stipulated in the Agreement. The rising cost of living, coupled with the continued failure of the government to pay salaries regularly, has exacerbated tensions within the military and among the broader population.

22. The Ministry of Finance and Economic Planning failed to present a budget to the National Assembly before the beginning of the fiscal year in South Sudan on 1 July. On 8 August, Stephen Dhieu Dau cancelled all unredeemed cheques previously issued by the transitional government.<sup>25</sup> Civil servants have not been paid since May 2016. In August, the Ministry issued an order (No. 004/2016) for all government agencies to close their accounts with commercial banks and reopen accounts solely with the Bank of South Sudan, a clear indication of looming bankruptcy and an attempt to consolidate any remaining assets.

23. By the government's own account, the vast majority of government revenue — 97 to 98 per cent of which derives from oil sales — has funded security expenses and the war effort, including the procurement of weapons, rather than social services.<sup>26</sup> As oil revenue has declined, even the already negligible social service spending has evaporated, just as commodity prices have spiked, reaching more than 10 times the five-year average in a number of the country's key markets. The consumer price index has risen by 77.7 per cent — on a monthly basis — over a one-year period, surpassing the widely used hyperinflation threshold of 50 per cent inflation per month.<sup>27</sup> Thus, prices of basic commodities in Juba have risen by as much as 45 to 80 per cent for legumes, 12 to 58 per cent for cereals, 144 per cent for sorghum and up to 70 or 80 per cent for fuel. Price increases have also occurred in the states because of the increased transportation costs associated with rising insecurity. For example, the price of maize increased between 135 and 144 per cent in Kapoeta, Eastern Equatoria state, and 488 per cent in Yida, Unity state.<sup>28</sup>

24. The South Sudanese pound has depreciated by nearly 90 per cent since the Bank of South Sudan floated the exchange rate in December 2015. In addition, the violence in Juba in July has led to severe insecurity along the Nimule-Juba and

<sup>23</sup> See [www.tradingeconomics.com/south-sudan/inflation-cpi](http://www.tradingeconomics.com/south-sudan/inflation-cpi).

<sup>24</sup> More than 40 per cent of the population (4.8 million people) is considered severely food insecure, with pockets of famine evident in some regions.

<sup>25</sup> "South Sudan's finance ministry cancels all unpaid cheques," *Sudan Tribune*, 8 August 2016. Available from [www.sudantribune.com/spip.php?article59864](http://www.sudantribune.com/spip.php?article59864).

<sup>26</sup> See the web portal of the Ministry of Finance and Economic Planning, <http://grss-mof.org/>.

<sup>27</sup> Famine Early Warning Systems Network, "Drastic food price increases further reduce household food access", 23 August 2016. Available from [www.fews.net/east-africa/south-sudan/alert/august-23-2016](http://www.fews.net/east-africa/south-sudan/alert/august-23-2016).

<sup>28</sup> World Food Programme, "South Sudan market price monitoring bulletin", 12 August 2016. Available from <http://documents.wfp.org/stellent/groups/public/documents/ena/wfp286257.pdf>.

Rumbek-Wau-Aweil roads, the two main economic arteries into and within South Sudan, respectively, which has significantly reduced trade flows.

## II. Transfer of arms and related materiel

25. The Panel has received numerous reports from sources in the government, SPLA, SPLM/A in Opposition, Member States and the United Nations of arms transfers into South Sudan since the formation of TGNU in April 2016. Investigations to establish the origins of the shipments and their use in South Sudan are under way. As at mid-August 2016, the Panel had found no evidence of significant arms procurement by SPLM/A in Opposition. The Panel had, however, received numerous reports of significant continuing arms procurement by SPLM/A in Government, which are detailed below.

### L-39 jet fighters

26. On 7 July, the SPLA spokesperson, Lual Ruai Koang, announced that “two L-39 Jet Fighters from SPLA Air Force will conduct air shows” over Juba.<sup>29</sup> When fighting broke out in the city the next day, there were numerous reports on social media of jets being sighted, although there were no reports of their direct involvement in the fighting. Subsequently, the Panel received a report that at least one jet was observed at Malakal airport on 16 August, together with two Mi-24 helicopters, and that the aircraft conducted combat operations against SPLM/A in Opposition positions in Nasir later the same day.<sup>30</sup> The photograph in annex IV proves the presence of an L-39 jet at Malakal airport on 31 August.

27. The jets have not previously been reported to be operating in South Sudan and are, therefore, probably a recent acquisition by SPLA. While the Panel has received preliminary reports from two sources that the jets were serviced and painted in Uganda, it has not yet been able to confirm their origin or whether they have been purchased or are on loan.

### Ammunition manufacture

28. The Panel received information in November 2015 from a high-ranking military source that the government was seeking to build a manufacturing facility for small arms ammunition in Juba. Through further investigations, the Panel was able to obtain documentation showing that the SPLA Chief of General Staff, Paul Malong, had requested a company registered in Lebanon, Rawmatimpex, to begin the development of the facility. Travel records show that a meeting was held in Beirut in late 2015 between SPLA officers designated by Malong and Rawmatimpex representatives. It is not clear from the information currently available whether this project has proceeded in the intervening period.

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<sup>29</sup> See [www.nyamile.com/2016/07/07/breaking-fighting-in-south-sudan-capital/](http://www.nyamile.com/2016/07/07/breaking-fighting-in-south-sudan-capital/).

<sup>30</sup> UNMISS report of 17 August 2016 (not publicly available).

### **Ammunition procurement**

29. In late June 2016, the Panel received information from a high-ranking SPLA source that two truckloads of ammunition had been transferred overland from Uganda to Juba via Nimule on or about 11 June.<sup>31</sup> The report was confirmed to the Panel by the representative of an IGAD Member State in Juba. Another high-ranking SPLA source told the Panel that the shipment had contained small arms ammunition and been procured in advance of an expected, unspecified operation. The Panel presented that information to the Minister of Defence and Veterans' Affairs, Kuol Manyang, and the SPLA Chief of General Staff, Paul Malong, on 23 June, but neither of them provided a substantive response.

### **Other arms transactions**

30. Media reports in July indicated that the Spanish police had arrested a number of individuals in connection with a long-running European Police Office investigation into a European arms smuggling network. South Sudan was noted as being among the countries involved in procuring arms through this network. The Panel has corresponded with the relevant authorities and is awaiting further information as the investigation proceeds.

## **III. Threats against the United Nations Mission in South Sudan, other United Nations agencies and international humanitarian personnel**

31. In both rhetoric and action, forces affiliated with SPLM/A in Government have actively threatened the operations and personnel of UNMISS and other United Nations agencies, and both parties have continued to target humanitarian workers. These actions have escalated in severity and scope since the violence in Juba in July.<sup>32</sup>

### **United Nations Mission in South Sudan and other United Nations actors**

32. The political pronouncements of Salva Kiir, Cabinet ministers such as the Minister of Information and Broadcasting, Michael Makuei, and the Jieng Council have consistently displayed hostility towards the United Nations and misrepresented

<sup>31</sup> When a confidential military source is referred to as a "high-ranking" officer or commander in SPLA or SPLM/A in Opposition, the source holds the rank of major general or above. When a confidential military source is referred to as a "senior" officer or commander in SPLA or SPLM/A in Opposition, the source holds a rank between lieutenant colonel and brigadier general.

<sup>32</sup> Source: Panel interviews with multiple United Nations sources. As an illustration, the Office for the Coordination of Humanitarian Affairs reported 64 humanitarian access incidents in June and 90 incidents in July. The incidents include, but are not limited to, violence against humanitarian personnel and assets, with 13 per cent of such violent incidents related to harassment or threats against humanitarian staff in June, compared with 24 per cent in July. See Office for the Coordination of Humanitarian Affairs, "South Sudan: humanitarian access situation snapshot — June 2016", available from [http://reliefweb.int/sites/reliefweb.int/files/resources/access\\_snapshot\\_20160705.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/access_snapshot_20160705.pdf), and "South Sudan: humanitarian access situation snapshot — July 2016", available from [http://reliefweb.int/sites/reliefweb.int/files/resources/access\\_snapshot\\_20160818.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/access_snapshot_20160818.pdf).

its work and intentions, creating a context in which attacks against United Nations personnel and facilities can be construed as a defence of SPLM/A in Government and the sovereignty of South Sudan.

33. As at the date of submission of the present report to the Security Council Committee established pursuant to resolution 2206 (2015) concerning South Sudan (6 September), SPLM/A in Government had sent conflicting messages about its stance towards the regional protection force envisaged by the Security Council in its resolution 2304 (2016). The Minister of Cabinet Affairs, Martin Elia Lomoro, released a joint communiqué by TGNU and the Council on 4 September indicating that the Government had consented to the force following the visit by Council representatives to South Sudan. On 5 September, the Minister of Information and Broadcasting then told the media: “That consent does not mean automatic entrance into South Sudan. We need to know what are these contributing countries. We need to know the size because that 4,000 is the ceiling, but we are not duty bound. We can negotiate and even agree on 10.”<sup>33</sup> He further stated: “If we don’t accept it, if we don’t agree with that, nobody will enter South Sudan. Anybody who enters without our consent is ‘an invader’”.<sup>34</sup>

34. Before the visit by the Security Council, the majority of the SPLM/A in Government statements on the regional protection force had been in opposition to it. On 19 August, Salva Kiir told the media: “The UNMISS here has so many foreign troops, so we will not even accept a single soldier. We will not accept that.”<sup>35</sup> On 12 July, his spokesperson, Ateny Wek Ateny, told Reuters: “We are not going to cooperate on that because we will not allow our country to be taken over by the UN ... Any force that will be called Juba Protection force will not be accepted.”<sup>36</sup> In a statement to the media on 13 August, the Permanent Representative of South Sudan to the United Nations, Akuei Bona Malwal, warned that the Government would not be responsible for any clashes between the protection force and armed elements, including SPLA, and that the deployment of the force without the consent of SPLM/A in Government would be “a risky venture”.<sup>37</sup> Notwithstanding claims of more conciliatory rhetoric, such as that reflected in Kiir’s speech to the parliament on 15 August,<sup>38</sup> on 25 August Radio Tamazuj reported that Wek Ateny had denied

<sup>33</sup> Okech Francis, “South Sudan accepts deployment of extra 4,000 troops”, Bloomberg, 5 September 2016. Available from [www.bloomberg.com/news/articles/2016-09-05/south-sudan-accepts-deployment-of-extra-4-000-un-troops](http://www.bloomberg.com/news/articles/2016-09-05/south-sudan-accepts-deployment-of-extra-4-000-un-troops).

<sup>34</sup> Denis Dumo and Michelle Nichols, “South Sudan spells out unresolved protection force issues”, Reuters, 5 September 2016. Available from [www.reuters.com/article/us-southsudan-security-un-idUSKCN11B22H](http://www.reuters.com/article/us-southsudan-security-un-idUSKCN11B22H).

<sup>35</sup> “Insider: politicians resisting idea of more peacekeepers in South Sudan”, Radio Tamazuj. Available from <https://tamazuj.atavist.com/insider-politicians-resisting-idea-of-more-peacekeepers-in-south-sudan>.

<sup>36</sup> See [www.aljazeera.com/news/2016/08/approves-peacekeeping-force-south-sudan-160812191513815.html](http://www.aljazeera.com/news/2016/08/approves-peacekeeping-force-south-sudan-160812191513815.html).

<sup>37</sup> See the pro-Kiir *National Courier* newspaper, available from [www.facebook.com/thenationalcourier/posts/625159727649066](http://www.facebook.com/thenationalcourier/posts/625159727649066).

<sup>38</sup> In this speech, Salva Kiir stated emphatically that “South Sudan is not instinctively or automatically against IGAD and UN involvement ... Already there are people who are accusing the TGoNU of refusing and fighting the UN. I want to confirm on this great day that this is not an accurate appraisal of our position”. See [www.gurtong.net/LinkClick.aspx?fileticket=WXuIVjX3umY%3D&tabid=124](http://www.gurtong.net/LinkClick.aspx?fileticket=WXuIVjX3umY%3D&tabid=124).

reports that SPLM/A in Government had agreed to the force after a meeting between IGAD ministers for foreign affairs and the Secretary of State of the United States of America, John Kerry, on 22 August.<sup>39</sup>

35. The Jieng Council has also been instrumental in mobilizing opposition to the United Nations and the force called for by IGAD and in Security Council resolution 2304 (2016). In an interview with Radio Tamazuj on 18 July, the Chair of the Jieng Council, Ambrose Riiny Thiik, said the following: “The Council calls on the people of South Sudan to not be tempted and listen to those propagating proposal to send in additional foreign troops, which is a declaration of war and invasion of the country ... There is no need for them and if the planners insist, then the people have to rise and stand with the government”.<sup>40</sup> On 19 and 20 July, the Jieng Council organized protests against the force in Juba and in the town of Bor, Jonglei state. Four UNMISS staff — one international and three national staff — were attacked by protesters armed with machetes and sticks during the protest in Bor.<sup>41</sup> In a statement dated 15 August but circulated via e-mail to a large distribution list, including the Coordinator of the Panel, on 4 September (the same day as the joint communiqué indicating consent for the force), the Jieng Council described resolution 2304 (2016) as a “misguided document” that undermines the country’s sovereignty by placing it under a United Nations/African Union trusteeship; asserted that “South Sudan does not need foreign troops who are bent on toppling the government”; and called upon “citizens of South Sudan to reject any external interference with our sovereignty”.<sup>42</sup>

36. Armed government actors are imposing debilitating movement restrictions on UNMISS across the country.<sup>43</sup> Incidents of harassment when entering the country at Juba International Airport, including routinely holding up United Nations staff members upon arrival,<sup>44</sup> have sharply increased since July. The transitional government has also seized the passports of UNMISS staff<sup>45</sup> and restricted or

<sup>39</sup> “South Sudan presidency denies accepting regional troops”, Radio Tamazuj, 26 August 2016. Available from <https://radiotamazuj.org/en/article/south-sudan-presidency-denies-accepting-regional-troops>.

<sup>40</sup> “Dinka Council of Elders warns war over additional UNMISS troops”, Radio Tamazuj, 18 July 2016. Available from <https://radiotamazuj.org/en/article/dinka-council-elders-warns-war-over-additional-unmiss-troops>.

<sup>41</sup> United Nations Operations and Crisis Centre alert, 19 July 2016 (not publicly available).

<sup>42</sup> “Jieng Council of Elders rejects the UN Security Council resolution 2304”, Juba, 15 August 2016. Available from [www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/19832/The-Jieng-Council-Of-Elders-Rejects-The-UN-Security-Council-Resolution-2304.aspx](http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/19832/The-Jieng-Council-Of-Elders-Rejects-The-UN-Security-Council-Resolution-2304.aspx).

<sup>43</sup> According to information compiled by the UNMISS Legal Affairs Unit, between 1 June and 28 August 2016, UNMISS recorded 56 incidents in violation of the status-of-forces agreement attributed to SPLM/A in Government. A total of 11 incidents were recorded in June, 23 in July and 22 in August. Restrictions on UNMISS movement and obstruction of UNMISS activities continue to constitute the majority of violations, with 6 such incidents recorded in June, 14 in July and 10 recorded as at 28 August.

<sup>44</sup> “Health cluster bulletin”, No. 2, 9 August 2016. Available from <http://reliefweb.int/sites/reliefweb.int/files/resources/South%20Sudan%20Health%20Cluster%20Bulletin-%202.pdf>.

<sup>45</sup> The passports of 90 UNMISS staff were reportedly confiscated between 16 and 31 July, according to the Office of the Special Representative of the Secretary-General and Head of UNMISS.

attempted to restrict United Nations air assets, in contravention of the status-of-forces agreement.<sup>46</sup>

### **International humanitarian personnel**

37. At the time of writing, 59 national and international aid workers had been killed in South Sudan since December 2013.<sup>47</sup>

38. On 11 July in Juba, many SPLA forces proceeded to “celebrate” the end of the fighting with SPLM/A in Opposition by indulging in widespread looting. During the looting, a force of between 80 and 100 uniformed soldiers<sup>48</sup> overran the Terrain compound, a residential complex for the staff of international organizations. Over a four-hour period, the soldiers beat and abused many of the residents, raped and gang-raped at least five international aid workers and an unknown number of staff working at the compound and executed a Nuer employee of the non-governmental organization Internews, John Gatluak, in front of his colleagues in an ethnically targeted killing. The soldiers damaged every single room and looted the compound extensively, stealing over 25 vehicles.<sup>49</sup> Considering the degree of violence inflicted, the high number of armed actors who participated, the vast quantity of items stolen and the systematic damage exacted on the sprawling compound, the Panel has concluded that the attack was well coordinated among the perpetrators and cannot be considered to be an opportunistic act of violence and robbery. Moreover, the attack represents a clear turning point in the level of brutality inflicted by South Sudanese soldiers on international humanitarian personnel.<sup>50</sup>

39. In the first seven months of 2016 alone, more than 470 humanitarian access incidents were reported. Of those, 90 were reported in July — the highest number in any month since June 2015. Humanitarian compounds, convoys and supplies were attacked and looted in six states.<sup>51</sup> The high level of insecurity has led humanitarian agencies to evacuate partially or completely in areas of Wau, Leer and the

<sup>46</sup> For example, on 18 July, the Government denied clearance for an UNMISS flight from Bor to Juba and UNMISS was subsequently informed that a ban on rotary-wing aircraft would be extended nationwide.

<sup>47</sup> “Humanitarian coordinator demands there be no more attacks against aid workers in South Sudan”, Office for the Coordination of Humanitarian Affairs, 19 July 2016. Available from [http://reliefweb.int/sites/reliefweb.int/files/resources/SS\\_160819\\_World\\_Humanitarian\\_Day\\_Press\\_Release.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/SS_160819_World_Humanitarian_Day_Press_Release.pdf). This was confirmed to the Panel by staff of the Office in Juba on 5 September.

<sup>48</sup> Some witnesses indicated that they were members of the Presidential Guard, otherwise known as the “Tiger Battalion”.

<sup>49</sup> “Report on the events at Yei Road Camp (Terrain Camp) on the 11/07/16”, submitted by the Terrain compound manager to the Transitional Government; confidential annex; and multiple independent sources interviewed by the Panel.

<sup>50</sup> On 23 August, the Secretary-General announced that an independent special investigation would be conducted into the violence in Juba and the response of UNMISS. See [www.un.org/press/en/2016/sga1677.doc.htm](http://www.un.org/press/en/2016/sga1677.doc.htm).

<sup>51</sup> In July, humanitarian compounds in Leer (Unity state) were looted for the third time since December 2013, leaving the town yet again without any health service providers as a result of the insecurity. See “OCHA humanitarian bulletin South Sudan”, No. 12, 23 August 2016, available from [http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA\\_SouthSudan\\_humanitarian\\_bulletin\\_12.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_SouthSudan_humanitarian_bulletin_12.pdf); and “Health cluster bulletin”, No. 2, 9 August 2016, available from <http://reliefweb.int/sites/reliefweb.int/files/resources/South%20Sudan%20Health%20Cluster%20Bulletin-%202.pdf>.

Equatorias.<sup>52</sup> On 10 July, the clearly marked South Sudan Red Cross warehouse in Juba was bombed, seriously damaged and looted,<sup>53</sup> and an International Medical Corps maternity ward inside the United Nations House base was hit and damaged.<sup>54</sup> On 11 July, uniformed soldiers entered the main warehouse of the World Food Programme in South Sudan, allegedly using SPLA trucks and cranes, and systematically looted 4,500 tons of food — enough to feed 220,000 people for a month — in addition to trucks, generators and other relief items, in a sophisticated and sustained operation that continued for four days after the fighting had ended.<sup>55</sup>

## IV. Conclusion

40. The Panel's investigations since the formation of TGNU in April indicate that the most severe security threat facing the transitional government arises from the policies and tactics of the belligerent parties to the Agreement. The focus of many of the central military and political figures on mobilizing their tribes has continued to escalate the conflict from a primarily political to a tribal war. That war has been further exacerbated by the collapse of the economy because of falling oil prices, mismanagement and the diversion of resources towards military expenditure. In combination with this increased tribalization, the failure of the transitional government to provide basic services or develop infrastructure has undermined the social fabric of South Sudan, making the conflict even more intractable.

41. Lastly, the mass importation of arms and, in particular, weapon systems such as Mi-24 attack helicopters since the beginning of the war in 2013 has served only to encourage those who seek a military solution to the conflict. The Panel has found that weapons are continuing to be procured, with the civilian population bearing the brunt of the resulting harm.

<sup>52</sup> “Tens of thousands of displaced people in Wau, Leer and the Equatorias are suffering largely out of sight as we and other humanitarian actors are unable to reach them.” Médecins sans frontières, “Access to essential healthcare dramatically reduced due to increased violence”, 25 August 2016, available from [www.msf.org/en/article/south-sudan-access-essential-healthcare-dramatically-reduced-due-increased-violence](http://www.msf.org/en/article/south-sudan-access-essential-healthcare-dramatically-reduced-due-increased-violence); “OCHA humanitarian bulletin South Sudan”, No. 12, 23 August 2016, available from [http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA\\_SouthSudan\\_humanitarian\\_bulletin\\_12.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/OCHA_SouthSudan_humanitarian_bulletin_12.pdf).

<sup>53</sup> “Joint statement by the South Sudan Red Cross, the International Committee of the Red Cross and the International Federation of the Red Cross and Red Crescent Societies on the Movement's response following the upsurge in the conflict”, 15 July 2016. Available from [www.southsudanredcross.org/index.php?option=com\\_content&view=article&id=140:joint-statement-by-the-south-sudan-red-cross-ssrc-the-international-committee-of-the-red-cross-icrc-and-the-international-federation-of-the-red-cross-and-red-crescent-societies-ifrc-on-the-movements-response-following-the-upsurge-in-the-conflict-&catid=7:news](http://www.southsudanredcross.org/index.php?option=com_content&view=article&id=140:joint-statement-by-the-south-sudan-red-cross-ssrc-the-international-committee-of-the-red-cross-icrc-and-the-international-federation-of-the-red-cross-and-red-crescent-societies-ifrc-on-the-movements-response-following-the-upsurge-in-the-conflict-&catid=7:news).

<sup>54</sup> International Medical Corps, “International Medical Corps' hospital in Juba hit by shelling amidst escalating violence in South Sudan”, 11 July 2016. Available from [https://internationalmedicalcorps.org/2016\\_07\\_11\\_pr\\_south-sudan-violence](https://internationalmedicalcorps.org/2016_07_11_pr_south-sudan-violence).

<sup>55</sup> Source: senior SPLA officer; World Food Programme, “WFP condemns looting of food warehouse in Juba, still assists thousands affected by fighting”, 14 July 2016, available from [www.wfp.org/news/news-release/wfp-condemns-looting-food-warehouse-juba-still-manages-assist-thousands-affected-f](http://www.wfp.org/news/news-release/wfp-condemns-looting-food-warehouse-juba-still-manages-assist-thousands-affected-f); Panel interview with Programme staff in August 2016; e-mail from Programme office in Juba, 26 August 2016. As at 29 August, none of the food or relief items had been returned.

## **Annex I: Violence in Juba in July 2016**

On 2 July, an SPLM/A in Opposition intelligence officer, Lt. Colonel George Gismala, was shot and killed in Juba. On 7 July, a shootout between SPLM/A in Government and SPLM/A in Opposition soldiers erupted at a checkpoint in the Gudele area of Juba during which five SPLM/A in Government personnel were reportedly killed. On 8 July, Kiir invited then-First Vice-President Machar to the presidential compound (known as J1) in central Juba to discuss these incidents. While this meeting was taking place, fighting broke out in the immediate vicinity of the compound resulting in more than 300 fatalities.<sup>1</sup> The events that sparked the violence are contested by the government and opposition.<sup>2</sup>

After a brief pause in fighting on 9 July, a major military engagement broke out between SPLM/A in Government and SPLM/A in Opposition forces on 10 July in the western section of Juba, near the site at Jebel Mountain where SPLM/A in Opposition forces were cantoned. Fighting then spread toward the Yei military checkpoint, which guards the main road from Juba toward the southwest and is near UNMISS headquarters. Observers stated that the SPLA conducted a coordinated attack using Mi-24 helicopters, tanks, armoured vehicles, heavy weapons, and infantry.<sup>3</sup> In the course of the fighting, two Chinese peacekeepers were killed and several more peacekeepers were injured while patrolling in the vicinity of the UN Juba HQ. Fighting also occurred in the Topping suburb of Juba in the vicinity of the UNMISS logistics base and the airport, as some units apparently defected from the SPLA and engaged in the fighting.<sup>4</sup>

Combat between the SPLA and SPLM/A in Opposition continued on 11 July—again centred on the Yei checkpoint—as the SPLM/A in Opposition sought to flee the city toward the southwest. By that afternoon, large-scale fighting in Juba had mostly concluded, and the SPLA had taken control of the SPLM/A in Opposition cantonment sites. The bulk of the surviving opposition forces had fled the city, and a limited number may have entered the UN Protection of Civilian (PoC) sites.<sup>5</sup>

After the fighting in Juba, the Panel received multiple, independent reports of civilians being killed both in the cross-fire and in targeted killings. According to the South Sudan Protection Cluster, the SPLA deliberately targeted civilians on the basis of their ethnicity, perpetrating unlawful killings, arbitrary arrests, enforced disappearances and sexual violence. House-to-house searches were conducted in at least five neighbourhoods in Juba, targeting mainly Nuer men and women,<sup>6</sup> but also individuals perceived as “anti-government.”<sup>7</sup> Ethnic violence also included widespread sexual violence during and especially in the aftermath of the fighting and announcement of a ceasefire, in particular rapes and gang-rapes of Nuer women and girls. The UN documented at least 217 cases of sexual violence, mainly Nuer women, in Juba alone between 8 and 25 July.<sup>8</sup>

<sup>1</sup> Letter from Kiir to IGAD heads of government, 12 July 2016

<sup>2</sup> The Permanent Mission of the Republic of South Sudan to the United Nations briefed the Panel on its version of events on 13 July 2016. The Panel has also discussed the incident with representatives of the SPLM in Opposition and the G10 and conducted interviews with witnesses. There are discrepancies among these accounts, including a number of questions raised by the SPLM/A in Government’s version of events. However, exposition of this issue is beyond the remit of the current report.

<sup>3</sup> Confidential expert source, 15 July 2015

<sup>4</sup> Ibid.

<sup>5</sup> Some SPLM/A in Opposition personnel are reported to have sought shelter in the UNMISS PoC sites, though the number of personnel is unclear. The majority of SPLM/A in Opposition forces were reported by UNMISS to have departed Juba.

<sup>6</sup> The South Sudan Protection Cluster coordinates humanitarian protection activities for internally-displaced persons (IDPs) and is co-led by UNHCR and the Norwegian Refugee Council (NRC). Protection Cluster update on Juba violence (8-21 July) dated 25 July, <https://www.humanitarianresponse.info/en/operations/south-sudan/document/protection-situation-update-outbreak-conflict-juba>, accessed on 30 August; and confirmed by the UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein statement dated 4 August, “While some civilians were killed in crossfire between the fighting forces, others were reportedly summarily executed by Government (SPLA) soldiers, who appear to have specifically targeted people of Nuer origin.” <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20339&LangID=E>, accessed on 4 August 2016.

<sup>7</sup> Multiple confidential interviews conducted by the Panel with one SPLM official, civil society and international observers.

<sup>8</sup> UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein statement dated 4 August, <http://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=20339&LangID=E>, accessed on 4 August 2016.; and UNMISS Human Rights Division confirmed they are still receiving cases of sexual violence in Juba at time of writing, Phone interview with UNMISS official, 24 August 2016.





### **Annex III: Command and Control Within the Parties to the TGNU**

In attributing command responsibility for actions or policies meeting the criteria for the imposition of sanctions described by the Security Council in paragraphs 8 and 9 of its resolution 2290 (2016), the Panel has followed the understanding of command responsibility outlined in articles 86 and 87 of Additional Protocol I to the Geneva Conventions of 1949, to which South Sudan acceded in July 2012.<sup>9</sup> Article 86 states that, among other things, parties to the Conventions are required to “repress grave breaches” of the Conventions. Furthermore, according to article 86:

“The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach. The essential elements for command responsibility therefore require that there was a relationship, even if de facto, between a superior and a subordinate linking those who committed the breach to the commander at the time of the commission of the breach; that the superior had knowledge or had reason to know that his subordinates had committed or were likely to commit the breach; and that there was a failure on the part of the superior to take all necessary and reasonable measures to prevent or to punish the breach.”

The essential elements for command responsibility therefore require that there was a relationship, even if de facto, between a superior and a subordinate at the time of the commission of the breach; that the superior knew or should have known that his subordinates had committed or were likely to commit the breach; and that there was a failure on the part of the superior to take all necessary and reasonable measures to prevent or to punish the breach.<sup>10</sup>

In late June 2016, representatives of the Ministry of Foreign Affairs and the Office of the President confirmed to the Panel that security decisions and the planning of military operations, including responses to what the SPLM in Government deem to be acts of aggression by armed opposition groups, are undertaken by the “national security council.” The Ministry of Foreign Affairs and the Office of the President confirmed that the members of this group are: President Salva Kiir, Minister of Defence and Veterans Affairs Kuol Manyang, SPLA Chief of General Staff Malong, Minister of Information Michael Makuei, then-Minister of Finance Deng Athorbi (who Kiir replaced with Stephen Dhieu Dau in July), Minister for National Security Obutu Mamur, Director of the National Security Service’s Internal Security Bureau Akol Koor, Director of the National Security Service’s External Security Bureau Thomas Duoth, and Presidential Advisor Kew Gatluak. No representative of the SPLM/A in Opposition or the G10/former detainees were included.

According to several senior SPLA officers, Malong personally oversaw operations in Wau, Western Bahr El Ghazal state in June and in Juba in July as well as the effort to hunt Machar in Greater Equatoria in August. As described in section II of this report, Kiir and Malong maintain operational control of air assets, such as the Mi-24s. However, multiple senior and high-ranking SPLA officers have noted to the Panel that there is discontent within the SPLA at the increasing tribalisation of the army, which is attributed to Malong’s reliance on troops from his home area in Bahr el Ghazal.

<sup>9</sup> See International Committee of the Red Cross (ICRC), “South Sudan: world’s newest country signs up to the Geneva Conventions”, 19 July 2012. Available from [www.icrc.org/eng/resources/documents/news-release/2012/south-sudan-news-2012-07-09.htm](http://www.icrc.org/eng/resources/documents/news-release/2012/south-sudan-news-2012-07-09.htm).

<sup>10</sup> See “Command responsibility and failure to act”, Advisory Service on International Humanitarian Law (ICRC, May 2014). Available from [www.icrc.org/eng/assets/files/2014/command-responsibility-icrc-eng.pdf](http://www.icrc.org/eng/assets/files/2014/command-responsibility-icrc-eng.pdf).

With respect to the command responsibility under the Geneva Conventions to “punish the breach” of those conventions, the Panel has taken note of the recent court martial proceedings following the July events in Juba. During this spate of violence, civilians were targeted on the basis of their ethnicity, in particular Nuer men and women. The Panel interviewed one victim, who was shot in the arm and wounded by SPLA soldiers. He was part of a group of 7 Nuer men, aged between 17 and 26, who were moving from one house to another seeking safety on 11 July. They were escorted by four Nuer SPLA soldiers and were stopped by soldiers in SPLA uniform at a checkpoint. The escorting soldiers were disarmed, and two were shot and killed on the spot. The soldiers at the checkpoint then fired at the seven boys, killing one and wounding two of them. The victim told the Panel how the soldiers at the checkpoint had first asked their escorts whether they were Nuer and when this was affirmed, the violence started.

Sixty soldiers were reportedly tried on charges relating to murder, random shooting, looting and violation of human rights committed during the Juba violence in July.<sup>11</sup> However, no soldier was charged with rape or sexual violence. Furthermore, the Panel was not in a position to verify whether any soldier has been charged with the attack on the Terrain compound.<sup>12</sup> The Panel will continue to follow the results of these court martial proceedings, in particular as they relate to violence committed during the fighting in July in Juba as well as the sexual violence committed during but mainly in the aftermath of fighting and the Terrain compound attack.

In a 27 June 2016 meeting with the Panel in Juba, Riek Machar told the Panel that he maintained command and control of SPLM/A in Opposition forces, citing the example of the rise of tensions in Kajo-Keji, Central Equatoria in recent weeks between SPLA and SPLM/A in Opposition soldiers, when he claimed he had ordered his troops to redeploy away from SPLA positions. Machar also said that he had urged his forces in Western Bahr el Ghazal to refrain from fighting but that they had been “drawn into” the conflict in Raja, Western Bahr el Ghazal — a conflict that preceded (and foreshadowed) the outbreak of violence in Wau — after police attacked civilians.

Given recent developments, including President Kiir’s decision on 3 August 2016 to dismiss some ministers from the TGNU and appoint new ministers as well as Machar’s departure from South Sudan, the Panel is continuing its investigations into command and control within the SPLM in Government and the SPLM/A in Opposition and will provide any updated findings to the Council as soon as possible.

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<sup>11</sup> Panel interview with UNMISS official; & “South Sudan claims to court martial 60 soldiers for looting,” Radio Tamazuj, 31 August, 2016. <https://radiotamazuj.org/en/article/south-sudan-claims-court-martial-60-soldiers-looting>.

<sup>12</sup> UNMISS sources have privately shared concerns whether international standards of due process were adhered to during these trials.



Annex IV: L-39 at Malakal Airport, 31 August 2016