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**SREBRENICA**  
MEMORIAL CENTER



British Embassy  
Sarajevo

# **CASE STUDY: SOUTH SUDAN**

**Genocide and Crimes Against Humanity  
Alert and Prevention Mechanism**



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The document is an official report compiled for the needs and on behalf of the Srebrenica-Potočari Memorial and Cemetery for the Victims of the 1995 Genocide (hereinafter the Srebrenica Memorial).

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## **The Srebrenica Memorial Center**

Established by decision of the High Representative for Bosnia and Herzegovina in 2000, the Srebrenica Memorial (full name: Srebrenica-Potočari Memorial and Cemetery for the Victims of the 1995 Genocide) is a place of remembrance for the victims of the 1995 Srebrenica genocide. The Memorial Center is dedicated to the preservation of history and to confronting the forces of ignorance and hatred which make genocide possible.

## **About the Project**


The Srebrenica Memorial Center began implementing the project “Truth, Dialogue, Future” in late 2020 with the support of the Government of the United Kingdom. The project aims to strengthen the capacities of the Memorial Center in areas such as memorialization, archiving, education, public outreach, institutional networking, and internationalization. Truth-telling, dialogue, and confronting violent extremism are central aspects of the project's design. Through research, publications, and development in key areas of its mission, the Memorial Center strives to assume a leading role in education about, and prevention of, radical hatred in the region—especially as it relates to genocide, war crimes, and confronting the past. To this end, the project focuses on the development of crucial capacities, including the collection, archiving, and presentation of research, as well as the building of fruitful and long-lasting partnerships with other institutions around the globe.

The Genocide and Crimes Against Humanity Alert and Prevention Mechanism (GCAHAPM) is an important activity within the project, which aims to identify narratives and patterns of action with the potential to lead to violence. The GCAHAPM entails a series of reports, written by the Memorial Center's team of expert researchers, which focus on situations of mounting violence around the world which exhibit significant potential to escalate into genocide. These reports are strictly fact-based, relying on available evidence, independent journalism, and the findings of esteemed international entities working to expose and prevent the violation of human rights. The Memorial Center views the responsibility to use the experience of the Srebrenica genocide as well as its developing research capacities to raise awareness about situations of escalating violence as an important aspect of protecting the legacy of Srebrenica. With these reports, the Memorial Center endeavours to apply the expertise gained through our collective experiences in Srebrenica to alert the international community to egregious violations of human rights and circumstances where there is an imminent risk of genocide. By ensuring that the horrors which transpired in Srebrenica are never experienced again anywhere in the world, we honour the victims of the Srebrenica genocide and help to fulfil the most fundamental collective responsibility of the human race.

## **EXECUTIVE SUMMARY**

This report focuses on the war in South Sudan, with particular attention to the hostilities conducted by the Kiir government. In December 2013, two years after achieving statehood, South Sudan descended into civil war after tension between the Kiir government and its political opposition erupted into violence. In the intervening years of war, the Kiir government and allied militias have perpetrated numerous atrocities against its civilians, disproportionately targeting the ethnic Nuer population. Although a peace agreement was signed in 2018, the peace in South Sudan remains extremely tenuous, as reports of violent attacks continue to emerge. The prevention of genocide and mass atrocities is both an internationally binding legal obligation and a universal moral responsibility. In establishing the case for





intervention to prevent future atrocities, this report (1) identifies the *violations of international law* which provide legal grounds for intervention; (2) assesses the *likelihood of the future escalation* of violence in order to demonstrate the exigency of prevention; and (3) recommends possible *measures* for intervention and prevention.

Pending further investigation by accredited legal institutions, this report offers provisional conclusions which pertain to violations of international law. Nevertheless, the findings of this research suggest a high probability that **crimes against humanity** and **war crimes** have been perpetrated by the South Sudanese government and its allies. These violations include but are not limited to indiscriminate targeting of civilians; mass murder; wanton destruction of civilian property; forced displacement; arbitrary detention; torture; enforced disappearance; starvation; use of child soldiers; and sexual violence. While legal confirmation must be established by the competent judicial authorities, with regard to **genocide**, this report finds substantial evidence to conclude that the violence committed against the Nuer may amount to genocide.

Although the main parties to the conflict have signed a peace agreement, the political, economic, and humanitarian conditions in South Sudan as well as the continuation of localised conflicts show potential for the situation to worsen dramatically. In light of these assessments, this report determines that there is sufficient legal basis for an intensification of international presence in South Sudan, as well as an urgent humanitarian imperative to prevent further suffering.

As such, the preliminary **recommendations** of the Genocide and Crimes Against Humanity Alert and Prevention Mechanism are as follows:

- The government in South Sudan must **cease all human rights violations**, including deliberate attacks on civilians and dissidents.
- The main parties to the conflict must **honour the peace agreement**, and work together towards its complete implementation, including **a cessation of hostilities** by local factions.
- The **constitution-making process** in the country must be supported by the national parliament, aided by international and regional bodies.
- With support from UNMISS, South Sudanese authorities must establish a **Commission for Truth, Reconciliation and Healing**.
- The international community must ensure **legal accountability** in international and/or domestic courts for all crimes committed during the conflict.

## **LEGAL FRAMEWORK AND MASS ATROCITY PREVENTION**

The prevention of genocide and mass atrocities is not only a legal obligation binding on all states, but a collective moral responsibility shared by all of humanity. The obligation of states to intervene to prevent genocide, war crimes, and crimes against humanity is firmly established under the customary rules of international law as well as in numerous international treaties. Based on relevant jurisprudence, the Genocide and Crimes Against Humanity Alert and Prevention Mechanism relies on the following definitions in substantiating the legal grounds for intervention in the case of genocide and mass atrocities:



## Legal framework

The GCAHAPM relies on the following definitions to determine legal justification for intervention in the case of genocide and mass atrocities:

### War Crimes

War Crimes are defined as Grave breaches of the Geneva Convention and include any of the following offences committed in armed conflict against persons or property protected under the Convention's provisions:

- a) Willful killing
- b) Torture or inhuman treatment, including biological experiments;
- c) Willfully causing great suffering, or serious injury to body or health;
- d) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- e) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- f) Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- g) Unlawful deportation or transfer or unlawful confinement;
- h) Taking of hostages;
- i) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law.

### Crimes Against Humanity

Article 7 of the Rome Statute defines crimes against humanity as any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a) Murder;
- b) Extermination;
- c) Enslavement;
- d) Deportation or forcible transfer of population;
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- f) Torture;
- g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- i) Enforced disappearance of persons;
- j) The crime of apartheid;
- k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

### Genocide

Article II of the Convention on the Prevention and Punishment of Genocide defines genocide as:



... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.

### **Intervention and Prevention in Cases of Genocide and Mass Atrocities**

The duty to prevent genocide is unequivocally expressed in Article I of the Genocide Convention. Moreover, the obligations enshrined by the Convention are obligations *erga omnes*, meaning that each state is bound by them. Hence, each state is legally obligated to prevent and punish genocide, regardless of where the crime occurs and without reservations.<sup>1</sup> The duty to prevent crimes against humanity is ensured by the duty to prevent certain acts, torture for instance, which would amount to crimes against humanity when committed as part of a widespread and systematic attack. Additionally, given that all states are obligated to abide by international humanitarian law, preventing and punishing war crimes is likewise a duty.<sup>2</sup>

These duties and responsibilities are explicitly outlined in the 2005 World Summit Outcome. R2P obligates all states to prevent atrocities as well as their incitement, through proper and necessary means. The primary responsibility rests with states themselves to prevent atrocity crimes on their own territories, however, the international community also has a responsibility to uphold these obligations when individual states prove unable or unwilling. The first recourse of intervening parties should be pacific means, but should such means prove inadequate, the United Nations Security Council (UNSC) may authorise other forms of collective action, including armed intervention, to protect populations from atrocities.

While international law provides explicit criteria for the classification and prosecution of known violations, it cannot speculate as to the potential of conflicts to escalate, including into genocide. For this reason, in identifying grounds for international intervention and prevention, it is necessary to consult the collective knowledge gained from the historical study of violence. The exigent scholarship leaves no doubt that genocide and mass atrocities are by no means spontaneous phenomena but are rather the culmination of historical processes. By studying the patterns in which political violence unfolds, scholars and researchers have been able to identify early warning signs, including the political, social, and economic conditions which are conducive to violence.<sup>3</sup>

Genocide scholar, Gregory S. Stanton, theorizes ten distinct stages of genocide, as well as preventative measure which can be taken by domestic and international actors at each stage. Based on this framework, the following means of prevention are identified in this report, corresponding to the scope of the intervention required.


#### Early Stages: Preventing Division

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<sup>1</sup> ICJ, *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia)*. Preliminary Objections. 11 July 1996. Para 31.

<sup>2</sup> See, for example, UN Human Rights Council. "Report on prevention of Genocide." A/HRC/41/24. 24 June 2019.

<sup>3</sup> See for example, Maureen S. Heibert, *Constructing Genocide and Mass Violence*. New York: Routledge, 2017.



The earliest warning signs of genocide involve the galvanization of identity grievances and the sowing of hatred and intolerance among groups. At this stage, preventative measures include **Institutional Development, Combatting Language and Symbols of Hatred, Empowering Marginalized Groups.**

Intermediate Stages: Preventing Mobilization

With divisions and hostility firmly embedded in the social fabric, perpetrators of genocide proceed to lay the structural groundwork for genocide. At this stage, preventative measures include **Supporting Moderate and Opposition Actors, Hindering Militarization of Aggressors and Prosecuting Incitement and Conspiracy.**

Late Stages: Preventing Violence

Once the violation of the victim groups' basic human rights has become systematized, violence against them can only be expected to intensify. In the late stages of genocide, war crimes and crimes against humanity are being perpetrated. The extermination of the victim group is an imminent threat or may already be underway, and preventive measures should be enacted immediately and swiftly by the international community. All of the following measures, however, must be enacted in accordance with international law: **Mobilizing International Structures, Providing Humanitarian and Military Assistance, Establishing and Defending International Safe Areas** and, ultimately, **Armed Intervention.**

## THE CONFLICT IN SOUTH SUDAN


Following two violent Civil Wars, South Sudan achieved independence from Sudan and was formally established as a sovereign state 9 July 2011, under the leadership of the Sudanese People's Liberation Movement (SPLM). This was widely perceived as a hopeful new beginning for the citizens of South Sudan. The SPLM, which had led the country during its struggle for autonomy, promised its people prosperity and development, as well as a decentralized government in which the country's numerous ethnic groups would be fairly represented. Despite this auspicious beginning, however, the SPLM quickly rescinded on these political promises. Rather than creating inclusive government institutions conducive to inter-ethnic power-sharing, the policies pursued by the SPLM aimed to consolidate political power, alienating various ethnic groups, and giving rise to numerous power struggles between prominent leaders in South Sudan.<sup>4</sup> In a newly formed state rife with deep seated ethnic tensions,<sup>5</sup> this political climate has proven especially deleterious.

In December 2013, Sudanese President Salva Kiir accused former Vice President Riek Machar of orchestrating an attempted coup d'état, resulting in the outbreak of violence between South Sudan's two largest ethnic groups—the Kiir-aligned Dinka, and the Machar-aligned Nuer. The violence spread rapidly to the states of Jonglei, Unity, and Upper Nile, transforming into a series of inter- and intra-communal conflicts. Although the number of militant groups involved in the conflict has proliferated over the years, Kiir's Sudanese People's Liberation Army (SPLA) and Machar's Sudanese People's Liberation Army-In Opposition (SPLA-IO) remain the central combatants.

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<sup>4</sup> Boswell, Alan. "What is Happening in South Sudan?" *International Crisis Group*. 29 March 2021. Available at <https://www.crisisgroup.org/africa/horn-africa/south-sudan/toward-viable-future-south-sudan>.

<sup>5</sup> Smith, David. "South Sudan: the death of a dream." *The Guardian*. 20 January 2014. Available at <https://www.theguardian.com/world/2014/jan/20/south-sudan-death-of-a-dream>.



Following several failed peace agreements and ceasefires, Kiir and Machar signed the Revitalized Agreement on the Resolution of the Conflict in South Sudan in August of 2018, which includes the formation of a Revitalized Transitional Government of National Unity and stipulates the reinstatement of Machar as Vice-President. The resultant peace process, however, has been characterised by political impasses as well as attacks by all parties to the conflict. While atrocities have been committed by all sides, this report focuses on the crimes perpetrated by the South Sudanese government and its allies, as governments bear the primary responsibility to protect populations from atrocities.

### Mass Murder

The mass murder of civilians by government forces has been widely documented in the course of the conflict. Reports indicate that civilians are regularly targeted on the basis of ethnicity,<sup>6</sup> and that children, pregnant women, the elderly, and the disabled are frequently the victims of massacres perpetrated by the regime.

According to reports by Amnesty International and UNMISS, attacks are frequently carried out by large groups of 100 or more soldiers and allied militants, who enter the villages on foot, supported by armoured vehicles. Upon entering the villages, these troops engage in myriad atrocities against civilians, including mass murder, with reports of civilians being shot, hanged, and burned alive. Civilians are killed in their homes, while fleeing, or in some cases, after being taken into custody.<sup>7</sup> Additionally, as well as civilian casualties resulting from close proximity to combat,<sup>8</sup> reports also show that certain marshlands and islands where civilians were known to have sought refuge have been shelled and that some civilians drowned while fleeing.<sup>9</sup>

“Why do these forces not just kill each other if killing is what they want... Why do they have to kill innocent children and helpless civilians, including disabled-elders? Until now I can still hear the cracking of their bones when a tank ran over them and how their stomach popped.”<sup>10</sup>

“There were 7 men [soldiers] who collected the children and put them into a *tukul*<sup>11</sup> and they set the *tukul* on fire. I could hear the screaming. They were four boys. One boy tried to come out and the soldiers closed the door on him. He tried to come out of the fire. There were also five boys whom they hit against the tree, swinging them. They were ... 2-3 years old ... They don't want especially boys to live because they know they will grow up to become soldiers.”<sup>12</sup>

“My brother's son was killed when we were hiding in the swamp in September... The boy was killed in my hands. We were hiding together... And my daughter's husband was killed where he was hiding [the following day]. It was early morning when government troops attacked us and managed to kill these two relatives. I thought that after the peace agreement was signed there would be peace in the country... We thought things would be better so we came out of swamp. But it was the

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<sup>6</sup>See, for example, Amnesty International. “‘We did not believe we would survive’: Killings, rape and looting in Juba.” 24 October 2016. Available at <https://www.amnesty.org/en/documents/afr65/5028/2016/en/>.

<sup>7</sup>See, for example, Amnesty International. “‘We are still running’: War crimes in Leer, South Sudan.” 28 July 2016. Available at <https://www.amnesty.org/en/documents/afr65/4486/2016/en/>.

<sup>8</sup>See, for example, Amnesty International. “‘We did not believe we would survive’: Killings, rape and looting in Juba.” 24 October 2016.


<sup>9</sup>UNMISS and UN Human Rights Office of the High Commissioner. *Indiscriminate Attacks Against Civilians in Southern Unity April-May 2018*. July 2018. paras. 21-26. See also, for example, Amnesty International. “‘Anything that was breathing was killed’: War crimes in Leer and Mayendit, South Sudan.” 18 September 2018. Available at <https://www.amnesty.org/en/documents/afr65/8801/2018/en/>.

<sup>10</sup>60-year-old woman from GandorPayam, Leer County. Testimony in UNMISS. *Indiscriminate Attacks Against Civilians in Southern Unity April-May 2018*. para. 20.

<sup>11</sup>Tukul is a traditional house with thatched roofing.

<sup>12</sup>Nyaweke, 20, told Amnesty International that she was in Thonyor, Leer. Testimony in Amnesty International. “‘Anything that was breathing was killed’: War crimes in Leer and Mayendit, South Sudan.”





opposite. It was worse. We don't talk about property anymore. We lost that already. We talk about life. What we need is peace."<sup>13</sup>

### Sexual Violence

Sexual violence has been a consistent means of terrorising the civilian population and inflicting immense suffering on victims and their families. The impact of the sexual violence that has characterized the conflict in South Sudan has been compounded by a combination of historical precedent, societal norms pertaining to gender and sexuality, and the dynamics of inter-ethnic conflict.<sup>14</sup>In addition to ground soldiers and armed militants, members of the Sudanese National Security Service and state police have also been implicated in the perpetration of sexual violence, testifying to the widespread and institutionalized nature of this tactic.<sup>15</sup>Indeed, the systematic patterns of conduct strongly suggest that sexual violence has been used as a weapon of war in the South Sudanese conflict,<sup>16</sup> and that this violence is often ethically motivated.<sup>17</sup>

Reports of sexual violence—includingrape, gang rape, torture, sexual humiliation, mutilation, slavery,and forced nudity—have emerged from virtually all instances of close contact between civilians and armed forces. This includes during attacks on villages, searches of residential areas, in detention, at checkpoints, and even along roadsides.<sup>18</sup> While women account for the majority of victims, reports of sexual violence against men have also surfaced, as well as sexual abuse of the elderly and of children under the age of ten.<sup>19</sup>

"They were beating me and telling me, 'If you don't want to be raped, we will beat you until you die'. Then I surrendered myself to them and they raped me...I was raped in front of my mother and father in our compound. Two were holding my hands and two were holding my legs. Five of them raped me...They raped me from 5pm in the evening up to 7am in the morning. I fainted. My body was covered with blood. I couldn't manage to move and go home because they left me between life and death."<sup>20</sup>

"They said, 'These women are rebel wives.' So, they gathered us in one place and raped us. I was pregnant and was raped by four men. Then they left me... I was tired and bleeding. Among us were three women who were breastfeeding their children and there were also other pregnant women...They just beat and raped women until they died."<sup>21</sup>

Due to the stigma associated with sexual victimization, many survivors of rape refuse to seek medical attention or to report their experiences.<sup>22</sup>This suggests that the true scale of these atrocities is far greater than even the expansive documentation indicates. This societal stigma compounds the deliberate efforts of government

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<sup>13</sup>Nyepaar, an elderly woman fromDhorNyiel village in ThonyorPayam. Testimony in Amnesty International. "'We are still running': War crimes in Leer, South Sudan."

<sup>14</sup> Amnesty International. "'Do not remain silent': Survivors of sexual violence in South Sudan call for justice and reparations." 24 July 2017. Available at <https://www.amnesty.org/en/documents/afr65/6469/2017/en/>.

<sup>15</sup>*Ibid.*

<sup>16</sup> UNMISS. *Indiscriminate attacks against civilians in southern UnityApril-May 2018*. para. 29-31.

<sup>17</sup> Amnesty International. "'We did not believe we would survive': Killings, rape and looting in Juba." 24 October 2016.


<sup>18</sup>*Ibid.*

<sup>19</sup>*Ibid.*

<sup>20</sup>Nyanhial from Bang, Koch county. Testimony in Amnesty International. "'Do not remain silent': Survivors of sexual violence in South Sudan call for justice and reparations."

<sup>21</sup>Nyapar, 24, from Rodkur, Rubkona county. Testimony in Amnesty International. "'Do not remain silent': Survivors of sexual violence in South Sudan call for justice and reparations."

<sup>22</sup> Amnesty International. "'We did not believe we would survive': Killings, rape and looting in Juba."



forces to inflict terror and humiliation on their victims, magnifying the destructive effect of sexual violence on individuals, families, and communities.

### Recruitment and Use of Child Soldiers

Throughout the conflict in South Sudan, the recruitment and use of child soldiers in armed combat has been customary.<sup>23</sup> While a number of factors make it difficult to determine the exact figures, UN analysts estimate that in 2019, there were approximately 19,000 child soldiers in South Sudan.<sup>24</sup> Although the South Sudanese government has pledged to eradicate this practice in its armed forces through the ratification of multiple legal frameworks,<sup>25</sup> UNHRC reports from 2020 indicate that, along with those who have yet to be released from armed service, SPLA recruited 211 new child soldiers.<sup>26</sup>

In the course of the conflict, children as young as 10 have been abducted from their homes, often at gun point, and physically forced to board transportation bound for training camps or even battle grounds. Others have joined armed forces out of fear for their safety as civilians, but later found they were unable to leave. Child soldiers in South Sudan are subjected to the same harrowing treatment and conditions as adult soldiers and forced to commit a range of atrocities.<sup>27</sup>

“They took us by force [...] We got training in Diteng, how to use weapons, how to stand to attention, we were also in parades...There was one battle, it was two days long, I was shooting. There were many children fighting there.”<sup>28</sup>

“The order was to kill anything we found [...] Some of us went to loot. Others gang-raped a woman. There were also those who took the children – some of them infants – by their ankles to crush their heads against the trees or any hard thing. And then civilians were taken into a house and the soldiers set it on fire. I saw it.”<sup>29</sup>

“We were given weed to smoke and alcohol, so that we don’t think about what they made us do.”<sup>30</sup>

“Some of us were very young. The youngest looked like he was 10...They were crying and saying that they had been taken away from their parents. But if you cry too much, the soldiers beat you.”<sup>31</sup>

Even after being released, the exceptional trauma experienced by these children has devastating long-term consequences, including PTSD, aggression, and other serious psychological issues. Without adequate support for their rehabilitation, former

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<sup>23</sup>The recruitment and use of children under the age of 18 in hostilities is prohibited under human rights law, while the use of children under the age of 15 is defined as a war crime by the International Criminal Court and is illegal under international humanitarian law.

<sup>24</sup>UNICEF. “32 children released from opposition groups in South Sudan.” 24 July 2019. Available at <https://www.unicef.org/press-releases/32-children-released-opposition-groups-south-sudan>.

<sup>25</sup>UNICEF. “Stolen Childhoods: Children in Armed Groups in South Sudan.” Accessed 28 October 2021. Available at <https://www.unicef.org/southsudan/stolen-childhoods>.

<sup>26</sup> UN Human Rights Council. Report of the Commission on Human Rights in South Sudan. 31 January 2020. A/HRC/43/56, paras. 45-51.

<sup>27</sup>Human Rights Watch. “‘We Can Die Too’: Recruitment and Use of Child Soldiers in South Sudan.” 14 December 2015. Available at <https://www.hrw.org/report/2015/12/14/we-can-die-too/recruitment-and-use-child-soldiers-south-sudan>.

<sup>28</sup>SG (name withheld), former child soldier recruited in Malakal. Testimony in Human Rights Watch. “‘We Can Die Too’: Recruitment and Use of Child Soldiers in South Sudan.

<sup>29</sup> John (pseudonym), former child soldier recruited in Unity. Testimony in Human Rights Watch. “South Sudan: Warring Parties Break Promises on Child Soldiers.” 5 February 2018. Available at <https://www.hrw.org/news/2018/02/05/south-sudan-warring-parties-break-promises-child-soldiers>.

<sup>30</sup>(Name withheld), former child soldier from Yei. Testimony in Andrea Campeanu and Patricia Houn. “Child Soldiers of South Sudan.” *Al Jazeera*. 30 October 2018. Available at <https://www.aljazeera.com/gallery/2018/10/30/child-soldiers-of-south-sudan>.

<sup>31</sup> JohnGuangwakThiep, former child soldier from the village of Wangkei. Testimony in Human Rights Watch. “South Sudan: Warring Parties Break Promises on Child Soldiers.”



child soldiers struggle to reintegrate into society and are at high risk of engaging in future violence.<sup>32</sup>

### Arbitrary Detention, Torture, and Forced Disappearance

The government of South Sudan has employed arbitrary detention, torture, and enforced disappearance of civilians in the course of its military campaign. Under the authority of the National Security Service and the Military Intelligence Directorate, hundreds of men have been taken from their homes and held in detention facilities. Denied due process and unable to communicate with their families, detainees are forced to live in deplorable conditions and subjected to all manner of abuses, including torture.<sup>33</sup>

Targeting suspected SPLA-IO sympathizers as well as journalists and Nuer civilians,<sup>34</sup> this campaign is part of the regime's "increasingly brutal counter-insurgency campaign, people are often singled out by security agents on the basis of their ethnic identity, which has become increasingly conflated with their assumed political allegiance."<sup>35</sup>

"People from a tribe are arrested arbitrarily, taken even without being taken to court and charged for their wrongs."<sup>36</sup>

"If [they think] you misbehave[d] then they beat you, or if the soldiers come in when they are drunk they beat you [...] The torturing there is beyond [words]— some people were beaten very badly. Some people are tortured even with electric shock [...] People are beaten to the level of collapsing."<sup>37</sup>

"When they come to the container to kill someone, they will put the person that they want to kill to one side [of the container] and tell us to watch. Most of the indoor deaths are nails and sticks. If you look, it looks like people are being killed and it is organized, it is not an individual decision."<sup>38</sup>

Some detainees have died from the injuries they received in custody, and many more still have been forcefully disappeared. In instances of the latter, without knowing the fate of their loved ones, the friends and family members of victims experience extreme emotional hardship. In many ways, enforced disappearance traumatizes individuals, families, and entire communities.

### Intentional Starvation

Even prior to the war, the South Sudanese population faced acute food insecurity. In the course of the conflict, the humanitarian crisis in the country has deteriorated rapidly, not only as an inevitable result of the conditions imposed by armed conflict, but also as a consequence of a deliberate strategy employed by the Kiir forces and their allies.<sup>39</sup>

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<sup>32</sup>Haer, Roos and TobaisBohmelt. "Child soldiers as time bombs? Adolescents' participation in rebel groups and the recurrence of armed conflict." *European Journal of International Relations*. 11 May 2015. Available at <https://doi.org/10.1177/1354066115581910>.

<sup>33</sup>Amnesty International. "Broken promises: Arbitrary detention by South Sudan's intelligence agencies continues." 4 September 2018. Available at <https://www.amnesty.org/en/documents/afr65/8823/2018/en/>.

<sup>34</sup>Amnesty International. "'We did not believe we would survive': Killings, rape and looting in Juba."


<sup>35</sup>Amnesty International. "Broken promises: Arbitrary detention by South Sudan's intelligence agencies continues."

<sup>36</sup>Nyeduop (pseudonym), held in Bilpham. He was beaten, stripped and forced to dance naked in front of government soldiers. Testimony in Amnesty International. "Broken promises: Arbitrary detention by South Sudan's intelligence agencies continues."

<sup>37</sup>Joseph (pseudonym), held at NSS Headquarters. He was detained without charge and denied access to a lawyer and family members. Testimony in Amnesty International. "Broken promises: Arbitrary detention by South Sudan's intelligence agencies continues."

<sup>38</sup>Gatwich (pseudonym), held in Juba. Testimony in Amnesty International. "Broken promises: Arbitrary detention by South Sudan's intelligence agencies continues."

<sup>39</sup>Commission on Human Rights in South Sudan and UN Human Rights Office of the High Commissioner. "'There is nothing left for us': starvation as a method of warfare in South Sudan." 5 October 2020. A/HRC/45/CRP.3. See also Amnesty International. "'Anything that was



According to reports, the government has intentionally deprived civilians of food, water, and other basic necessities for survival. Government forces have dispossessed and forcibly displaced ancestral communities of farmers as well as deliberately timed their attacks in order to obstruct planting and harvesting seasons.<sup>40</sup> Additionally, the SPLM and their allies have deliberately targeted facilities and infrastructure indispensable to the survival of rural populations, looting and plundering vital resources on a massive scale.<sup>41</sup> In addition to targeting civilian property, government forces have also plundered the compounds of the World Food Programme and the Food and Agriculture Organization, as well as several markets.<sup>42</sup>

“There is no food at all because of fear to cultivate. People are displaced and have no place to do so. They are depending only on humanitarian aid. Besides, the Government does not accept food to come to [opposition] controlled areas.”<sup>43</sup>  
“I believe the attacks on places like Ngoko were because the SPLA wanted to get their hands on the harvest. We saw them bringing back looted bags with groundnuts and other agricultural products into Wau.”<sup>44</sup>

As a form of collective punishment which has ultimately been instrumentalized by the South Sudanese government as a weapon of war,<sup>45</sup> this strategy of deliberate starvation is directly linked to the displacement of civilians.<sup>46</sup>

### Destruction and Displacement

In their military operations, the SPLA and their allies have engaged in destruction and displacement, destroying entire villages, setting fire to homes, and looting civilian property. These operations have been conducted with the intent of making villages uninhabitable,<sup>47</sup> thereby forcibly displacing the populations and effectively ‘cleansing’ the areas.<sup>48</sup> The ethnically motivated nature of these attacks has seen Nuer civilians disproportionately targeted.<sup>49</sup> Oftentimes, civilians would flee their villages in the course of the attacks and return later to find their homes and livelihoods utterly destroyed, with all hope of life there extinguished.<sup>50</sup>

“When we went back, every tukul had been burnt down ... the soldiers would come and cover the food with dry grass and burn it up ... if the soldiers found food in the house, they burned it, and if they found food outside the house they covered it with grass and set it on fire. It is a kind of punishment because they take what they can carry and what remains which they cannot carry, that is what they burnt. They don’t want people to come back and get food. It is a kind of hatred.”<sup>51</sup>

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breathing was killed’: War crimes in Leer and Mayendit, South Sudan.” 18 September 2018 and Amnesty International. “‘If men are caught, they are killed, if women are caught, they are raped’: South Sudan – Atrocities in Equatoria region turn country’s breadbasket into a killing field.”

<sup>40</sup> Commission on Human Rights in South Sudan. A/HRC/45/CRP.3. para. 6-8.

<sup>41</sup> UNMISS and UNOHCHR. *Indiscriminate Attacks Against Civilians in Southern Unity April-May 2018*. July 2018. para. 33.

<sup>42</sup> Amnesty International. “‘We did not believe we would survive’: Killings, rape and looting in Juba” 24 October 2016.

<sup>43</sup> Male from Akobo County. Testimony in A/HRC/45/CRP.3. para. 110.

<sup>44</sup> Displaced male from Ngoko. Testimony in A/HRC/45/CRP.3. para. 79.

<sup>45</sup> For more information, see Commission on Human Rights in South Sudan. A/HRC/45/CRP.3.

<sup>46</sup> Amnesty International. “‘If men are caught, they are killed, if women are caught, they are raped’: South Sudan – Atrocities in Equatoria region turn country’s breadbasket into a killing field.”

<sup>47</sup> Amnesty International. “‘Anything that was breathing was killed’ War crimes in Leer and Mayendit, South Sudan.”


<sup>48</sup> UNMISS. *Indiscriminate Attacks Against Civilians in Southern Unity April-May 2018*. para. 36.

<sup>49</sup> Amnesty International. “‘We are still running’: War crimes in Leer, South Sudan.”

<sup>50</sup> Amnesty International. “‘Anything that was breathing was killed’ War crimes in Leer and Mayendit, South Sudan.”

<sup>51</sup> Gatkuoth, 38, from Mayendit. Testimony in Amnesty International. “‘Anything that was breathing was killed’ War crimes in Leer and Mayendit, South Sudan.”





“When we came back to the village the next day, the whole village had been burnt...All the cattle were stolen. They took even the goats, sheep, and property in the house, beds, chairs, clothes...they burnt our hut but not the house where the women and children stay...30 of our cattle were taken in that attack...there is farmland in Guat and we harvested food this year, but the attackers took everything...not many people remained after that. We left because of hunger. We felt we might die of hunger.”<sup>52</sup>

Combined with the terror and anxiety produced by the government’s overall military campaign, the destruction of homes and livelihoods has led to the displacement of roughly 4.5 million South Sudanese civilians. Both refugees and internally displaced persons remain at great risk after fleeing their homes, including from the deplorable conditions and lawlessness in refugee camps.<sup>53</sup>

### **South Sudan Today: Likelihood of Escalation**

Although the 2018 peace agreement suspended largescale military operations, South Sudan has witnessed an alarming surge in localized violence in the intervening years. More than 75% of the country has been engulfed by inter-communal conflicts between ethnically organized militant groups largely motivated by unresolved wartime grievances as well as competition over territory and resources. The escalation of this violence has included increasingly brutal attacks against civilian populations and an array of documented atrocities. To make matters worse, evidence suggests these militias are receiving support from state and opposition forces, indicating a serious risk that these localized conflicts will spill-over onto the national level, retriggering largescale hostilities between the combatants of the civil war.<sup>54</sup>

The likelihood of this scenario is heightened by the ongoing political tension and instability in the country. Despite the establishment of a unity government in 2020, effective power-sharing agreements have failed to materialize, fueling continued political disputes between the leaders of many of South Sudan’s rival constituencies. This precarious situation has given rise to fears of renewed violence in the run-up to the 2022 national elections. Furthermore, President Kiir has been accused of obstructing the full implementation of the peace agreement along with numerous destabilizing practices, including an increasingly ruthless crackdown on journalists and dissidents, which has precipitated a rapidly deteriorating human rights crises in the country.<sup>55</sup>

These conditions are bolstered by the culture of impunity, wherein the “lack of accountability for historical grievances and the general state of lawlessness are fueling impunity for gross human rights violations in South Sudan. If not addressed, this may leave deep-seated ethnic and other divisions, worsen gender-based discrimination, and exacerbate the violence in the country.”<sup>56</sup> The absence of

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<sup>52</sup>Nyewang, 25, from Luale village, Guatpayam. Testimony in Amnesty International. “‘We are still running’: War crimes in Leer, South Sudan.”

<sup>53</sup> Amnesty International. “‘Anything that was breathing was killed’ War crimes in Leer and Mayendit, South Sudan.”

<sup>54</sup> UNHCR. “Despite renewed political commitment, staggering levels of violence continued across South Sudan for the second successive year, UN experts note.” 19 February 2021. <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26761&LangID=E>.

<sup>55</sup> UN News. “‘Overzealous’ security services undermining South Sudan peace: rights experts.” 20 October 2021. Available at <https://news.un.org/en/story/2021/10/1103512>.

<sup>56</sup> UNHCR. “Despite renewed political commitment, staggering levels of violence continued across South Sudan for the second successive year, UN experts note.”



accountability mechanisms accompanies a broader failure to address underlying societal grievances through effective reconciliation and peace-building processes. Notably, given the large number of recently demobilized child soldiers in the country who are especially vulnerable to recruitment in future violence,<sup>57</sup> the failure to provide adequate structures for their rehabilitation and reintegration into society is especially problematic.

The Kiir government has also continued to engage in rampant corruption at the expense of infrastructure and basic services.<sup>58</sup> It is estimated 8.3 million people, almost 70% of the population, are in urgent need of humanitarian assistance, with more than 7.2 million people, over 60% of the population, experiencing acute food insecurity.<sup>59</sup> Exacerbated by conflict, COVID-19, natural disasters and climate challenges, this humanitarian crisis not only amounts to enormous suffering for the civilian population, but also augments political instability in the country.

## INTERVENTION AND PREVENTION

The South Sudanese government and its allied forces have carried out numerous attacks which have deliberately targeted civilians on the basis of their ethnicity or perceived political allegiance. These attacks are likely to constitute violations of international law. Furthermore, although the South Sudanese Civil War formally ended in 2018, numerous political trends and societal conditions indicate a substantial risk that persistent violence in the country could escalate in the near future, triggering renewed largescale hostilities.

### Legal Grounds for Intervention

Although this report can only ever offer provisional guidance, as pertains to international criminal and humanitarian law, pending the assessment of qualified judiciary bodies, these findings indicate that atrocities and gross violations of international law have been committed against the civilian population in South Sudan by the government and allied forces. This report identifies the following potential legal violations in South Sudan, which warrant further investigation, as well as potentially intervention and prosecution:


- **War crimes:** The conduct of the SPLA and allied forces reflects a complete disregard for international humanitarian law and customary laws of war. The findings of this report suggest that the following war crimes have been committed by the South Sudanese government and its allies: murder, mutilation, cruel treatment, torture, outrages upon personal dignity, sentencing and execution without due process, attacks against the civilian population, rape and sexual violence, displacement of civilians, intentional starvation, and the recruitment and use of child soldiers.
- **Crimes against humanity:** The assessment of this report also suggests that the following crimes against humanity have been committed by the SPLA and its allies, as part of a widespread and systematic attack against South Sudanese civilians: murder, extermination, imprisonment or other severe deprivation of physical liberty, torture, rape and sexual violence, persecution, enforced

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<sup>57</sup>Haer, Roos and TobaisBohmelt. "Child soldiers as time bombs? Adolescents' participation in rebel groups and the recurrence of armed conflict." *European Journal of International Relations*. y

<sup>58</sup> UN News. "New South Sudan Parliament can 'infuse urgency' into peace process." 15 September 2021. Available at <https://news.un.org/en/story/2021/09/1099982>.

<sup>59</sup> Care. "South Sudan Humanitarian Crisis." August 2021. Available at <https://www.care.org/our-work/disaster-response/emergencies/south-sudan-humanitarian-crisis/>.



disappearance, as well as other inhumane acts causing great suffering, or serious injury to body or to mental or physical health.

- With regard to **genocide**, legal justification must necessarily be established by competent judicial authorities; however, this report finds substantial evidence to suggest that the threshold for *dolus specialis* has been met in the case of the military operations carried out by the Kiir government and its allies, and that the violence committed against the Nuer people in South Sudan may constitute genocide.

## CONCLUSION AND RECOMMENDATIONS

Under the Kiir regime, the SPLA and allied militia have carried out an extremely violent military campaign in South Sudan. The evidence presented in this report indicated that the government has perpetrated numerous extensive atrocities against civilians, particularly those of the Nuer ethnic group. Although the Revitalized Agreement on the Resolution of the Conflict in South Sudan formally put an end to the South Sudanese Civil War in August of 2018, the implementation of this agreement has been slow and inadequate, and violence against civilians in the country continues. Pending further investigation by the competent legal authorities, the preliminary findings of this report suggest that these attacks are likely to constitute serious violations of international law. As such, this report concludes that there are sufficient legal grounds to warrant the intensification of international involvement to protect civilians in South Sudan.

The urgency of action is likewise substantiated by numerous factors which indicate a high probability that the violence in South Sudan will escalate in the near future, as well as by the worsening humanitarian crisis. Given that the parties to the conflict in South Sudan have proven unwilling and unable to work together towards a full implementation of the peace agreement, the future of South Sudan, including the prospects of sustainable peace, is likely to be decided by the involvement of the international community.

With this in mind, the following **recommendations** are made on behalf of the Srebrenica Memorial Center Genocide and Crimes Against Humanity Alert and Prevention Mechanism:

- The government in South Sudan must **stop any human rights violations**, including deliberate attacks on civilians and dissidents.
- The main parties to the war must **honour the peace agreement** in full and work together towards its complete implementation.
- The SPLA and SPLA-IO must ensure that **a cessation of hostilities** is negotiated and enforced by local factions as well as other community-based militias.
- The **constitution-making process** in the country must be supported by the national parliament. This process must be aided by international mechanisms, such as UNMISS, as well as the regional development body IGAD.
- With support from UNMISS, South Sudanese authorities must establish a **Commission for Truth, Reconciliation, and Healing** to adequately and impartially address the root causes of ethnic violence, as well as to promote accountability, reconciliation, and national unity.
- International and domestic actors must provide adequate resources for the **rehabilitation of former child combatants**, including extensive psychological and social support for their reintegration into society.
- All able state and non-state actors should increase **humanitarian assistance** to populations in South Sudan.



- The international community must ensure **legal accountability** in international and/or domestic courts for all crimes committed during the conflict. To this end, the South Sudanese authorities must honour their commitment to establish a Hybrid Court for South Sudan, as per the peace agreement.