

Briefing Paper

August 2019



WAR CRIMES AND PUNISHMENT

The Terrain Compound Attack and Military Accountability in South Sudan, 2016–18

Flora McCrone



Credits and contributors

Project coordinator: Khristopher Carlson

Editor: Rebecca Bradshaw

Fact-checker: Lisa Björk
(lisa.h.bjork@gmail.com)

Copy-editor: Alex Potter
(alex.potter@mweb.co.za)

Proofreader: Stephanie Huitson
(readstephanie@gmail.com)

Design: Rick Jones
(rick@studioexile.com)

Layout: raumfisch.de/sign

Communications: Emilia Dungal

Front cover photo

Accused soldiers stand in the dock at their military court martial in Juba, South Sudan, 11 July 2017. Source: Albert Gonzalez Farran/AFP Photo

About the author

Flora McCrone is a conflict researcher and political anthropologist who has been conducting research on South Sudan since 2012. Her previous work covered a variety of issues relating to armed conflict, political dispensation, and community security. Since 2017 she has been based in Nairobi, undertaking research on conflict, violence, and governance across the Horn of Africa.

Acknowledgements

The author would like to thank those who agreed to be interviewed for this research. This includes actors from all of the parties that were involved in the Terrain court martial process, both within and outside the South Sudanese government and military. I am grateful for their openness and patience when discussing this complex and often painful subject. Without this wide and rich variety of perspectives on the attack itself and the process that followed, this paper would not have been possible.

The author and Small Arms Survey also wish to express their thanks to the Government of the United States for its financial support to the HSBA project.

Overview

On 11 July 2016, at the end of four days of fighting between government and opposition forces in the South Sudanese capital, Juba, government soldiers stormed the Terrain ‘Hotel’,¹ a residential compound that was home to South Sudanese and East African and Western expatriates. There they began a violent rampage of systematic looting, rape, gang rape, and abuse—including one killing—of the civilians sheltering in the compound. The Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Army (SPLA) subsequently initiated a court martial to hold perpetrators of the attack accountable. The trial and convictions that followed marked a rare example of SPLA soldiers being held to account for crimes committed against civilians in the context of war. An examination of the court martial and the events surrounding it provides some insight into the dynamics of the ruling Sudan People’s Liberation Movement (SPLM) government since the civil war resumed in July 2016, and reveals a degree of judicial capacity and political will within the government to hold its uniformed soldiers accountable for violence against civilians, with direct implications for the country’s present transitional phase towards peace.

Key findings

- The Terrain trial confirmed that elite SPLA units committed crimes against civilians in Juba in July 2016, providing a rare window into the conduct of these forces in battle scenarios and underscoring the fact that it is not merely ‘rogue’ SPLA elements who commit abuses against civilians.
- Deficient command and control within the SPLA during the Terrain attack resulted in soldiers’ actions having devastating impacts on civilians, raising questions around the accountability of commanders and pervasive indiscipline among soldiers. In this regard, perceptions within the SPLA on what constitutes indiscipline among soldiers often vary as a function of the context in which abuses are committed and their outcome, with acts of ‘indiscipline’ sometimes left unpunished when broader military objectives are achieved.
- The court martial process highlighted the complexity of SPLM/A political relationships and internal power struggles, but also revealed that new entry points do arise through which the international community can constructively engage with the South Sudanese government and military.
- While the Terrain court martial handed down guilty verdicts to several of the accused attackers, the commanders of those who were accused were not prosecuted. Addressing military command and control issues has been difficult within the SPLA, and presents a significant challenge for the hybrid court for South Sudan envisaged in the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) peace process.
- The SPLA court martial established an important precedent for future justice and accountability in South Sudan, marking the first time that SPLA soldiers were held accountable for internationally recognized war crimes, including sexual violence.

Introduction

On 11 July 2016 government soldiers stormed Terrain, a residential compound in Juba. A violent rampage of looting, torture, sexual violence, and one murder against those sheltering inside ensued. The attackers belonged to several military units, including the elite Presidential Guard, National Security Service (NSS), and regular SPLA divisions. Following a series of arrests, a special court martial (see Box 1) began in May 2017 and concluded 16 months later with the conviction and sentencing of ten soldiers for murder, rape, and other crimes committed during the Terrain compound attack.

This Briefing Paper is divided into two parts.² The first section describes the Terrain attack, its immediate aftermath and investigation, and the court martial proceedings that followed. The second section discusses what can be learned from these events, examining the internal dynamics of the SPLM/A from July 2016 to the end of the Terrain trial in September 2018, as well as the capacity of the SPLA’s military justice system to hold its soldiers accountable for crimes perpetrated against civilians.

The Terrain attack

Violence across Juba

On Thursday, 7 July 2016 fighting erupted in Juba between units of the rebel SPLA in-Opposition (SPLA-IO) and government SPLA forces. While it is unclear who fired the first shot that day,³ violence between the SPLA and SPLA-IO led to a shoot-out outside Juba’s Presidential Palace on 8 July, setting off a city-wide battle during which the SPLA used heavy weaponry and helicopter gunships to attack SPLA-IO cantonment sites.⁴ By the end of the fighting on 11 July—two days after the fifth anniversary of South Sudan’s independence—more than 300 civilians were dead (Burke, 2016); witness accounts⁵ estimated a much higher death rate, because armed combatants appeared to deliberately target civilians during the fighting (see Amnesty International, 2016; UNHCHR, 2016).

On 11 July violence in the Jebel and Yei Road areas in the south-western part of Juba—near the UN Mission in South Sudan (UNMISS) and the main SPLA-IO cantonment site—reached its peak.⁶

While the precise timeline and many of the facts surrounding the fighting in the Jebel and Terrain areas are unclear, the main incidents appear to have occurred as described below.

As violence broke out in Juba on 7 July, Riek Machar and his SPLA-IO soldiers found themselves militarily overwhelmed by the SPLA. After four days of fighting, surviving SPLA-IO fighters either went into hiding or fled the city (Boswell, 2017). With any immediate SPLA-IO threat to the Juba government removed, the SPLA declared a ceasefire in the afternoon of 11 July (HRW, 2016; Al Jazeera, 2016b). Around the same time SPLA soldiers and some civilians began looting and ransacking the Jebel market.⁷ Among these soldiers were members of the president's own protection force, the SPLA Tiger Division, who during the fighting were stationed on Yei Road a short distance from the market. Over the next several hours their looting spree spread across the entire Jebel area.

Upon hearing of the looting, the SPLA Tiger Division commander, Gen. Marial Chonyuang Yol, and David Yau Yau (a former Murle rebel-turned-deputy minister of defence) went to the Jebel market to call off the soldiers. To their disbelief, the soldiers—including Gen. Marial's own men—shot at the general, forcing him and Yau Yau to retreat.⁸

The attack on the Terrain compound

At around the same time reports surfaced that an attack was under way in the Terrain compound on nearby Yei Road (HRW, 2016). At around 3.30 p.m. the attackers, including SPLA Tiger Division and regular SPLA soldiers, as well as members of the national police and NSS, broke through the compound entrance using guns and tyre levers (Terrain Services Ltd, 2016).⁹ Having been informed of the attack, Gen. Marial dispatched a rescue party of other Tiger Division soldiers to stop it,¹⁰ but they were quickly repulsed as their fellow soldiers fired on them from inside the compound.¹¹ The invading soldiers eventually forced their way into the compound's restaurant building and car park, vandalizing property, looting possessions, and stealing cash and 18 vehicles. Victims' testimony later revealed that they severely injured one staff member's feet

and forced him to hot-wire the cars; other victims were forced to lie on the ground while soldiers fired their weapons close to the victims' ears (Terrain Services Ltd, 2016).

Later, at around 4.15 p.m., a smaller group of soldiers forced their way into the compound's residential area. After an hour of shooting at a bullet-proof door to gain entrance, they managed to enter a secure apartment building through an upstairs balcony, identifying themselves as SPLA-IO fighters to the residents and staff hidden inside (Terrain Services Ltd, 2016).

At around 5.30 p.m. soldiers began to physically attack the 30 civilians inside the apartment building. Soon after, John Gatluak, a South Sudanese man working for an international media organization, was executed. Female residents and staff were then sexually assaulted, raped, and gang raped,¹² including six Western expatriates and several of Terrain's East African female staff. One man from the United States suffered a non-fatal bullet wound and nearly every civilian in the compound was subjected to physical abuse, including beatings (see South Sudan, 2017).

During the protracted attack residents made repeated requests for help to the UNMISS compound located 1 km away, the US Embassy, and the offices of the organizations for whom the residents worked. The UN Joint Operations Centre in Juba was alerted to the Terrain attack at 3.37 p.m., nearly two hours before soldiers breached Terrain's residential area (Patinkin, 2016). The UNMISS Quick Reaction Force—a unit designed to respond to emergencies such as these—was never dispatched to the compound. The US ambassador reportedly made telephone calls to Gen. Marial and the NSS requesting help, but US Embassy personnel made no direct attempt to intervene in the attack (Patinkin, 2016).

Eyewitnesses estimated that there were between 50 and 100 or more attackers inside the Terrain compound. Through the course of this looting spree 'not a single structure was left untouched' (South Sudan, 2017), with beds, sinks, lights, and power sockets being systematically removed and transported away by vehicle, in what witnesses described as a visibly coordinated operation to loot and remove the compound's contents.¹³

Many observers have assumed that the attack on Terrain was premeditated,

but this was one of several attacks against civilians in the Jebel and Yei Road area. The neighbouring HIV/AIDS Commission was looted at the same time by the same soldiers, as was the compound of the ABMC construction company.¹⁴ The offices of the nearby Falcon construction company were also looted and ransacked, and the guards murdered. Elsewhere, soldiers broke into private homes along Yei Road, the Jebel market, the World Food Programme compound, and the Arech fuel depot, where hundreds of thousands of dollars' worth of fuel was stolen and seven members of its staff killed.¹⁵

An NSS rescue unit entered the Terrain compound at around 7 p.m., just before sunset. Led by a senior officer, the unit managed to separate many of the victims from the attackers and evacuate them from the apartment building, but three Westerners and most of the East Africans and South Sudanese trapped inside remained while looting continued.¹⁶ Those left behind later recounted during their testimony that a 'signal' was passed among the looting soldiers after 7 p.m., at which point they began to leave. The remaining residents and staff were stranded in the compound until the following morning, when a private security firm contracted by Terrain evacuated them.¹⁷ According to an internal UN timeline of events, the UNMISS operations centre had said a patrol would go to the compound in the morning, but this 'was cancelled due to priority' (see Patinkin, 2016).

Aftermath and investigation

By the following morning—12 July—SPLA Military Intelligence, the NSS, and Gen. Marial were leading efforts to arrest suspects involved in the Terrain attack and Jebel area looting. It is not clear where the arrests took place nor how the suspects were identified, but around 60 people were arrested and detained in either the Military Intelligence office in the SPLA barracks or the NSS headquarters in Juba (South Sudan, 2016).

By late July court martials—with support from Gen. Marial—were under way for soldiers arrested and accused of looting in the Jebel market. An internal SPLA military justice charge sheet seen by the author detailed 25 of these arrests (South Sudan, 2016) and contained the following information of note.

Sixteen of the 25 arrests detailed were of soldiers from the SPLA Tiger Division, while the remaining nine belonged to Military Intelligence and other parts of the SPLA. Two Tiger Division members were charged on 10 July 2016 with looting that they had allegedly carried out that day (that is, the day before the Terrain attack). Fourteen more of the soldiers were arrested in the immediate aftermath of the fighting between 12 and 14 July, belonging to the Tiger Division, Military Intelligence, and other units. The majority of this group were charged with looting, although two Tiger Division sergeants were charged with murder (South Sudan, 2016).

On 16 August 2016 President Salva Kiir appointed a six-person Investigation Committee to probe the alleged offences committed during the Terrain attack. This committee included as its chairperson the deputy minister of justice; the deputy inspector general of police; and senior members of the NSS, Military Intelligence, the Ministry of Foreign Affairs, and the SPLA.¹⁸ A larger subcommittee was also appointed comprising members of the same government sectors and security services; it also included lawyers who conducted much of the day-to-day investigative work.¹⁹

The committee's report, submitted on 25 October 2016, presented evidence that included more than 60 oral and written witness interviews and video footage. Amid what has been described as a climate of intense fear among committee and subcommittee members, who were afraid of how the findings would be received,²⁰ the report concluded that the attackers were indeed members of the SPLA (including the Tiger Division), the NSS, and the police force. Among its recommendations, the committee proposed the creation of a special court to try the suspects, advising that it should be established within the SPLA's general court martial system (see Box 1) or derive from a hybrid civilian–military court (see South Sudan, 2017). The report recommended that 12 soldiers²¹ stand trial; other detained soldiers who were not mentioned in the report were immediately released.

Wider fallout

The political dynamics that emerged in the aftermath of the July 2016 fighting provide important context for the Terrain

Box 1 The SPLA court martial system

Generally speaking, court martials are military courts, or trials conducted in military courts. They differ from civilian criminal courts in the particulars of the law and procedures they follow and by the normative aims that they pursue. The overarching objective of a court martial is to mitigate elements of indiscipline and criminality within a country's armed forces in order to build an effective and disciplined fighting force.²²

Typically, the judging panel, prosecution, and defence team involved in a court martial comprise both legal professionals known as advocates and military (non-legally trained) officers. The latter are theoretically drawn from across all units of the military and are typically at least two ranks senior to the soldier(s) on trial.²³

The SPLA established its General Court Martial (GCM) Unit in 2008. Currently the

GCM Unit courthouse forms part of the barracks in Giada, Juba, and is staffed by a number of full-time SPLA advocates, most of whom acquired their legal training in Khartoum.²⁴ The unit is mandated to run two types of court martials. The first is a general court martial that tries soldiers accused of criminal conduct under the SPLA Act (Southern Sudan, 2009). The second type is a special court martial—or special tribunal—in which, following an expansion of executive powers through constitutional amendments since 2013, either the president or the head of the defence forces can initiate in response to extraordinary events. The GCM Unit is responsible for these special tribunals.²⁵ The court martial for the Terrain attack was the first special tribunal that the GCM Unit had ever established.

court martial proceedings. With the SPLA-IO expelled from Juba, the SPLM and military leadership began to turn on one another, with dormant fault lines surfacing. Acute tensions arose between the then-head of the SPLA, Chief of General Staff Paul Malong, and other senior leaders of the security forces and government, including the head of the NSS, Akol Koor.²⁶

Amid these tensions the Terrain incident became a stick with which the NSS—through Koor—sought to beat Malong,²⁷ who as chief of general staff was ultimately responsible for the conduct of SPLA soldiers and faced intensifying condemnation over the killings of civilians in Juba's July fighting. Malong countered by blaming the NSS-affiliated suspects for the attack. Illustrative of this breakdown in relations is that the majority of the suspects arrested were detained at the NSS headquarters by order of the president, because both Koor and Kiir doubted whether the SPLA (that is, Malong) would keep the suspects in detention.²⁸

With tensions escalating between the NSS and SPLA, the Terrain investigation and court proceedings reached an impasse. During the period October 2016 to early 2017, Gen. Marial adopted a proactive position, pushing for his soldiers to be held to account for the Terrain crimes.²⁹ Concurrently, senior officials encouraged President Kiir to accept the

Investigation Committee's findings and allow the case to go to trial.³⁰ Also during this time, Malong's relationship with the president, the NSS, and other parts of the government and security forces continued to deteriorate, eventually leading to his dismissal and subsequent house arrest in May 2017 (see Boswell, forthcoming).

Another important dynamic with a bearing on the Terrain case was the involvement of the international community. Both UNMISS and the US Embassy were widely criticized for not responding to the victims' distress calls during the attack, which included calls from victimized US citizens. Following the UN's report on the independent special investigation of the Terrain incident and UNMISS's response to it (see UN, 2016), the commander of the UNMISS forces was dismissed (see BBC, 2016b).

The US Embassy was hesitant to become involved in the Terrain investigation. Terrain management requested that the embassy support a formal complaint against the SPLA for its soldiers' actions, but in private correspondence between the US Embassy and Terrain compound management the embassy declined the request.³¹ The US Embassy's position later shifted, however, following increased media attention on the attack and the lack of any UN and US response to it (see Channel 4 News, 2016; BBC, 2016a;

“The political dynamics that emerged in the aftermath of the July 2016 fighting provide important context for the Terrain court martial proceedings.”

Patinkin, 2016; CNN, 2016). Even so, the 7 September 2016 testimony of Special Envoy for Sudan and South Sudan Donald Booth before a US House of Representatives Subcommittee on Africa made no mention of the Terrain attack investigation (Booth, 2016), which was by that stage well under way. Around this time, the UN Security Council—which had been investigating UNMISS’s failure to respond on 11 July—is believed to have privately requested the United States to support the investigation and court martial process.³²

The Terrain court martial proceedings³³

The first court hearing for the Terrain case began in May 2017 shortly after Malong’s dismissal and the appointment of the new CDF, James Ajongo (see Box 2).³⁴

The question remained as to whether to hold the trial in a civilian court or under the SPLA GCM Unit (see Box 1), with legal and practical issues affecting both sides of the argument. In theory, under the SPLA Act, charges against SPLA soldiers accused of crimes against civilians should be tried in a civilian court (Southern Sudan, 2009). The Kiir-appointed Investigation Committee recommended, however, that the trial should take place within the SPLA court martial system. Interviewees posed the following factors as having influenced this decision:

- Special tribunals can circumvent some of the protocol and procedures normally required in civilian courts, because such tribunals deal with ‘special’ or extraordinary circumstances. In this case, at the outset there was only one claimant, the Terrain general manager, who at the start of the court martial had to represent

both Terrain Services Ltd and the victims of the attack, because the victims had no claimant of their own in the country. Normally, all claimants need to be physically present in the country for a trial to go ahead, but designating the Terrain court martial as a special tribunal could override this rule.³⁵

- The attack took place in a context of war and military operations.³⁶
- The attack featured both military crimes under the SPLA Act (Southern Sudan, 2009) and criminal crimes under the Penal Code (Southern Sudan, 2008).
- The court martial system was seen as being better resourced and more efficient than the civilian courts.³⁷

In the Terrain court martial both the SPLA Act (military law) and the Penal Code (criminal law) were applicable.³⁸ Five members were appointed to the judging panel, including two judge advocates and three SPLA officers. The SPLA leadership selected Gen. Moulana Knight, a military lawyer, as head of the judging panel.³⁹ Leading the prosecution’s team was an SPLA chief prosecutor and a private

lawyer who represented the Terrain owners and, by default, the victims of the attack. (A private lawyer representing some of the attack victims joined the proceedings later when the first rape victim came to testify in August 2017.)⁴⁰ An SPLA-appointed lawyer led the defence team and was supported by three additional lawyers.⁴¹

The ranks of the 12 accused soldiers ranged from private to captain.⁴² Ten of them were from the SPLA Tiger Division, one from the NSS, and one from Military Intelligence.⁴³ Open hearings began with witness testimony from eight South Sudanese private security guards, four East African Terrain staff members, the Terrain general manager, and a South Sudanese doctor who treated victims.⁴⁴

Proceedings stalled temporarily when the rape victims were unavailable to testify, because they opted not to return to South Sudan for the trial. Their absence cast uncertainty on how the trial would proceed, because the defence team made a ‘submission of no case to answer’—a standard procedural request—in an attempt to have the case dismissed for lack of evidence.⁴⁵ After evaluating the submission, however, the judging panel agreed that the court martial would proceed.⁴⁶

In August 2017 one rape victim agreed to fly to Juba to testify for the prosecution on condition that the US Embassy provide her with physical protection and an armed guard during her testimony.⁴⁷ In October a series of contentious exchanges between the SPLA and the US Embassy concluded with the SPLA accepting the US Embassy’s facilitation—together with the US Federal Bureau of Investigation (FBI)—of a satellite video link to allow other witnesses outside of South Sudan, including rape victims, to testify.⁴⁸

Box 2 The SPLA reshuffle

In September 2017 President Kiir renamed the SPLA the South Sudan People’s Defence Force, ostensibly as part of the army’s transition from an armed wing of a liberation movement to a national army. The renaming coincided with the restructuring of the force, with each military branch (ground, air, and naval forces) being placed under separate commands. The position of chief of general staff was replaced with that of chief of defence forces (CDF).

As part of this transition key members of the military were reassigned, with James Ajongo named CDF and Gabriel Jok his deputy. Gen. Marial was promoted from commander of the SPLA Tiger Division to overall commander of ground forces and, shortly after, promoted again to assistant CDF for operations, training, and intelligence (see Radio Tamazuj, 2017). He was abruptly dismissed in March 2018 for reasons that are unclear (see Reuters, 2018).

The trial was delayed again in October when defendant Luka Akechak was found dead while in NSS custody. Akechak, of the SPLA Tiger Division, was the highest-ranking soldier of the 12 defendants and was believed to have implicated other senior officers during his testimony (see Wudu, 2017). There was some uncertainty as to the cause of his death,⁴⁹ which was officially attributed to ill health, and, given the poor conditions in which the accused soldiers were held, this was a plausible explanation (see Wudu, 2017).

When the trial resumed the defence team presented witness testimony, much of which hinged on alibis for the remaining 11 accused.⁵⁰ According to trial observers, these alibis appeared to be highly unreliable and conflicted with other defendants' narratives of the events on 11 July.⁵¹

In December the judging panel privately reached a verdict. Then-CDF James Ajongo signed off on the verdict, and it was then passed on to the President's Office for final approval, with the judgment expected to be released in February 2018. However, after Ajongo's illness and subsequent death in early April, the verdict's release was delayed until after the appointment of his replacement, Gabriel Jok, in May (Dumo, 2018a). Nearly ten months later, on 6 September 2018, the verdict was finally released (Dumo, 2018b).⁵²

Among the 11 soldiers charged, life sentences were given to two of those found guilty of murder. One soldier was acquitted, and of the eight others, three were found guilty of raping the aid workers, four of sexual harassment, and one was found guilty of theft and armed robbery. The compensation awarded to the victims included USD 2.25 million for damages to the owners of Terrain, USD 4,000 for each of the six known victims of sexual assault and rape, and 51 cows for the family of John Gatluak (Amnesty International, 2018b).

After the announcement of the verdict and sentences, the ten convicted soldiers were taken to the main SPLA barracks in Giada, where they were publicly stripped of their ranks before being taken to Juba Prison.⁵³ As of July 2019 none of the victims had been paid their compensation (Tanza, 2019; Mednick, 2019b). Two separate appeal processes have been filed: one by the defence to reduce the sentences for some of those convicted⁵⁴ and another by the rape victims contesting

the amount of monetary compensation, which they deemed to be inadequate.⁵⁵ The appeals are expected to be passed on to the Supreme Court for judgment.⁵⁶

The state of the SPLM/A

The second part of this Briefing Paper examines some of the dynamics among the South Sudanese leadership and security forces between the period of the Terrain attack in July 2016 and the release of the trial verdict in 2018.

Leadership dynamics

With the negotiations for the revitalization of the the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) peace process beginning in June 2017 (JMEC, 2018; also see IGAD, 2015), President Kiir sought to project an image of political and military unity among the SPLM/A in an effort to bolster his position at the negotiating table. Doing so meant managing the reshuffling of a largely hegemonic Dinka government and military⁵⁷—a challenging task in the face of internal tensions and wide-ranging personal and political interests.

The deteriorating relationship between the then-SPLA chief of general staff, Paul Malong, and the NSS head, Akol Koor, best captured these internal tensions, and to some extent the dynamics of the ethnic Dinka constituencies that these leaders represented. As mentioned above, in the aftermath of the Terrain attack the president ordered the detention of suspects at the NSS compound to prevent their premature release by the SPLA while it was still under Malong's command, which Kiir presumably perceived as a possibility.

While Malong blamed Koor and the NSS for the Terrain attack, Koor's response was to exploit the increasing precariousness of Malong's position and push for his removal, causing fears to spread of a new conflict, this time between the SPLA and NSS.⁵⁸ In November 2017 tensions peaked following Malong's dismissal from the SPLA in May and his subsequent house arrest, culminating in an armed stand-off between government troops and soldiers loyal to the now-unemployed Malong. These tensions dissipated without violence after Kiir granted Malong permission to leave Juba and go to Nairobi (see Tanza and Wudu, 2017).

Malong's successors, the late James Ajongo (a more moderate Dinka from Aweil) and Gabriel Jok (a Bor Dinka), had far better relationships with Koor and the NSS, which made for a degree of stability within the SPLM/A. However, Kiir's expulsion of Malong—the Aweil Dinka's main champion—left Malong's loyalists disgruntled, and threatened Kiir's sought-after image of SPLM/A unity. Ultimately, it was apparently the continuation of a hostile relationship between Malong and Koor that would prevent Malong's return to Juba.⁵⁹

The period of the Terrain attack and court martial saw Koor's NSS increasingly encroaching on South Sudan's public and private sectors.⁶⁰ Following its role in halting the 11 July rampage at the Terrain compound, a trend emerged in which the NSS became the de facto agency to 'police' the SPLA when its soldiers ran afoul of the law.⁶¹

Meanwhile, Gen. Marial's position within the SPLA continued to stir controversy. His placement on a UN Security Council sanctions list in 2015 for his alleged role in commanding SPLA Tiger Division soldiers responsible for atrocities against Nuer civilians in Juba in December 2013 (see Panchol, 2019) was still a factor. His double promotion in late 2016 and 2017 was followed by an abrupt yet comfortable fall, underscoring a pattern of quid pro quo protectionism among veteran SPLA leadership. As of July 2019 Marial remained without an official SPLA posting, but was still living comfortably in the same house in the army barracks and was treated as a VIP at James Ajongo's funeral in April 2018.⁶²

Rank and file

Beyond leadership dynamics, the Terrain attack served as a paradigmatic example of the troubled nature of the SPLA's command and control structures. While the SPLA leadership characterized the soldiers accused of the Terrain attack as 'rogue individual soldiers' (Santo, 2016), it is widely known that indiscipline continues to pervade the SPLA's rank and file. According to one SPLA officer:

The SPLA's problem is indiscipline because most of the soldiers are from guerrilla groups ... even the commanders are not well trained

“The GRSS’s and army’s response to the Terrain attack showed progress towards an improved internal mechanism to hold state actors accountable for crimes.”

*and there is a weakness of command. They don’t know how to do their jobs and the soldiers don’t listen.*⁶³

The degree to which indiscipline can explain the soldiers’ behaviour at the Terrain compound is uncertain, but their actions that day did expose the chronic fragility of SPLA vertical command and control over SPLA soldiers. No commander—even the most senior—appeared to be able to exercise any immediate control over the marauding soldiers. Moreover, reports that Gen. Marial was shot at by his own men and that SPLA Tiger Division soldiers dispatched to rescue civilians in Terrain were fired on by other Tiger Division members further emphasize these limitations.

The egregiously criminal behaviour of the Tiger Division soldiers is particularly noteworthy. The Tiger Division is President Kiir’s designated protection force, drawn heavily—although not exclusively—from Kiir’s home area of (former) Warrap and Northern Bahr el Ghazal states. Members of what would become the Tiger Division acted in the pre-independence period as bodyguards for the rebel leaders, before the division was formalized as an SPLA unit in 2011.⁶⁴ Currently it is considered to be an elite force and, as such, its personnel are expected to operate at a higher professional standard than that of regular SPLA units. Of equal note, the involvement of NSS members in the attack—another elite security force—is of concern for the same reasons.

Another group of fighters alleged to bear responsibility for crimes during the Terrain attack is the Mathiang Anyoor, a Dinka militia that Paul Malong formed in Northern Bahr el Ghazal in 2012.⁶⁵ SPLA generals were quick to scapegoat the

militia as the force responsible for what transpired at the Terrain compound.⁶⁶ However, while some Mathiang Anyoor fighters may have been among the looters in the Jebel area and participated in the Terrain compound attack, there is no evidence that those involved were operating as an organized militia during the attack. Indeed, during the period 2015–16 members of the Mathiang Anyoor were deployed in units of the SPLA and placed on Tiger Division and NSS payrolls; they have currently been largely integrated into the SPLA (Boswell, forthcoming).

Paradoxically, the nature of the Terrain attack indicates that rank-and-file indiscipline does not necessarily equate to chaotic disorganization. The Terrain residents and staff witnessed a level of coordination among those engaged in looting that resembled a systematic building-by-building removal of property and its transfer to vehicles in a virtual production-line style operation.⁶⁷ This would indicate that, when certain shared interests are in place and in the absence of strong vertical military command, a degree of spontaneous organization emerges among the rank and file.

Prospects for SPLA accountability

Political will

The GRSS’s and army’s response to the Terrain attack showed progress towards an improved internal mechanism to hold state actors accountable for crimes, including acts of sexual violence against civilians. Throughout the 16-month court martial period several key SPLM/A actors demonstrated a commitment to the pursuit of justice and accountability among

government security forces. While personal interests were also at stake, SPLM/A actors were able to cooperate in pursuit of a seemingly common objective: a credible court martial process.

Gen. Marial, whose commitment to SPLA accountability helped the court martial process happen, gave evidence at the court martial that supported the prosecution of soldiers from his own division. Well after the trial’s conclusion he confided that he felt ‘embarrassed’ by their conduct.⁶⁸

It would be easy to assume—as many have—that Marial’s (and other SPLA officials’) support for the court martial was merely an attempt to appease international pressure to respond to the attack through legal means. Such perceptions may, however, overlook the fact that by late July 2016—before the Terrain investigation had formally begun—Marial had already initiated court martials for his own soldiers accused of looting the Jebel market and Yei Road area.⁶⁹

President Kiir’s endorsement of the process was imperative for the trial to take place at all. Recalling that the SPLA Tiger Division is the president’s personal protection force and its members are heavily drawn from his native area, one of Kiir’s advisors pointed out that ‘even his relatives are the ones accused of the damage’.⁷⁰ Diplomatic pressure from the international community certainly became a factor in Kiir’s cooperation later on, but it is worth noting that his initiation of the investigation in August 2016 predated US Embassy pressure to proceed with the case.⁷¹

Lastly, the Investigation Committee’s report revealed that a high level of professionalism and independence characterized the investigation. Ultimately, the report’s authors acted boldly to assert the guilt of SPLA and NSS soldiers, who were the committee members’ own colleagues.

Procedural credibility

While the proceedings were slow, with several delays, and also appeared to be disorganized at times, for the most part this was due to exogenous factors, including two changes of SPLA chiefs of general staff/CDFs, as well as logistical constraints, including power cuts, fuel shortages, and a general lack of facilities. Nevertheless, experts from the UN Commission on Human Rights in South Sudan

concluded that the trial was credible, fair, and procedurally sound.⁷² Further, despite early concerns that a court martial would shield the process from public view (see Reuters, 2017), all of the hearings were open to the public, with the exception of the testimony given by rape victims. Legal experts cited the translation of statements from Juba Arabic into English as a simple but positive effort to ensure transparency.⁷³ On a more technical level, observers pointed to the defence team's use of a 'submission of no case to answer' as a noteworthy example of procedural rigour.⁷⁴

The selection of Gen. Knight as head of the judging panel also brought additional credibility to the court martial and was a significant indicator of a wider desire for the trial to be perceived as credible and impartial. At the outset of the proceedings President Kiir had asked Gen. Malong to nominate a head judge. Malong then asked Marial whom he would propose, and Marial suggested Knight, an Equatorian who was seen as someone who would act impartially, because he had little invested in the intra-Dinka power struggles that influence SPLM/A affairs.⁷⁵ Moreover, he trained and worked in the Sudanese army and was never an SPLA bush soldier during the north-south civil war, and therefore did not have the baggage from that period that characterized other possible candidates.⁷⁶

Lessons learned and precedents set

The Terrain court martial was the first special tribunal that the SPLA GCM Unit had ever established. GCM Unit members broadly participated in the process, and the proceedings utilized every advocate in the unit. A variety of new precedents were established and associated lessons learned through the trial.

The court martial was a rare example of the GCM Unit trying so many soldiers simultaneously. Usually, accused soldiers are tried individually—yet the capacity to try multiple perpetrators at once is essential in cases of collective violence against civilians.

The introduction of victim-sensitive measures in the courtroom was also a positive step: the court allowed rape victims to provide closed testimony and gave permission to the FBI to facilitate video-



The SPLA General Court Martial (GCM) in Juba, South Sudan, as seen from the outside, 26 November 2018. Source: Flora McCrone

link testimony. Further, the court allowed lawyers to submit sensitive information anonymously by redacting victims' names and other identifying information.⁷⁷ While the video-link technology was extremely expensive,⁷⁸ which would be a challenge for future cases involving victims' testimony from outside of South Sudan, the other measures to ensure privacy and witness protection served as examples of good practice for future trials.

Arguably the most important precedent established was that for the first time members of the SPLA were tried for wartime rape and other forms of sexual violence. The GCM Unit's prior experiences of trying rape cases involved non-war-related crimes. The explicit recognition of rape and sexual violence as state-actor-perpetrated crimes in war is

extremely significant not only in South Sudan, but in a broader international context as well. To give some scope to the magnitude of conflict-related sexual violence in South Sudan, UNMISS documented 577 cases of conflict-related sexual violence in 2016 involving rape, gang rape, and abduction for the purpose of committing sexual assault. These reported attacks were attributed to the SPLA, SPLA-IO, and allied militia of both groups, but none of the perpetrators of such incidents has been prosecuted (UN, 2018b, p. 20). Thus, the incident rate of (unprosecuted) sexual violence underscores the importance of the development of jurisprudence in this area.

At the conclusion of the court martial, efforts to publicly disseminate the verdict, including across the wider SPLA

through the parading of the accused in the barracks and the SPLA radio's transmission of the verdict, could be read as a sign that the SPLA wanted to use the Terrain court martial as a deterrent to potential offenders.

Limits to justice

In spite of the Terrain court martial's many achievements, a number of limitations remain that restrict the degree of accountability that prevails in South Sudan. Perhaps the greatest counterweight to the accomplishments of the court martial was that it seemed to be an exception to the rule. The swift response of the government and SPLA to make arrests did not appear to be reflective of a broader commitment to reduce violence against civilians: even as the court martial verdict was announced, allegations of war crimes committed by SPLA soldiers—including killings, sexual violence, abduction, and forced displacement—against Nuer communities in Unity state were being reported (see Amnesty International, 2018a). A court martial for SPLA troops accused of mass rape in Kubi village, not far from Juba, in February 2017 had as of July 2019 failed to reach a conclusion (see Pur, 2019). Indeed, as mentioned above, in 2015 the UN Security Council sanctioned some of the key actors who were supporters of the Terrain trial—namely Gen. Marial and Gabriel Jok—for their roles in alleged crimes during SPLA offensives in Juba and Unity state, respectively, since December 2013 (Panchol, 2019).

It is important to view the adjudicated response to the attacks on civilians in Terrain within this context. While the violence at Terrain generated a significant and very public source of embarrassment for the SPLM/A, it achieved no particular military or political outcome. In contrast, analysts have claimed that SPLA violence against communities in Unity state, the Equatorias, and elsewhere is deliberately designed to serve a military and political purpose.⁷⁹ In such cases, the abuse of civilians is not considered to be 'indiscipline'. And as far as the Terrain case is concerned, arguably the abusive acts that the soldiers committed were only considered to be 'indiscipline' *because they were not militarily or politically useful* to the government and army.

Elsewhere, human rights groups accuse the South Sudanese justice and

detention system of committing egregious violations of prisoners' rights, including executions allegedly carried out under presidential order (see Amnesty International, 2018c). The violation of prisoners' rights was also an issue during the Terrain court martial, as the death of Luka Akechak while in NSS custody demonstrated. The extremely poor conditions in which the prisoners were held highlighted that while due legal process was respected in the courtroom, the conditions in which the accused were held in prison were inhumane.

The number of soldiers who were not formally charged in the Terrain attack is also a critical limitation to the outcome. Only 12 of the 50–100 attackers were tried. Moreover, the most senior among the attackers were not put on trial. If Luka Akechak, the highest-ranking soldier among the accused, was indeed a captain (as interviews suggest),⁸⁰ he would have been in charge of three platoons and in a position to shed light on the command dynamics on the day of the attack. There were several ranks and officers above his level with command responsibility within the Tiger Division, and, whether they were present or not during the attack, it is plausible to believe that some escaped accountability. The court's failure to put more senior officers on trial was a missed opportunity to understand the SPLA's command and control of its soldiers.

It is important to reiterate that not all instances of civilian abuse and SPLA criminality are the result of a breakdown of command and indiscipline among soldiers. In many cases, especially in front-line areas, the opposite seems true. In 2017 the UN Commission on Human Rights in South Sudan identified several SPLA commanders (as well as commanders of other armed groups and state governors) for whom there were reasonable grounds to believe that they exercised command responsibility while their soldiers committed war crimes (see UNHCR, 2018). Although there were instances when military discipline broke down, the military hierarchies of the SPLA (and the SPLA-IO) generally appeared to function effectively in terms of the issuance and transmission of and obedience to orders (UNHCR, 2018).

In any case, experts from the US government advised the prosecutorial team that it would not be worth pursuing senior officers' responsibility, at least not as

part of the Terrain trial.⁸¹ Comparable trials elsewhere, such as those for which the International Criminal Tribunal for Rwanda was responsible, followed a process whereby the most junior soldiers were tried first, and then their trials were used as a judicial record to support the trials of more senior ranks.⁸² The hybrid court provided for by the R-ARCSS⁸³ could pick up where the Terrain court martial left off, because the crimes committed in July 2016 would potentially fall under its jurisdiction.⁸⁴ According to members of the SPLA, the Ministry of Defence can address the issue of weak command structures administratively, but as of July 2019 there have been no signs of concerted efforts on the part of the ministry to do so.⁸⁵

As described in the previous section, the formation of the special tribunal and its issuance of the verdict were contingent on the convergence of specific conditions and personal interests within the SPLM/A. The power of the executive and SPLA leadership enabled the process to happen, but this is also why other similar tribunals may not materialize or be implemented with such success. The South Sudanese executive's extensive and wide-ranging powers constitute a double-edged sword. While the Terrain Investigation Committee and court martial were established by executive order, these same powers could also be used to disrupt and overturn future judicial processes. In fact, in February 2017 the SPLA's director of military justice and the head of military courts both resigned, citing the president's and former chief of general staff Paul Malong's high-level interference in their work.⁸⁶ Indeed, revelations in April 2019 that the GRSS had hired a lobbying firm run by the former US ambassador to Kenya, Michael Ranneberger, to, among other things, 'delay and ultimately block establishment of the hybrid court' as envisaged in the R-ARCSS peace agreement (Mednick, 2019a) casts a muted light on any potential pressure Kiir might exert to ensure the future accountability of state actors for crimes they had allegedly perpetrated.

External influences

Another consideration with implications for future court martial hearings is the extent to which international support and pressure contributed to the successful

completion of the Terrain trial process. Many commentators attribute the undertaking and outcome of the Terrain court martial largely to US involvement: its embassy and FBI facilitated the use of satellite video links for remote testimony and held high-level meetings with the president and CDF to push the process forward.⁸⁷

Behind the US Embassy's support for the court martial process were its own interests. The most apparent of these was to provide support to the US citizens who were victims of the Terrain attack.⁸⁸ The offer of US support to the investigation and court martial came two months after the attack and following high-profile media reports on the lack of US and UNMISS response to desperate calls for assistance from the people in the Terrain compound. A factor in the early unwillingness of the US Embassy and FBI to become involved was their fear of supporting a process that would fail to deliver justice, potentially further tarnishing the United States in the public eye.⁸⁹ Ultimately, the court martial gained bipartisan support from within the US government and was viewed as an opportunity to improve public perception of the US Embassy in Juba.⁹⁰

On the margins of the Terrain trial was also the issue of US and UN sanctions, including the threat of—and already imposed—sanctions on members of South Sudan's leadership. Experts have posited that the GRSS proceeded with the trial in order to placate the international community (see Modi, 2017; Reuters, 2017). In 2015 the UN Security Council sanctioned Gen. Marial and Gabriel Jok for their alleged involvement in SPLA war crimes in Juba and Unity state (Panchol, 2019). In September 2017 the United States sanctioned Malong for allegations that he ordered his soldiers to attack disarmed Nuer soldiers and kill civilians, as well as other charges (US Department of the Treasury, 2017). These sanctions likely influenced some actors' decisions to support the court martial, but at the same time the looming threat of additional sanctions was believed to have endangered the court martial proceedings by undermining diplomatic relations between the United States and the SPLM/A.⁹¹

A perception within the GRSS and SPLA that an international justice mechanism may come to fruition was, and remains, an additional factor to consider. The violent acts committed in the Terrain

“ There is also a need for actors and institutions ... to develop a nuanced understanding of the concept of security sector reform as the South Sudanese military perceives it.”

attack and alleged crimes committed elsewhere in South Sudan are indictable offences under international law. The proposed hybrid court for South Sudan would presumably have jurisdiction to try the most egregious of these alleged crimes, including those for which evidence of command responsibility has been collected. Legal advisors to the GRSS and SPLA are believed to have encouraged certain individuals to support the Terrain trial in an effort to mitigate their (potential) scrutiny by future justice mechanisms.⁹²

The issues discussed in this section should be taken together with the examples of the SPLA's internally driven support for the court martial, which predated US Embassy involvement by some months. The influence of international involvement therefore needs to be read with a high degree of nuance, and observers should avoid attributing the outcome of the court martial to any one factor.

Future prospects

SPLA advocates and GCM Unit members have expressed a clear desire to carry out their jobs and to do so with high standards of procedure and management.⁹³ Following the trial, the GCM Unit asked UNMISS to provide it with additional training, and as of mid-2019 the UNMISS Rule of Law Department was in the process of holding a year-long training programme for GCM Unit judge advocates.⁹⁴ Other assistance that the GCM Unit asked for includes technical support to help it build on the precedent-setting approaches used in the Terrain court martial.⁹⁵

The majority of the GCM Unit's judge advocates hold relatively junior ranks—

first or second lieutenant.⁹⁶ The fact that this role falls largely on the shoulders of a younger generation of the SPLA is paradoxical. This younger generation appears to be more committed to justice, accountability, and professionalism than the SPLA 'old guard', yet at the same time, as junior soldiers in the top-heavy and highly patriarchal SPLA, many are wary of being seen as disrupting the status quo.⁹⁷

In response to questions about the near future, members of the GCM Unit expressed their desire to gain more trial experience.⁹⁸ The South Sudanese military and civilian justice systems are complainant driven, however, meaning that for complaints to reach the trial phase, complainants need to hire private advocates, which is expensive, and know how to approach the military justice system. Perhaps most importantly, complainants also need the confidence and security to challenge the SPLA. All of these things are quite hard to come by for those living in marginalized or minority-group communities.

Indeed, the initial complainants in the Terrain case—the owners and management of a large international business—were relatively well positioned to advance the case. Nonetheless, they still experienced well-founded fears for the safety of themselves, their lawyer, and the prosecution's witnesses. Furthermore, they faced widespread cynicism—even hostility—among commentators and the media (see Modi, 2017; Reuters, 2017). Nonetheless, the Terrain complainants were at a considerable advantage compared to the vast majority of South Sudanese civilians.

Moreover, the barriers to ensuring witness and victim testimony in court remain

“The Terrain case also illustrates... the need to expand civilian access to justice and legal aid during the country’s implementation of the R-ARCSS process and beyond.”

and include fear of SPLA retribution, the pervasive stigmatization of victims of sexual violence, and lack of awareness of available witness protection measures. Combined, these factors can discourage the testimony of national and international witnesses alike.

Finally, in terms of possible future court martials, the Terrain attack was a high-profile incident that took place within a confined, privately owned space. The damage inflicted was thoroughly documented and the body of evidence against the accused robust.⁹⁹ For attacks in remote areas outside of Juba it is significantly more difficult to document evidence and considerably easier for the alleged perpetrators to contest accusations made against them.

Conclusion

The scope of this research presents an opportunity to better understand the behaviour of the South Sudanese security forces in the context of armed conflict. The Terrain attack exposed the brittleness of the SPLA’s vertical chains of command and widespread indiscipline among its troops. The trial showed that South Sudan’s elite security forces committed the Terrain-related crimes, not ‘rogue’ soldiers in remote areas. It is clear that the risk of state security forces abusing civilians needs to be front and centre of any future SPLA efforts to reform or transform the security forces, if the GRSS leadership and external partners want to support South Sudan’s transition to sustainable peace.

SPLA conceptions of ‘indiscipline’ need to be factored into these considerations. Currently, troops’ abuse of civilians often appears to be treated as ‘indiscipline’ only when it does not serve

political or military purposes. There is also a need for actors and institutions—both internal and external—to develop a nuanced understanding of the concept of security sector reform as the South Sudanese military perceives it. This understanding should form the foundation for work that progressively shifts the focus of state security provision to a more civilian-centric approach.

The response to the Terrain attack, however, shows that such an approach is possible when the right constellation of actors and individuals emerge within the South Sudanese government and military. The Investigation Committee members and the GCM Unit demonstrated a high degree of integrity, independence vis-à-vis the government, and a commitment to deliver justice through rigorous adherence to due process. Their respective capacities and professionalism will expand with continued support from the GRSS and other agencies, specifically in the form of technical and legal assistance and training to build on these foundations.

It is quite clear that the members of the GCM Unit wanted to prove to the international community that they were able to conduct such a trial. To quote the chief prosecutor:

I want[ed] to show the internationals that we can do this properly. This is a first step towards justice ... we are a new country. We are not saying we are all proper, but we are doing things according to our capacity.¹⁰⁰

Indeed, the GCM Unit’s pursuit of justice during the Terrain court martial, coupled with the precedents the court martial introduced, should give the international community some confidence that there is a basic capacity for transitional justice in South Sudan that allows opportunities

to work within the existing system rather than overlooking or entirely dismissing it.

The Terrain case also illustrates how important civilian access to justice is, underscoring the need to expand civilian access to justice and legal aid during the country’s implementation of the R-ARCSS process and beyond. While the hybrid court that the R-ARCSS proposes is still a distant goal and the civilian justice system remains weak, politicized, and under-resourced (see UN, 2018a), the GCM Unit could allow at least some civilians to pursue accountability for SPLA crimes committed during the civil war. ●

Abbreviations and acronyms

ARCSS	Agreement on the Resolution of the Conflict in the Republic of South Sudan
AU	African Union
CDF	Chief of defence forces
CHRSS	Commission on Human Rights in South Sudan
FBI	Federal Bureau of Investigation
GCM	General Court Martial
GRSS	Government of the Republic of South Sudan
MoU	Memorandum of understanding
NSS	National Security Service
R-ARCSS	Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan
RPF	Regional Protection Force
SPLA	Sudan People’s Liberation Army
SPLA-IO	Sudan People’s Liberation Army-in-Opposition
SPLM	Sudan People’s Liberation Movement
SSPDF	South Sudan People’s Defence Force
UN	United Nations
UNMISS	United Nations Mission in South Sudan
US	United States
USD	United States dollar(s)

Notes

- 1 The Terrain compound included a residential area and the premises of a construction company of the same name. Commonly, the compound is inaccurately referred to as the ‘Terrain Hotel’ in media reports. In this Briefing Paper the compound is referred to as ‘Terrain’ throughout.
- 2 This Briefing Paper is based on primary interviews that the author conducted in Juba,

- South Sudan, from 19 to 28 November 2018, as well as preliminary and follow-up interviews conducted in Nairobi, Kenya, immediately before and shortly after the research undertaken in Juba. In addition a variety of secondary sources were used as reference material, including a small number that were confidential or that the author only saw in hardcopy.
- 3 See Young (2017, p. 24): ‘No consensus has emerged on how these developments transpired, although government claims that [Riek] Machar had attempted to carry out a coup or that he tried to kill [President] Kiir can be dismissed, because SPLM-IO forces were too few and lightly armed for such actions compared to the superior forces of the SPLA. Meanwhile, SPLM-IO supporters claimed that, as was the case in December 2013, the government tried to assassinate Machar, but this too cannot be confirmed. International opinion was divided, but generally attributed the fighting to the growing tensions between the belligerents over the previous weeks.’
 - 4 For more information, see Al Jazeera (2016a). SPLA-IO units were stationed in cantonment sites in Juba three months earlier in accordance with ARCSS peace process, an agreement mediated by the Intergovernmental Authority on Development in Addis Ababa in August 2015 between President Salva Kiir and his former vice-president and the leader of the SPLA-IO, Riek Machar. For more information, see Reliefweb (2016).
 - 5 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 6 See the Human Rights Watch map detailing the locations of the violence in Juba during the July 2016 fighting (HRW, 2016). Note that the Terrain compound is referred to as the Yei Road compound.
 - 7 Author interview with Gen. Marial Chonyuang Yol, SPLA, Giada barracks, Juba, 26 November 2018.
 - 8 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 9 The NSS headquarters lies approximately 2 km north-east of the Terrain compound.
 - 10 While it is arguably plausible that Gen. Marial claimed he could not control his men as a way to escape his own culpability for command responsibility, this is unlikely. The management of the Terrain compound were speaking on the phone to Marial constantly in the run-up to and throughout the attack, allowing them a detailed insight into Marial’s response during the attack. Moreover, it is worth stating that it is extremely embarrassing for a senior veteran commander such as Marial to admit that he had lost control of his men, so it seems unlikely that he would do so falsely.
 - 11 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 12 Most media coverage misreported the number of rape victims as five (author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019).
 - 13 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 14 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 15 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019; see also South Sudan (2017). Later a small number of civilians are thought to have joined in the looting.
 - 16 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 17 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 18 The full names and positions of the six Investigation Committee members are as follows: Deputy Minister for Justice Martinson Mathew Oturomoi (chairperson), Deputy Inspector General of Police Lt. Gen. James Biel Ruot (deputy chairperson), NSS Director of Political Affairs Maj. Gen. Bor Wutchok Bor (member), Deputy Director of Military Intelligence Maj. Gen. Kulang Mayen Kulang (member), Ambassador in the Ministry of Foreign Affairs and International Cooperation John Andruga Duku (secretary), and Col. Matur Dharuai Yor of the SPLA (member).
 - 19 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 20 Author interview with a private advocate for the prosecution of the Terrain court martial, Juba, 19 November 2018.
 - 21 Information on the 12 soldiers was not included in the Investigation Committee’s final report, but the recommendations for arrests were part of the committee’s work.
 - 22 Author interview with a former SPLA military justice advisor, Juba, 20 November 2018.
 - 23 Author interview with an UNMISS court martial observer, Juba, 24 November 2018.
 - 24 Author interview with a senior member of the GCM Unit, Juba, 20 November 2018.
 - 25 Author interview with a senior member of the GCM Unit, Juba, 20 November 2018.
 - 26 Author interview with an UNMISS analyst, Juba, 25 November 2018.
 - 27 Author interview with an UNMISS analyst, Juba, 25 November 2018.
 - 28 Author interviews with two senior SPLA officers, SPLA headquarters, Bilpham, Juba, 26 November 2018.
 - 29 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 30 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 31 Email correspondence dated 30 July 2016 between the public affairs officer of the US Embassy and the Terrain compound management.
 - 32 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
 - 33 This section is based on the author’s primary interviews with individuals who had been key observers of or participants in the court martial proceedings throughout their course from May 2017 to September 2018, as well as key court martial documents produced by the court.
 - 34 While the court hearings did not begin because Malong had been replaced, there was a sense that once Ajongo took over, his support for the process injected momentum into the proceedings.
 - 35 Author interview with the Terrain compound general manager, Nairobi, 6 January 2019.
 - 36 Author interview with the head of the judging panel for the Terrain court martial, Juba, 26 November 2018.
 - 37 Author interview with an UNMISS court martial observer, 24 November 2018.
 - 38 Author interview with the chief prosecutor for the Terrain court martial, Juba, 27 November 2018.
 - 39 Author interview with the head of the judging panel for the Terrain court martial, Juba, 26 November 2018.
 - 40 Author interview with the chief prosecutor for the Terrain court martial, Juba, 27 November 2018.
 - 41 Author interview with the lead defence advocate for the Terrain court martial, Juba, 24 November 2016.
 - 42 There is some confusion as to whether Luka Akechak, the soldier who died in NSS custody, was a captain or sergeant major. In the official verdict produced by the judging panel he is listed as a sergeant major, but participants in the court martial said he held the more senior position of captain.
 - 43 Author interview with an UNMISS court martial observer, Juba, 24 November 2018.
 - 44 Author interview with the Terrain compound general manager, Nairobi, 6 January 2019.
 - 45 Author interview with a private advocate for the prosecution in the Terrain court martial, Juba, 19 November 2018; author interview with the lead defence advocate for the Terrain court martial, Juba, 24 November 2016.
 - 46 Author interview with a UN Commission on Human Rights in South Sudan (CHRSS) court martial observer, Nairobi, 15 November 2018.
 - 47 Author interview with a private advocate for the prosecution in the Terrain court martial, Juba, 19 November 2018.
 - 48 Author interview with a former employee of the US Embassy in South Sudan, Nairobi, 16 November 2018; see Reuters (2017).

- 49 Author interview with an UNMISS court martial observer, Juba, 24 November 2018.
- 50 Author interview with the lead defence advocate for the Terrain court martial, Juba, 24 November 2016.
- 51 Author interview with an UNMISS court martial observer, Juba, 24 November 2018.
- 52 The delay between May and September does not seem particularly significant. It can be assumed that Jok and Kiir had other priorities and interests during this period, so the Terrain case files went to the bottom of the pile.
- 53 Author interview with the lead defence advocate for the Terrain court martial, Juba, 24 November 2016.
- 54 Author interview with the lead defence advocate for the Terrain court martial, Juba, 24 November 2016.
- 55 Author interview with a private advocate for the prosecution for the Terrain court martial, Juba, 19 November 2018.
- 56 Author interview with the lead defence advocate for the Terrain court martial, Juba, 24 November 2016.
- 57 For background, see Pinaud (2016) and de Waal (2014).
- 58 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019; author interview with an UNMISS analyst, Juba, 25 November 2018.
- 59 Author interview with an UNMISS analyst, Juba, 25 November 2018.
- 60 For background, see Global Witness (2018).
- 61 Author interview with an UNMISS analyst, Juba, 25 November 2018.
- 62 Author observations, Juba, November 2018; author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
- 63 Author interview with a senior SPLA officer, SPLA headquarters, Bilpham, Juba, 26 November 2018.
- 64 The history of the Tiger Division is complex and somewhat contested, but this lies outside the scope of this study. As of July 2019, to the author's knowledge little to no substantive research focused primarily on this topic has been undertaken.
- 65 For background on the Mathiang Anyoor, see Pendle (2015) and Boswell (forthcoming).
- 66 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
- 67 In another attack in Juba on 11 July uniformed soldiers looted 4,500 tons of food from a World Food Programme warehouse, allegedly using SPLA trucks and cranes to do so (UNSC, 2016, p. 15).
- 68 Author interview with Gen. Marial Chonyuang Yol, Giada barracks, Juba, 26 November 2018.
- 69 South Sudan (2016); see also the advance version of the report of the UN Human Rights Council-appointed CHRSS: 'Following the violence in July 2016, the Government announced the establishment of court martials to prosecute SPLA soldiers allegedly responsible for crimes against civilians. The Government reported that 77 soldiers had been convicted for various offences, including murder, rape, theft and looting' (UN, 2018a, para. 112).
- 70 Author interview with a senior SPLM advisor, Juba, 25 November 2018.
- 71 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
- 72 Author interview with an UNMISS court martial observer; author interview with a UN CHRSS court martial observer, Nairobi, 15 November 2018.
- 73 Author interview with a UN CHRSS court martial observer, Nairobi, 15 November 2018.
- 74 Author interview with a UN CHRSS court martial observer, Nairobi, 15 November 2018.
- 75 Author interview with Gen. Marial Chonyuang Yol, Giada barracks, Juba, 26 November 2018.
- 76 Author interview with Gen. Marial Chonyuang Yol, Giada barracks, Juba, 26 November 2018.
- 77 Author interview with a UN CHRSS court martial observer, Nairobi, 15 November 2018.
- 78 Author interview with the chief prosecutor of the Terrain court martial, Juba, 27 November 2018.
- 79 See, for example, Amnesty International (2018a, p. 5), which documents the 'deliberate', 'systematic', and 'tactical' nature of the violence the SPLA committed against Nuer civilians in Unity state in 2018: 'These abuses appear to have been carried out with the purpose of forcibly displacing civilians and making villages uninhabitable. Attacks on food sources, including the deliberate destruction and burning of food stocks, moreover, seem to have been carried out with the intention of making the civilian population living in opposition held areas of Leer and Mayendit food insecure.'
- 80 Author interview with a private advocate for the prosecution in the Terrain court martial, Juba, 19 November 2018; author interview with the lead defence advocate for the Terrain court martial, Juba, 24 November 2016.
- 81 Author interview with a key witness to the Juba fighting and court martial proceedings, Nairobi, 6 January 2019.
- 82 Author interview with a UN CHRSS court martial observer, Nairobi, 15 November 2018; author interview with an UNMISS court martial observer, Juba, 24 November 2018.
- 83 The ARCSS collapsed in July 2016. In September 2018 it was renegotiated and South Sudan's main warring parties then signed the Revitalized ARCSS (IGAD, 2018).
- 84 According to the UN CHRSS report (UN, 2018a), under Chapter V of the R-ARCSS the African Union (AU) is responsible for establishing the hybrid court for South Sudan to investigate and prosecute individuals allegedly responsible for violations of international law and the applicable law of South Sudan since 15 December 2013. In December 2017 the South Sudan Council of Ministers approved the legal instruments for the establishment of the court, including a draft statute and a draft memorandum of understanding (MoU) between the AU and GRSS. The UN CHRSS report states that in March 2018 the MoU was believed to be with the Legislative Assembly, which will incorporate the peace agreement into the domestic law of South Sudan. The draft statute for the hybrid court sets forth the jurisdiction of the court with regard to genocide, crimes against humanity, war crimes, and other serious crimes under international and relevant domestic laws. As of July 2019 the author has not received any reports of the MoU having been signed or the draft statute being domesticated.
- 85 Author interview with a private advocate for the prosecution of the Terrain court martial, Juba, 19 November 2018.
- 86 They also cited ethnic partiality and impunity as reasons for their resignations (author interview with a UN CHRSS court martial observer, Nairobi, 15 November 2018).
- 87 Author interview with a private advocate for the prosecution of the Terrain court martial, Juba, 19 November 2018.
- 88 Perhaps an additional incentive for the United States to see the court martial process through to its end was an incident that took place three days before the Terrain attack. When fighting broke out in Juba on 8 July, troops suspected of being members of the Tiger Division shot at two US Embassy vehicles (author interview with a former employee of the US Embassy in South Sudan, Nairobi, 16 November 2018).
- 89 Author interview with a former employee of the US Embassy in South Sudan, Nairobi, 16 November 2018.
- 90 Author interview with a former employee of the US Embassy in South Sudan, Nairobi, 16 November 2018.
- 91 Author interview with a former employee of the US Embassy in South Sudan, Nairobi, 16 November 2018.
- 92 Author interview with an UNMISS court martial observer, Juba, 24 November 2018; author interview with a UN CHRSS court martial observer, Nairobi, 15 November 2018; author interview with a private advocate for the prosecution of the Terrain court martial, Juba, 27 November 2018. Senior SPLM/A officials interviewed for this research did not express a similar view.
- 93 Author interviews with members of the SPLA GCM Unit, Giada barracks, Juba, 21 November 2018.
- 94 Author interview with an UNMISS court martial observer, Juba, 24 November 2018.

- 95 Author interview with an SPLA spokesperson, SPLA headquarters, Bilpham, Juba, 26 November 2018.
- 96 Author interview with a former SPLA military justice advisor, Juba, 20 November 2018.
- 97 Author interview with a former SPLA military justice advisor, Juba, 20 November 2018.
- 98 Author interviews with two senior members of the GCM Unit, Juba, 20 November 2018.
- 99 This is not to say that all civilian abuses committed in Juba have been relatively easy to bring to justice—the justice system has for the most part not yet dealt with violence against civilians committed elsewhere in the city during the July 2016 fighting; see Amnesty International (2016).
- 100 Author interview with the chief prosecutor for the Terrain court martial, Juba, 27 November 2018.
- Channel 4 News. 2016. 'South Sudan: Aid Workers Raped and Assaulted by Soldiers.' YouTube. Posted 16 August.
- CNN (Cable News Network). 2016. 'Surviving South Sudan's Compound Raid.' *Amanpour*. 18 August.
- Dumo, Denis. 2018a. 'South Sudan President Names Gabriel Jok Riak New Army Chief.' Reuters. 2 May.
- . 2018b. 'South Sudan Soldiers Sentenced to Jail for Murder, Rape in 2016 Hotel Raid.' Reuters. 6 September.
- Global Witness. 2018. *Capture on the Nile: South Sudan's State-owned Oil Company, Nilepet, Has Been Captured by the Country's Predatory Elite and Security Services*. April.
- HRW (Human Rights Watch). 2016. *South Sudan: Killings, Rapes, Looting in Juba*. 15 August.
- IGAD (Intergovernmental Authority on Development). 2015. Agreement on the Resolution of the Conflict in the Republic of South Sudan. Addis Ababa, 15 August.
- . 2018. Revitalised Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). Addis Ababa, 12 September.
- JMEC (Joint Monitoring and Evaluation Committee). 2018. Status of Implementation of the R-ARCSS 2018.' 28 September.
- Mednick, Sam. 2019a. 'South Sudan Paying US Lobbyists \$3.7M for Better Trump Ties.' Associated Press. 29 April.
- . 2019b. 'Survivors of South Sudan's Terrain Attack Demand Justice.' *Mail & Guardian*. 8 May.
- Modi, Roger. 2017. 'South Sudan: Soldiers' Rape Trial Is a Publicity Stunt and Distraction.' *African Arguments*. 22 June.
- Panchol, Ayuen. 2019. 'UNSC Blacklists Six Commanders.' Eye Radio. 4 April. First published 2015.
- Patinkin, Jason. 2016. 'Rampaging South Sudan Troops Raped Foreigners, Killed Local.' AP News. 16 August.
- Pendle, Naomi. 2015. "'They Are Now Community Police': Negotiating the Boundaries and Nature of the Government in South Sudan through the Identity of Militarised Cattle-keepers.' *International Journal on Minority and Group Rights*, Vol. 22, No. 3, pp. 410–34.
- Pinaud, Clémence. 2016. 'Who's behind South Sudan's Return to Fighting?' *African Arguments*. 11 July.
- Pur, Nyagoah. 2019. 'South Sudan: Does Juba Even Care about Protecting Girls from Sexual Violence?' Human Rights Watch. 11 February.
- Radio Tamazuj. 2017. 'South Sudan's Kiir Reshuffles Top Military Leadership.' 1 December.
- Reliefweb. 2016. 'Transitional Government Draws Closer as First IO Forces Arrive in Juba.' UN Mission in South Sudan. 29 March.
- Reuters. 2017. 'FBI Helps South Sudan in Murder and Rape Trial.' 6 June.
- . 2018. 'South Sudan President Fires Finance Minister and Blacklisted General.' 13 March.
- Santo, Dominic. 2016. 'Kiir, Malong not responsible for July violence,' says SPLA.' Eye Radio.
- South Sudan. 2016. 'SPLA Directorate of Military Justice, Office of Military Prosecution Attorney: Charge Sheet 24.08.16.' Confidential document.
- . 2017. *Government of South Sudan: Official Report of the Investigation Committee on the Terrain Hotel Incident of 11 July 2016*. 11 January.
- Southern Sudan. 2008. The Penal Code Act, 2008. Act 9 of 2008.
- . 2009. The Sudan People's Liberation Army Act, 2009.
- Tanza, John. 2019. 'South Sudan Rape Victims Demand Justice.' VOA News. 4 March.
- and Waakhe Simon Wudu. 2017. 'Former South Sudan Army Chief of Staff Released from House Arrest.' VOA News. 9 November.
- Terrain Services Ltd. 2016. *Report on the Events at Yei Road Camp (Terrain Camp) on the 11/07/16*. Confidential report.
- UN (United Nations). 2016. *Executive Summary of the Independent Special Investigation into the Violence which Occurred in Juba in 2016 and UNMISS Response*. 1 November.
- . 2018a. *Report of the Commission on Human Rights in South Sudan*. Advance Edited Version. A/HRC/37/71 of 13 March.
- . 2018b. *Report of the Secretary-General on Conflict-related Sexual Violence*. S/2018/250 of 23 March.
- UNHCHR (United Nations High Commissioner for Human Rights). 2016. 'SPLA Committed Widespread Violations during and after July Fighting in South Sudan—Zied.' 4 August.
- UNHCR (United Nations Human Rights Council). 2018. 'UN Human Rights Commission Collects Evidence to Hold More than 40 South Sudanese Officials Accountable for War Crimes and Crimes against Humanity.' 23 February.
- UNSC (United Nations Security Council). 2016. *Report of the Panel of Experts on South Sudan Established Pursuant to Security Council Resolution 2206 (2015)*. S/2016/793 of 19 September.
- US Department of the Treasury. 2017. 'Treasury Targets South Sudanese Government Officials and Related Companies for Continued Destabilization.' Press release. 9 September.
- de Waal, Alex. 2014. 'When Kleptocracy Becomes Insolvent: Brute Causes of the Civil War in South Sudan.' *African Affairs*, Vol. 133, No. 452, pp. 347–69.
- Wudu, Waakhe Simon. 2017. 'Army Officer Allegedly behind South Sudan Killings, Rapes Found Dead.' VOA News. 23 October.
- Young, John. 2017. *Isolation and Endurance: Riek Machar and the SPLA-IO in 2016–17*. HSBA Report. Geneva: Small Arms Survey. October.

References

- Al Jazeera. 2016a. 'South Sudan Fighting: Gunfire Erupts Again in Juba.' 10 July.
- . 2016b. 'South Sudan's Warring Factions Declare Ceasefire.' 12 July.
- Amnesty International. 2016. *'We Did Not Believe We Would Survive': Killings, Rape and Looting in Juba*.
- . 2018a. *'Anything that Was Breathing Was Killed': War Crimes in Leer and Mayendit, South Sudan*.
- . 2018b. 'South Sudan: Sentencing of Soldiers for Killing Journalist and Raping Aid Workers a Step forward for Justice.' 6 September.
- . 2018c. 'South Sudan: Execution Spree Targets Even Children and Threatens Nursing Mothers.' 13 December.
- BBC (British Broadcasting Corporation). 2016a. 'Testimony from the South Sudan Attack.' *BBC Newsnight*. YouTube. Posted 22 August.
- . 2016b. 'Kenya Angry at Sacking of South Sudan Peacekeeping Chief.' 2 November.
- Booth, Donald. 2016. 'The Growing Crisis in South Sudan.' Testimony of Special Envoy for Sudan and South Sudan Donald Booth before the House Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations. 7 September.
- Boswell, Alan. 2017. *Spreading Fallout: The Collapse of the ARCSS and New Conflict along the Equatorias–DRC Border*. HSBA Issue Brief No. 28. Geneva: Small Arms Survey. May.
- . Forthcoming. *Insecure Power and Violence: The Rise and Fall of Paul Malong and the Mathiang Anyoor*. HSBA Briefing Paper. Geneva: Small Arms Survey.
- Burke, Jason. 2016. 'More than 300 Dead as South Sudan Capital Is Rocked by Violence.' *The Guardian*. 11 July.

About the HSBA project

Through the generation and dissemination of timely, empirical research, the **Human Security Baseline Assessment (HSBA)** for Sudan and South Sudan supports violence-reduction initiatives, including DDR programmes, incentive schemes for civilian arms collection, as well as security sector reform and arms-control interventions across Sudan and South Sudan. The HSBA also offers policy-relevant advice on addressing insecurity.

For more information, please visit: www.smallarmssurveysudan.org

The **Small Arms Survey** is a global centre of excellence whose mandate is to generate impartial, evidence-based, and policy-relevant knowledge on all aspects of small arms and armed violence. It is the principal international source of expertise, information, and analysis on small arms and armed violence issues, and acts as a resource for governments, policy-makers, researchers, and civil society. It is located in Geneva, Switzerland, and is a project of the Graduate Institute of International and Development Studies.

The Survey has an international staff with expertise in security studies, political science, law, economics, development studies, sociology, and criminology, and collaborates with a network of researchers, partner institutions, non-governmental organizations, and governments in more than 50 countries.

For more information, please visit: www.smallarmssurvey.org

Small Arms Survey
Maison de la Paix, Chemin Eugène-Rigot 2E
1202 Geneva, Switzerland

t +41 22 908 5777

f +41 22 732 2738

e info@smallarmssurvey.org

Follow the Small Arms Survey

 www.facebook.com/SmallArmsSurvey

 www.twitter.com/SmallArmsSurvey

 www.smallarmssurvey.org/multimedia



This publication and its research was funded with the support of the Government of the United States.

