

To Permanent Representatives of member and observer States of the United Nations Human Rights Council

Geneva, 26 February 2016,

RE: Addressing the human rights situation and the need for accountability for past atrocities and on-going violations in South Sudan

Your Excellencies,

We, the undersigned South Sudanese and international non-governmental organisations, write to urge your delegation to address the lack of accountability for severe, widespread and ongoing violations and abuses of international human rights and humanitarian law committed in South Sudan, many of which amount to war crimes and possibly crimes against humanity, during the upcoming 31st session of the UN Human Rights Council.

The final report of the African Union Commission of Inquiry on South Sudan (AUCISS)¹ established to investigate human rights abuses committed during South Sudan's internal armed conflict, found that parties in the conflict had murdered, tortured, inflicted cruel, inhumane and other degrading treatment, raped and committed other sexual and gender-based crimes against civilians. It also found that parties to the conflict had forcibly conscripted children, and looted and destroyed civilian property. The report emphasised that accountability is central to building sustainable peace in South Sudan and recommended the establishment of a hybrid judicial mechanism to bring those responsible to account, among other transitional justice processes.

In August 2015, parties to the conflict signed an Agreement on the Resolution of Conflict in South Sudan (ARCSS). The agreement provides for the formation of a Transitional Government of National Unity (TGoNU) and for national elections after three years. It also envisages broad security sector reform, the establishment of a Hybrid Court for South Sudan (HCSS) by the African Union Commission to provide accountability for crimes under international law, a Commission on Truth, Reconciliation and Healing (CTRH), a Compensation and Reparations Authority (CRA), and for a permanent constitutional development process

In January 2016, the UN Mission in South Sudan Human Rights Division released a report which found that despite the August 2015 peace agreement, “[t]he scale, intensity and severity of human rights violations and abuses have increased with the continuation of the hostilities, particularly during spikes in fighting in the middle and latter part of 2015.”² It also found that conflict had spread to the Equatoria region of the country, which had previously been relatively unaffected by violence. UNMISS noted the absence of any tangible domestic accountability despite the rhetoric of the main belligerents, thus reinforcing the need for international accountability measures.

The AU Commission has not yet taken any specific steps towards the creation of a hybrid court.

The government of South Sudan and the Sudan Peoples' Liberation Movement/Army-in Opposition (SPLM/A-IO) should swiftly implement the transitional justice and accountability provisions of the August 2015 peace agreement. The AU, UN, and partner countries should ensure swift action particularly on the envisioned hybrid court. A credible, independent hybrid court to try crimes under international law committed during the conflict and that meets internationally accepted standards of fairness and impartiality has the potential to make a critical contribution to the achievement of sustainable peace.

¹ The AUCISS report was completed in September 2014, but was not released until October 2015.

² United Nations Mission in South Sudan, *The State of Human Rights in the Protracted Conflict in South Sudan*, 4 December 2015, p. 1, available at: [http://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/Human%20Rights%20Update%20Report%20of%204%20December%202015%20\(final\).pdf](http://unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/Human%20Rights%20Update%20Report%20of%204%20December%202015%20(final).pdf)

In June 2015, the Human Rights Council adopted resolution A/HRC/RES/29/13 calling for the deployment of an OHCHR mission to monitor and report on the situation of human rights, and setting forth indicators for the mission to assess the effectiveness of steps taken by the government, including to ensure accountability for human rights violations and abuses, *inter alia* by working to establish appropriate criminal justice mechanisms.

Given the still limited progress towards accountability, our organisations believe that the Human Rights Council should take meaningful action at the 31st Session to follow-up on the Office of the High Commissioner's expert mission report, in order to contribute to providing justice to the victims of the grave human rights situation in South Sudan.

The Human Rights Council should adopt a resolution during its up-coming 31st session to:

- Condemn in the strongest terms the continuation of violations of international humanitarian law, crimes under international law which may amount to war crimes and crimes against humanity, and other serious violations and abuses of international human rights law;
 - Welcome the UNMISS Human Rights Division report and encourage continued and regular public reporting;
 - Establish a Special Rapporteur on South Sudan with a mandate to investigate and publicly report on violations and abuses of international human rights and humanitarian law; make recommendations for achieving effective accountability for past and on-going crimes, including through the establishment of transitional justice mechanisms; provide technical assistance for the development of transitional justice mechanisms; and work in close cooperation with other international stakeholders, including the AU, the Intergovernmental Authority of Development (IGAD), and UNMISS as well as with national and international non-governmental organizations to promote human rights and accountability;
 - Request the High Commissioner for Human Rights to urgently appoint a group of experts on international justice and accountability for international crimes to coordinate and complement efforts towards accountability for human rights violations and abuses with efforts of the AU, IGAD, the UN and other actors, drawing on the work done by the AU, IGAD and UNMISS; to provide technical support for the operationalization of the Hybrid Court for South Sudan, the Commission on Truth, Reconciliation and Healing, and the Compensation and Reparations Authority; to provide technical support to domestic courts, prosecuting authorities and police to build domestic capacity for effective investigations and prosecutions; and to brief the Council orally about its preliminary findings in an interactive dialogue at its 33rd session, and to present a written report in an interactive dialogue at the Council's 34th session;
 - Calls on South Sudan and other UN Member States to use the upcoming Universal Periodic Review, in November 2016, to consolidate and commit to further action to address violations and abuses of international human rights and humanitarian law, including through a robust national process involving key national stakeholders as well as other Member States.
- Call for the AU, the UN, and South Sudan to ensure concrete steps towards the establishment of a hybrid court and other transitional justice mechanisms included in the August 2015 peace agreement; and for South Sudan to ratify the Rome Statute and make an Article 12(3) declaration accepting the ICC's retroactive jurisdiction.
- **Background:**

Since the beginning of South Sudan's civil war in mid-December 2013, tens of thousands of civilians have been killed in horrific attacks, often targeted because of their ethnicity or perceived allegiances. Large parts of towns and cities, including civilian infrastructure such as clinics, hospitals, and schools, have been looted and destroyed.

According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), there are over 2.3 million civilians displaced internally or to neighbouring countries as of February 2016.³

In addition, the UMISS report found that South Sudan's military and National Security Service (NSS) "operate in a space above the law and with virtual impunity."⁴ Both the SPLA and the NSS have continued to unlawfully detain civilians without access to a lawyer or presenting them before a judge, sometimes for many months, despite constitutional provisions limiting their power to do so. Detainees, often accused of supporting South Sudanese opposition forces, have been kept in poor conditions, and in some instances tortured or brutally beaten. Gender-based violence has been rampant throughout the conflict, and survivor accounts to UNMISS indicate as well that incidents of conflict related sexual violence could amount to crimes against humanity and war crimes.⁵

Moreover, the space for civil society and independent media to express themselves has significantly narrowed since the beginning of the conflict. The harassment of independent civil society actors and the introduction of legislation restricting the rights to freedom of association, expression and assembly severely undermine on-going efforts to effectively monitor and report on the human rights crisis in the country. Journalists have been repeatedly targeted for their coverage of the conflict, with at least 7 killed last year alone and dozens more arbitrarily detained, physically assaulted and intimidated.⁶ Human rights defenders and activists seeking to cooperate with the Human Rights Council have been the subject of escalating threats, attacks and reprisals. The President of the Human Rights Council as clearly stated that such threats are unacceptable.

As the High Commissioner has noted, a lack of accountability for decades of violence during Sudan's long civil war has helped fuel the conflict. Despite announcements by parties to the conflict that perpetrators of serious violations and abuses of human rights and humanitarian law would be held to account, no decisive action has been taken towards this end. Although the Government took some initial steps, establishing several committees (including a national investigation committee into human rights abuses), these have failed to produce any identifiable results to date.⁷

The Human Rights Council should ensure that combatting impunity is put at the core of the international agenda, and should support on-going African Union efforts to assist South Sudan's weakened state institutions and justice system to ensure justice to victims of the war. We once more urge your delegation to echo the call of the High Commissioner for Human Rights and to ensure that a human rights special procedure is established to respond to the long-standing need of the people of South Sudan for justice and accountability.

We thank you for your attention to these pressing issues.

Sincerely,

- Amnesty International
- Assistance Mission for Africa
- CIVICUS: World Alliance for Citizen Participation
- Community Empowerment for Progress Organisation

3 OCHA, South Sudan Humanitarian Bulletin, 10 February 2016.

4 UNMISS, *The State of Human Rights in the Protracted Conflict in South Sudan*, p. 31.

5 UNMISS, *The State of Human Rights in the Protracted Conflict in South Sudan*, p. 19.

6 EHAHRDP, "South Sudan: Journalists under Brutal Government Attack", 23 September 2015, <https://www.defenddefenders.org/2015/09/south-sudan-journalists-under-brutal-government-attack/>

7 UNMISS, *The State of Human Rights in the Protracted Conflict in South Sudan*, p. 2.

- Dialogue and Research Initiative
- East and Horn of Africa Human Rights Defenders Project
- Human Rights Watch
- International Commission of Jurists
- International Federation for Human Rights (FIDH)
- International Service for Human Rights
- South Sudan Law Society
- Soweto Children's Organization
- West African Human Rights Defenders Network