

**Index No: AFR 65/6435/2023**

To Permanent Representatives of Member and Observer States of the United Nations (UN) Human Rights Council

13 February 2023

***Re: Extend the mandate of the UN Commission on Human Rights in South Sudan for two years***

Excellencies,

**Ahead of the UN Human Rights Council's ("HRC" or "Council") 52<sup>nd</sup> session (27 February-4 April 2023), we, the undersigned non-governmental organisations, write to urge your delegation to support a two-year extension of the mandate of the UN Commission on Human Rights in South Sudan (hereafter "Commission" or "CHRSS") in full.**

The CHRSS is the only mechanism tasked with collecting and preserving evidence of violations of international humanitarian and human rights law with a view to ensuring accountability and addressing human rights issues in South Sudan from a holistic perspective. Its work remains vital as the conditions that prompted the HRC to establish the Commission, in 2016, have not significantly changed to warrant less scrutiny. In fact, reports by the CHRSS and other independent actors do not indicate that the conditions on the ground have significantly improved,<sup>1</sup> thereby underlining the importance of keeping the CHRSS and extending its mandate for at least two years.

Last year, parties to the 2018 Revitalised Peace Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS) agreed to extend the country's transitional period by 24 months. The transitional period is now due to end in February 2025.

This agreement, as well as the HRC's consideration of an upcoming report by the CHRSS, occurs at a critical time, as violence and impunity remain pervasive in the country, uncertainty over the constitution-making and electoral process is high, and South Sudanese civil society faces intensifying repression. Through its public monitoring and reporting mandate, the CHRSS can also play a crucial role in preventing further atrocity crimes during this period.

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In 2022, the Council adopted two resolutions on South Sudan. The first one extended the mandate of the CHRSS,<sup>2</sup> whereas the second focused on technical assistance and capacity-building.<sup>3</sup> We stress that all elements of the CHRSS's mandate should be preserved. A mandate renewal, as in HRC resolution 49/2, does not preclude, but rather enables, the provision of advisory services to South Sudan. A purely technical assistance and capacity-building focus would be unsuitable to tackle South Sudan's continuing

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<sup>1</sup> For instance, see UN News, "South Sudan: 'Raw violence' displaces thousands during 'ruthless conflict', UNHCR says," 7 December 2022, <https://news.un.org/en/story/2022/12/1131457>; UNMISS and OHCHR, "Attacks against civilians in southern Unity State, South Sudan, February – May 2022," [https://unmiss.unmissions.org/sites/default/files/report\\_on\\_attacks\\_on\\_civilians\\_in\\_southern\\_unity\\_state\\_-\\_06\\_september\\_2022.pdf](https://unmiss.unmissions.org/sites/default/files/report_on_attacks_on_civilians_in_southern_unity_state_-_06_september_2022.pdf); Amnesty International, "South Sudan: Survivors describe killings, mass displacement and terror amid fighting in Western Equatoria", 9 December 2021, <https://www.amnesty.org/en/latest/news/2021/12/south-sudan-survivors-describe-killings-mass-displacement-and-terror-amid-fighting-in-western-equatoria/> (accessed on 26 January 2023).

<sup>2</sup> HRC resolution 49/2, available at <https://undocs.org/A/HRC/RES/49/2>.

<sup>3</sup> HRC resolution 49/35, available at <https://undocs.org/A/HRC/RES/49/35>.

serious human rights issues, including ensuring perpetrators of conflict-related and other violations and abuses, including crimes under international law, are held to account. The South Sudanese authorities' failure to address these is grounded in the government's lack of political will, not solely a lack of capacity, and as such, is not adequately resolved by technical assistance and capacity-building.

Since the onset of the conflict in 2013, justice remains elusive for the victims and survivors. The continuation of the CHRSS's mandate is the best means to safeguard prospects for future accountability, including through the Hybrid Court for South Sudan (HCSS), whose establishment continues to be paralysed at the time of writing.<sup>4</sup>

The factors that prompted the Council to establish the CHRSS in 2016 have not changed. Until there is meaningful and genuine change, there is no reason for the Council to lift its scrutiny. The Council's scrutiny, through the Commission's mandate, should at the very least cover the entirety of the transitional period, after which an assessment should be made again whether the conditions that prompted the Commission's establishment have sufficiently changed.

Progress on key human rights issues of concern has not been reported by the CHRSS, the Office of the UN High Commissioner for Human Rights (OHCHR), or other independent actors. If anything, 2022 witnessed an increase in violence and risk factors of further atrocities. In its update to the HRC, on 5 October 2022, the OHCHR stressed that it remained concerned by the "continued high levels of localised violence and the increase of conflict-related sexual violence." The CHRSS warned that the international community needs to "urgently [...] pay more attention to the escalating violence proliferating at a local level all over South Sudan," including sexual violence and the use of rape and gang rape as a weapon of war.<sup>5</sup> The UN Mission in South Sudan (UNMISS) also expressed the grave concerns it shares with its UN partners about "escalating violence," especially in the Greater Pibor area.<sup>6</sup>

African human rights bodies and mechanisms, such as the African Commission on Human and Peoples' Rights (ACHPR), have also expressed their concern. In a resolution adopted at its last session, in November 2022, the ACHPR deplored the "continuing human rights violations and abuses suffered by the people of South Sudan, including the deliberate targeting of and retaliatory attacks against civilians, particularly women and children, including sexual and conflict-related sexual violence, gang rape, acts of torture and other cruel, inhuman or degrading treatment, deliberate starvation, recruitment and use of child soldiers, abductions, enforced disappearances and extrajudicial executions," as well as "violations of economic, social and cultural rights, including the rights to food, education, and health." The ACHPR also expressed alarm at "obstacles to humanitarian aid [...], reported intimidation and harassment of and attacks against humanitarian workers, including killings, and extrajudicial executions of prisoners" and its deep concern over "the shrinking of the civic and political space, exemplified by the reported arbitrary arrests and detention of protesters."<sup>7</sup>

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<sup>4</sup> Amnesty International, "South Sudan: African Union's abandoned commitment to justice in Africa; The case of the Hybrid Court for South Sudan," 23 November 2022, <https://www.amnesty.org/en/documents/afr65/6196/2022/en/> (accessed on 26 January 2023).

<sup>5</sup> "UN experts warn that South Sudan's peace process needs urgent attention to prevent violence escalating," 26 September 2022, <https://www.ohchr.org/en/press-releases/2022/09/un-experts-warn-south-sudans-peace-process-needs-urgent-attention-prevent>; "UN experts call on South Sudan to investigate top government officials for their role in sexual violence," 28 November 2022, <https://www.ohchr.org/en/press-releases/2022/11/un-experts-call-south-sudan-investigate-top-government-officials-their-role> (accessed on 11 January 2023).

<sup>6</sup> "South Sudan: UN and partners make plea for urgent intervention to end 'escalating violence'," 28 December 2022, <https://news.un.org/en/story/2022/12/1132067> (accessed on 11 January 2023).

<sup>7</sup> "Resolution on the Situation of Human Rights in the Republic of South Sudan - ACHPR/Res. 542 (LXXIII) 2022," 9 November 2022, available at <https://achpr.au.int/en/adopted-resolutions/542-resolution-situation-human-rights-republic-south-sudan> (accessed on 6 January 2023). See, in particular, preambular paragraphs 13, 15, and 16.

All trends and patterns outlined in a civil society letter released one year ago<sup>8</sup> have worsened. Our organisations continue to monitor the situation and note the lack of structural improvements with the utmost concern. Ongoing violations and abuses include extrajudicial executions<sup>9</sup> and other unlawful killings, violations of international humanitarian law that may amount to crimes under international law, politically instigated and supported violence between community-based militias and vigilante groups, repression against peaceful protesters,<sup>10</sup> and harassment of civil society actors,<sup>11</sup> in a climate of widespread impunity.<sup>12</sup> Nationally instigated localised conflicts and intercommunal violence are pervasive in Tonj and other parts of Warrap State, Magwi, Nimule and Kapoeta in Eastern Equatoria State, as well as in Greater Upper Nile State, and parts of greater Jonglei and Unity State.

Human rights defenders (HRDs), civil society organisations, journalists,<sup>13</sup> and others face undue restrictions to their rights to freedoms of opinion and expression both online and offline, peaceful assembly and association. Independent actors face harassment, intimidation, surveillance, threats, attacks, and arbitrary arrests and detentions, including incommunicado detention.<sup>14</sup>

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Parties to the R-ARCSS committed to ensuring justice for crimes under international law and human rights violations and abuses. The African Union (AU) and the Intergovernmental Authority on Development (IGAD) supported this approach. Yet four and a half years after the signature of the R-ARCSS and over seven years after the signature of the initial peace agreement, none of the mechanisms provided for by Chapter V of the agreement, namely the Commission for Truth, Reconciliation and Healing (CTRH), the Compensation and Reparation Authority (CRA), and the Hybrid Court for South Sudan (HCSS), have been established.<sup>15</sup>

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<sup>8</sup> DefendDefenders et al., “Extend the mandate of the UN Commission on Human Rights in South Sudan,” 10 February 2022, as well as its Annex, available at: <https://defenddefenders.org/extend-the-mandate-of-the-un-commission-on-human-rights-in-south-sudan/> (accessed on 11 January 2023).

See also Nyagoah Tut Pur, “Has South Sudan’s Conflict Really Ended?,” Human Rights Watch, 14 December 2022, <https://www.hrw.org/news/2022/12/14/has-south-sudans-conflict-really-ended> (accessed on 11 January 2023).

<sup>9</sup> Human Rights Watch, “Extrajudicial Killings Emblematic of Impunity by Army,” <https://www.hrw.org/news/2022/06/01/execution-style-killings-emblematic-impunity-south-sudan-army>, 1 June 2022 (accessed on 24 January 2023).

<sup>10</sup> Amnesty International, “South Sudan: End new wave of repression against peaceful protests,” 3 September 2021, <https://www.amnesty.org/en/latest/news/2021/09/south-sudan-end-new-wave-of-repression-against-peaceful-protests/> (accessed on 26 January 2023).

<sup>11</sup> See, for instance, joint civil society statement, “South Sudan: unfreeze civil society and political activist’s bank accounts”, 19 November 2021, <https://www.amnesty.org/en/wp-content/uploads/2021/11/AFR6550172021ENGLISH.pdf> (accessed on 26 January 2023).

<sup>12</sup> Amnesty International, “South Sudan: ‘If you don’t cooperate, I’ll gun you down’: Conflict-related sexual violence and impunity in South Sudan,” 18 May 2022, <https://www.amnesty.org/en/documents/afr65/5569/2022/en/>; “South Sudan: African Union’s abandoned commitment to justice in Africa,” op. cit. (both accessed on 24 January 2023).

<sup>13</sup> See, for instance, Amnesty International, “South Sudan: Release six media staff detained in relation to circulated video of President Salva Kiir urinating in public,” 12 January 2023, <https://www.amnesty.org/en/documents/afr65/6348/2023/en/> (accessed on 26 January 2023).

<sup>14</sup> Committee to Protect Journalists, “South Sudan security forces detain 6 state media employees,” 6 January 2023, <https://cpj.org/2023/01/south-sudan-security-forces-detain-6-state-media-employees/>; Human Rights Watch, “South Sudan Government Begins Trial of Activists, Critics,” 6 October 2022, <https://www.hrw.org/news/2022/10/06/south-sudan-government-begins-trial-activists-critics> (both accessed on 24 January 2023).

<sup>15</sup> Regarding the CTRH, progress has been slow. National consultations on the establishment of the CTRH have taken place and the Ministry of Justice and Constitutional Affairs has started drafting the enabling legislation. However, in its latest resolution the ACHPR stressed “the need for the Ministry of Justice to ensure that the national consultations about the establishment of the CTRH are fully inclusive, in particular of refugees and internally displaced persons,

In its latest resolution on the country, the ACHPR highlighted that “while the transitional justice mechanisms envisioned by Chapter V of the [R-ARCSS] [...] are yet to be established, there is a need for continued monitoring of and reporting on human rights violations.”<sup>16</sup> As the ACHPR stressed, the extension of the transitional period should be used to “open the political space, adopt an election law, establish an inclusive electoral system, and advance the permanent constitution-making process.”<sup>17</sup> All these issues are intertwined with human rights issues and reinforce the need for ongoing human rights scrutiny.

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**This is not the time to relax the Council’s scrutiny. The mandate of the CHRSS remains critical and should continue until the reasons that led the Council to establish this mechanism have been addressed in a meaningful manner. The CHRSS should remain in place at least for the national elections (scheduled for December 2024) to be held and the end of the transitional period, in February 2025.**

**We urge the Council to continue its meaningful action on South Sudan by extending the CHRSS’s mandate in full for a period of two years to enable it to comprehensively report on the election and transition process. The Council should request the CHRSS:**

- **To present comprehensive written reports on the situation of human rights in South Sudan to it at its 55<sup>th</sup> and 58<sup>th</sup> sessions, to be followed by interactive dialogues;**
- **To present oral updates to the Council at its 54<sup>th</sup> and 57<sup>th</sup> sessions, to be followed by enhanced interactive dialogues, with the participation of representatives of the African Union, of the Intergovernmental Authority on Development, and of the United Nations Mission in South Sudan; and**
- **To share its reports and recommendations with the African Union and all relevant organs of the United Nations, and to submit comprehensive reports to the General Assembly at its 78<sup>th</sup> and 79<sup>th</sup> sessions, to be followed by interactive dialogues.**

We thank you for your attention to these pressing issues and stand ready to provide your delegation with further information as required.

Sincerely,

#### 1. Action 54 – South Sudan

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before drafting relevant CTRH- and CRA-related legislation (“Resolution on the Situation of Human Rights in the Republic of South Sudan,” op. cit., preambular paragraph 11).

Regarding the Hybrid Court, there has been no progress. We urge the Revitalised Transitional Government of National Unity (R-TGoNU) to work with the African Union to immediately establish and operationalise the Hybrid Court without further delays, including by adopting the Statute of the Court, by signing the Memorandum of Understanding in this regard, and by adopting legislation to operationalize the Court.

The AU Commission should stand ready to take steps, including unilateral establishment of the HCSS, to ensure justice for serious crimes committed, as recommended by the AU Commission of Inquiry on South Sudan and provided for in the 2015 Peace Agreement and the 2018 Revitalised Agreement. See DefendDefenders et al., “Extend the mandate of the UN Commission on Human Rights in South Sudan,” op. cit., as well as DefendDefenders et al., “Human Rights Council: Extend the mandate of the Commission on Human Rights in South Sudan,” 5 February 2021, <https://defenddefenders.org/human-rights-council-extend-the-mandate-of-the-commission-on-human-rights-in-south-sudan/> (accessed on 12 January 2023).

See also, Amnesty International, “South Sudan: African Union’s abandoned commitment to justice in Africa,” op. cit.

<sup>16</sup> “Resolution on the Situation of Human Rights in the Republic of South Sudan,” op. cit., preambular paragraph 5.

<sup>17</sup> Ibid., preambular paragraph 10.

2. Action for Community Education and Development (ACEDO South Sudan)
3. Action for Community Transformation Initiative (ACTI) – South Sudan
4. Action for Peace and Development Organization
5. Action for Rural Transformation – South Sudan
6. African Centre for Democracy and Human Rights Studies (ACDHRS)
7. Africa Light Organization for Relief and Development (LFORD) – South Sudan
8. AfricanDefenders (Pan-African Human Rights Defenders Network)
9. Amnesty International
10. Ana Taban Arts Initiative – South Sudan
11. Anika Women Association (AWA) – South Sudan
12. Arise Sociocultural Organization
13. Assistance Mission for Africa (AMA)
14. Association of Media Women in South Sudan (AMWISS)
15. Burkinabè Human Rights Defenders Coalition (CBDDH)
16. Burundian Human Rights Defenders Coalition (CBDDH)
17. Center for Democracy and Good Governance – South Sudan
18. Center for Inclusive Governance Peace and Justice (CGPJ) – South Sudan
19. Center for Peace and Advocacy (CPA)
20. Centre for Human Rights and Democracy (CHRD) – South Sudan
21. Centre for Innovation and Creativity – ICT Solutions (South Sudan)
22. Centre for Legal Aid and Justice (CLAJ) – South Sudan
23. Child Pearl Organization – South Sudan
24. CIVICUS
25. Civil Society Human Rights Advocacy Platform of Liberia
26. Community Empowerment for Progress Organization (CEPO)
27. Community Initiative for Partnership and Development (CIPAD) – South Sudan
28. Community Organization for Peer Educators (COPE) – South Sudan
29. Consortium of Ethiopian Human Rights Organizations (CEHRO)
30. DefendDefenders (East and Horn of Africa Human Rights Defenders Project)
31. Dialogue and Research Institute (DRI)
32. Echoes of Women in Africa Initiative
33. Egyptian Initiative for Personal Rights (EIPR)
34. Empower the Girl Child Initiative – South Sudan
35. Empower Youth Africa (EYA) – South Sudan
36. FIDH (International Federation for Human Rights)
37. Forum pour le Renforcement de la Société Civile (FORSC) – Burundi
38. Foundation for Youth Empowerment
39. Geneva for Human Rights – Genève pour les Droits de l’Homme
40. Global Centre for the Responsibility to Protect (GCR2P)
41. Greater Yei Human Rights Forum
42. Humanitarian Development Organization (HDO)
43. Human Rights Defenders Network – Sierra Leone
44. Human Rights Watch
45. Independent Human Rights Investigators – Liberia
46. Institut des Médias pour la Démocratie et les Droits de l’Homme (IM2DH) – Togo
47. International Bar Association’s Human Rights Institute (IBAHRI)
48. International Service for Human Rights
49. Itkwa Women Empowerment Organization (IWEO) – South Sudan
50. Ivorian Human Rights Defenders Coalition (CIDDH)
51. Joint Border Peace Development Agency (JBPDA) – South Sudan
52. Lawyers’ Rights Watch Canada (LRWC)

53. Maridi Women Union General Association
54. Men Engage Gender Equality Network (MEGEN) – South Sudan
55. National Press Club South Sudan (NPC-SS)
56. National Women Empowerment and Rehabilitation Organization (NWERO) – South Sudan
57. Network of the Independent Commission for Human Rights in North Africa (CIDH Africa)
58. New Vision for Sustainable Development (NVSD) – South Sudan
59. Nigerien Human Rights Defenders Network (RNDDH/NHRDN)
60. Nile Initiative for Development (NID)
61. Nile Sisters Development Initiative Organization (NSDIO) – South Sudan
62. Pan African Peacemakers Alliance (PAPA)
63. Passion for the Needy
64. People’s Demands Organization (PEDO) – South Sudan
65. Protection International Africa
66. Réseau des Citoyens Probes (RCP) – Burundi
67. Resilient Organization – South Sudan
68. Rural and Urban Development Agency (RUDA) – South Sudan
69. Safe Orphans Charity Organization (SOCO) – South Sudan
70. Screen of Rights (SoR) – South Sudan
71. South Sudan Action Network on Small Arms (SSANSA)
72. South Sudan Human Rights Defenders Network (SSHRDN)
73. South Sudan Women Empowerment Network (SSWEN)
74. South Sudan Youth for Peace and Development Organization (SSYPADO)
75. SOWETO Community Based Organization
76. Southern Africa Human Rights Defenders Network (SouthernDefenders)
77. Support the Child Initiative – South Sudan
78. Support Peace Initiative Development Organization (SPIDO) – South Sudan
79. The Advocates for Human Rights and Democracy (TAHURID)
80. Togolese Coalition of Human Rights Defenders (CTDDH)
81. Union of Journalists of South Sudan (UJOSS)
82. War Widow and Orphans Association (WWOA) – South Sudan
83. West African Human Rights Defenders Network (ROADDH/WAHRDN)
84. Western Equatoria State Human Rights Network
85. Wider Aid and Development Agency (WADA) – South Sudan
86. Women Action for and with Society (WAS) – South Sudan
87. Women Ambassadors for Peacebuilding – South Sudan
88. Women for Justice and Equality (WOJE)
89. Women Monthly Peace Forum – South Sudan
90. Women Peace Forum – South Sudan
91. Women Training and Promotion (WOTAP) – South Sudan
92. Yei Youth Initiative for Human Rights and Development (YYIHRD)
93. Youth for Democracy – South Sudan
94. Youth Vision South Sudan (YVSS)