



AMNESTY INTERNATIONAL PUBLIC STATEMENT

South Sudan's Council of Minister's Approval of Plans to Establish Long-awaited Hybrid Court must be followed by action

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On 29 January 2021, South Sudan's Council of Ministers took a decision that potentially marks a crucial step towards the pursuit of accountability and justice for victims of the atrocities committed in the conflict that began in December 2013.¹ The Council of Ministers approved a plan by the Ministry of Justice and Constitutional Affairs for the establishment of the Hybrid Court for South Sudan (HCSS), as well as the Commission for Truth, Reconciliation and Healing (CTRH) and the Compensation and Reparation Authority (CRA).

The Council of Minister's decision comes after years of delays and deliberate obstruction by the South Sudanese government of efforts to establish the mechanisms, in particular the HCSS that is meant to prosecute the most serious crimes committed in the conflict. The delays have denied justice, truth and reparation to millions of victims of years of brutal atrocities by all parties to the conflict, with near total impunity.²

South Sudanese authorities agreed to the court's establishment in the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) in August 2015 and recommitted to it in the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS). The idea to establish a hybrid court first emerged in the recommendations of the 2014 report of the AU Commission of Inquiry.³ South Sudanese civil society has repeatedly called for accountability as necessary for stability and ensuring a sustainable end to violence and war crimes and crimes against humanity.

According to the UN Commission on Human Rights in South Sudan (CoHRSS),

¹ The temporal mandate of the HCSS starts on 15 December 2015 and runs till the end of the transitional period whereas the temporal mandate of the CTRH is from July 2005 to September 2018.

² Amnesty International, *"Do You Think We Will Prosecute Ourselves": No Prospects for Accountability in South Sudan* (Index: AFR/65/1105/2019).

³ AUCISS, Final Report of the African Union Commission of Inquiry on South Sudan, 15 October 2014, www.peaceau.org/uploads/auciss.final.report.pdf

South Sudan's Council of Ministers already approved a draft Memorandum of Understanding with the African Union and Statute of the HCSS in December 2017.⁴ However, to date, the Presidency has neither approved the two legal instruments nor sent them to parliament which must pass them before they can come into force. Until that is done, the process is stalled and the HCSS cannot be established.

In December 2019, the AU Legal Counsel convened a high-level expert consultation in Dar es Salaam, Tanzania, to review the court's legal instruments. Since then, no significant public steps have been taken to establish the court, neither by the AU nor the South Sudanese authorities, despite the latter's obligations under international law to prosecute crimes under international law.

The AU Commission (AUC) chairperson welcomed the cabinet's decision on 30 January as an end to the delays. Amnesty International calls on the AUC to keep a watchful eye on actual progress and to be ready to establish the Court unilaterally in the event that the South Sudanese authorities continue to drag their feet in spite of its latest plan.

Amnesty International calls on the South Sudanese government to urgently take concrete steps towards the establishment of all three mechanisms to ensure truth, justice, and reparations for all victims. The Council of Ministers' announcement must be immediately followed by the adoption of legislation establishing the HCSS.

⁴ CoHRSS, Final report of the CoHRSS, 23 February 2018, www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx, para. 631.