

AI INDEX NUMBER: AFR 65/2744/2020

15 July 2020

Members of the Peace and Security Council
African Union (AU)
Addis Ababa, Ethiopia

cc: H.E. Moussa Faki Mahamat, Chairperson, AU Commission
H.E. Amb. Smail Chergui, Commissioner, AU Peace and Security
H.E. Amb. Dr. Namira Negm, AU Legal Counsel
H.E. Amb. Augustino Njoroge, Interim Chairperson of the Reconstituted Joint Monitoring and Evaluation Commission (RJMEC)
Commissioner Solomon Dersso, Chairperson, African Commission on Human and Peoples' Rights (ACHPR)
H.E. Amb. James Pitia Morgan, South Sudan's Ambassador to Ethiopia and Permanent Representative to the African Union

Re: AU Peace and Security Council Session on South Sudan

Your Excellencies,

We, South Sudanese, regional and international civil society organizations, write ahead of the 21 July Peace and Security Council (PSC) session scheduled on South Sudan's implementation of the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) and the council's 9 April communiqué on the situation in South Sudan.

We welcome a session on South Sudan and wish to encourage the council to use the session to consider the stalled establishment of the Hybrid Court for South Sudan (HCSS) and to direct the AU Commission to take unilateral action to enable the court's creation immediately. These efforts would signal the AU's commitment to implementing its 2020 theme, "Silencing the Guns." Delays in establishing the HCSS threaten the future of the peace deal and protection of civilians and prevent survivors and families of victims from seeking justice for themselves and their loved ones.

Stalled Establishment of the Hybrid Court for South Sudan

The AU Commission has taken important steps to date to prepare for the establishment of the Hybrid Court for South Sudan, and renewed initiatives over the past year to achieve this objective, including convening expert consultations in December 2019 in Dar es Salaam and reviewing the court's legal instruments prepared by the commission's Office of Legal Counsel.

Despite these significant steps, the establishment of the HCSS has continued to stall as the Government of South Sudan failed to prioritize processes that would ensure accountability and truth telling. In 2019 the government secured a lobbying firm to work to delay and block the HCSS, although the contract was later revised. South Sudan has yet to sign the Memorandum of Understanding on the HCSS that was developed with the AU in 2017.

In February 2020, South Sudanese authorities started the creation of a unity government, appointing vice presidents and Council of Ministers and in June appointed some state governors. But despite a directive by the Intergovernmental Authority on Development (IGAD) in April that parties reconstitute the Transitional National Legislative Assembly within 10 days, this is yet to be done. This prevents important checks and balances on the executive and key legislative reforms needed to establish the justice mechanisms in Chapter V of the ARCSS.

The unity government should have already sought assistance from the AU, UN, and the ACHPR to design, implement, and facilitate the envisioned Commission for Truth, Healing and Reconciliation (CTHR), the HCSS, and the Compensation and Reparations Authority (CRA) according to the implementation matrix of the revitalized ARCSS. The effective and complementary operations of the HCSS, CTHR, and CRA give South Sudan and its people increased chances of achieving justice and securing a society respectful of human rights. It should have initiated legislation years ago and according to the latest implementation matrix, created these bodies in May, paving way for the AU Commission to establish the HCSS in August with concurrence of the government and decide on the location of the seat of the court.

While progress on the peace agreement may be slowed in part due to Covid-19, stalling and selective implementation of the 2018 agreement pre-date the pandemic.

Imperative of Accountability for Crimes under International Law in South Sudan

Impunity for past abuses has fueled further serious human rights violations in South Sudan. Human rights groups have documented brutal, widespread crimes committed during South Sudan's conflict since December 2013, including killings, enforced disappearances, recruitment and use of children as fighters, sexual violence, forced starvation, and obstruction of humanitarian assistance. All parties to the conflict have committed crimes under international law.

While large-scale fighting has decreased, intercommunal fighting in Lakes, Jonglei, and Warrap has displaced thousands and led to abuses including killings and sexual violence. Persistent low-level fighting in the Southern and Central parts of the Equatoria region has displaced thousands, reportedly destroyed numerous villages, and led to abductions and other abuses against civilians.

Justice for crimes under international law committed can help to deter future violations, bring redress to the victims and their loved ones, and enable the people of South Sudan to heal and rebuild their lives. The HCSS, which the parties to the conflict agreed to both in the 2015 ARCSS and 2018 Revitalized ARCSS, is designed to be an African judicial mechanism comprised of South Sudanese and other African judges and prosecutors.

The court's creation is supported by the Commission of Inquiry on South Sudan that the AU created in 2014, which detailed serious crimes committed by all parties to the conflict and recommended a hybrid court; by article 4(o) of the AU Constitutive Act, which rejects impunity; by the African Charter on Human and Peoples' Rights; and by the AU's own Transitional Justice Policy.

In the face of years of delay during which the South Sudanese authorities have failed in their obligations, we believe the AU has no choice but to act unilaterally to establish the court.

This is consistent with the peace agreements, which provide in Chapter V that the court "shall be established by the African Union Commission," and that the commission shall provide "broad guidelines

related to including the location of the HCSS, its infrastructure, funding mechanisms, enforcement mechanism, the applicable jurisprudence, number and composition of judges, privileges and immunities of Court personnel or any other related matters.”

South Sudanese authorities should not be permitted to hold hostage the vital process to enable justice for victims of the conflict in South Sudan. The people of South Sudan deserve every step that can be taken to advance the chances for justice to be delivered.

We thank you for your attention.

Sincerely,

South Sudan Civil Society Forum, a coalition of over 200 civil society organisations (South Sudan)

Transitional Justice Working Group, a coalition of 20 civil society organisations (South Sudan)

Crown the Woman (South Sudan)

Dialogue Research Initiative (South Sudan)

Foundation for Democracy and Accountability Governance (South Sudan)

Organization for Responsive Governance (South Sudan)

South Sudan Women With Disability Network (South Sudan)

South Sudan Youth for Peace Development Organization (South Sudan)

Action des Chrétiens pour l'Abolition de la Torture (Burundi)

Africa Center for International Law and Accountability

African Centre for Justice and Peace Studies

Africa Legal Aid

Africans Rising (Kenya)

Amnesty International

Association Communautaire pour la Promotion et Protection des Droits de l'Homme (Burundi)

Candle For Hope Foundation (Kenya)

Center for Accountability and Rule of Law-Sierra Leone

Civil Society Human Rights Advocacy Platform (Liberia)

Global Trauma Project

Human Rights Concern (Eritrea)

Human Rights Watch

Institute for Security Studies

Independent Human Rights Investigators (Liberia)

Journalists for Justice

Kenya Human Rights Commission

Mother of Hope (Cameroon)

Parliamentarians for Global Action

Partners in Justice International

Rights for Peace

Southern African Centre for the Constructive Resolution of Disputes (Zambia)

Southern Africa Litigation Centre

Transitional Justice Working Group (Liberia)

Women's International Peace Centre (Uganda)