



South Sudan: Strengthen human rights and accountability mechanisms

Human Rights Council: Establish an Independent Expert mandate

Written statement to the 21st session of the UN Human Rights Council (10-28 September 2012)

The Human Rights Council (the Council) should support the development of robust and effective human rights and justice mechanisms in South Sudan. Council members and observers should work with South Sudan to establish an Independent Expert mandate.

Human rights situation in Jonglei

In March 2012, President Salva Kiir established an *Investigation Committee into the Jonglei State Crisis*. The committee is mandated to investigate those responsible for the inter-communal violence in Jonglei State in December 2011 and early 2012. Over eight hundred people were killed in attacks between 23 December 2011 and 4 February 2012 alone,¹ tens of thousands displaced, children and women abducted, and property was looted and destroyed as a result of the violence.² However, six months later, committee members have not been sworn in and funding has not been provided to enable the committee to carry out its mandate.

Since March 2012, serious human rights violations have occurred in Jonglei State, carried out by the South Sudan Armed Forces, known as the SPLA, and the South Sudan Police Service (SSPS) Auxiliary Forces, during an ongoing state-wide civilian disarmament campaign, *Operation Restore Peace*. Research conducted by Amnesty International in Jonglei from 27 August to 5 September 2012 documented numerous cases of serious human rights violations that took place in Pibor County between March and August 2012. Violations include beatings of men, women and children by soldiers; simulated drowning; sexual violence against women; shooting of civilians by soldiers; and looting in towns and villages.³ All of the incidents occurred in the context of civilian disarmament processes. Local authorities and international organizations, including Human Rights Watch and the UN Mission in South Sudan (UNMISS), have previously reported several cases of torture and ill-treatment of civilians by the SPLA across Pibor County.⁴

¹ UNMISS, *Incidents of inter-communal violence in Jonglei State*, June 2012, available at: <http://unmiss.unmissions.org/LinkClick.aspx?fileticket=DBQoOQvnMAA%3d&tabid=4969&language=en-US>

² OCHA, South Sudan Humanitarian Update, January-April 2012, available at: http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_3978.pdf

³ Evidence based on interviews with victims of abuse, witnesses and medical records.

⁴ Human Rights Watch, *Letter to South Sudan's President Salva Kiir on the Violence in Jonglei State*, 23 August 2012, available at: <http://www.hrw.org/news/2012/08/23/letter-south-sudans-president-salva-kiir->

While the South Sudan authorities have taken some action to address violations by the armed forces in Jonglei State, this has been limited and under-resourced. In particular the lack of civilian judicial personnel, including a prosecutor and a judge, in Pibor significantly hampers the ability of civilian authorities to ensure an effective criminal justice system. In Pibor County, military authorities have arrested five suspected perpetrators but the cases remain pending as the judge-advocate assigned to Pibor is on sick-leave and a replacement has not been provided.

There is also a lack of clarity about jurisdiction over military personnel involved in crimes against civilians. The SPLA Act, 2009, article 37(4), states that acts committed by the military against civilians or civilian property should be tried in a civilian court, however the majority of cases have not been handed over to the civil authorities.

Other investigations

On 30 July 2011, General Marial Nour Jok, the former Director of Public Security and the Criminal Investigations Department, was arrested over his alleged involvement in a number of crimes including: the enforced disappearance of John Louis Silvino, an architect at the Ministry of Housing, on 25 March 2011; the creation of illegal detention centres; torture; and corruption. An investigation committee was formed in August 2011, but over one year on, the investigation appears to have stalled. The whereabouts of John Louis Silvino remain unknown.

Legal framework for human rights

Amnesty International welcomes South Sudan's efforts to put in place a legal framework to respect, protect and promote human rights. In November 2011, South Sudan notified the UN Secretary-General of its succession to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction. In June 2012 the President signed into force a Refugee Provisional Order that includes international standards on refugee rights. South Sudan acceded to the 1949 Geneva Conventions and their Additional Protocols in July 2012.

However, over one year since South Sudan became an independent state it has yet to become party to key international human rights treaties. These include several human rights treaties to which Sudan is party. South Sudan should reconfirm its obligations under human rights treaties to which Sudan was party at the time of South Sudan's independence, including the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC) and its Optional Protocols; the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of All Forms of Racial Discrimination (ICERD), while withdrawing reservations to them, and it should become party to other widely ratified international treaties, including Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearances (CPED); and the Rome Statute of the International Criminal Court. While Amnesty International believes there is a commitment from South Sudan to become party to human rights treaties, the country's legal framework currently presents obstacles to treaty ratification and accession, namely the lack of a national law in treaty ratification and accession procedures.

Furthermore, gaps in national legislation such as the absence of an adequate legal framework to regulate the National Security Service (NSS), including by limiting or defining its powers of arrest and detention, calls into question the lawfulness of any intervention by the NSS that has repercussions on individuals' rights. In November 2011, the NSS detained the Editor in Chief

and a journalist from *The Destiny* newspaper for an article that criticized the President for allowing his daughter to marry a non-South Sudanese man. The Editor in Chief was ill-treated in custody and both were held *incommunicado* without access to a lawyer or their families.

Death Penalty

South Sudan retains the death penalty and carried out executions as recently as 28 August 2012, when two men were hanged in Juba prison. In November 2011, five men were hanged in Wau prison. Over 230 prisoners remain on death row.

Amnesty International is opposed to the death penalty as a violation of the right to life and as the ultimate cruel, inhumane and degrading punishment, in all cases without exception, regardless of the nature of the crime, characteristics of the offender, or the method used by the state to carry out the execution.

International standards, including the 1984 UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty and UN Commission on Human Rights resolution 2005/59,⁵ require strict adherence to fair trial standards, which include the presumption of innocence, and for all of the proceedings the right to adequate legal assistance, and, if necessary, the free assistance of an interpreter.. Furthermore, they protect the right of convicted persons to appeal to a higher tribunal and the prohibition of the use of the death penalty against, among other groups, persons who were under the age of 18 at the time the crime was committed and people with mental or intellectual disabilities. They also stipulate that the death penalty should be imposed only for the most serious crimes. This month, the Special Rapporteur on extrajudicial executions affirmed this should be understood to mean that in countries which have not abolished the death penalty, capital punishment may be imposed only for intentional killing, but it may not be mandatory in such cases.⁶

South Sudan's use of the death penalty contravenes these standards. Weaknesses in the country's criminal justice system, primarily the non-observance of fair trial standards, such as the lack of provision for legal representation for all accused persons emphasise the need to abolish the death penalty without delay. Many trials were conducted in Arabic even if the defendant did not understand that language, and without an effective appeals review. Furthermore, the Transitional Constitution and the Penal Code, 2003 only prohibit the imposition of the death penalty on a person under the age of 18, whereas the relevant point in time is the *commission* of the crime, not the age of the offender at the time of the execution.

The need for an Independent Expert

Amnesty International urges the Human Rights Council to support the development of robust and effective human rights and justice mechanisms in South Sudan. With this in view, it is crucial that South Sudan benefit from sustained support in establishing an adequate legal framework, creating or strengthening national institutions and addressing human rights violations.

At its 21st session, the Council has before it the report of the High Commission for Human Rights on 'Technical assistance and capacity-building for South Sudan in the field of human rights' (A/HRC/21/34)⁷. The report states, inter alia, that "while the primary responsibility for the promotion and protection of human rights lies with the Government of South Sudan, OHCHR urges the international community to assist national actors in implementing the [recommendations addressed in the report]."

⁵ UN Doc. E/CN.4/2005/59(2005) of 20 April 2005.

⁶ Special Rapporteur on extrajudicial executions, UN Doc. A/67/275 (2012) para. 67.

⁷ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-34_en.pdf

An independent expert technical assistance mandate would help ensure follow-up on the High Commissioner's assessment and provide assistance to South Sudan in implementing recommendations contained in her report. An independent expert would also help increase visibility to the needs for technical assistance and generate financial and other support from the international community for the most pressing needs.

Recommendations

Amnesty International urges the Human Rights Council member and observer states to call on the government of South Sudan to:

- immediately swear in members of the *Investigation Committee into the Jonglei State Crisis* and provide them with necessary resources to carry out an independent, full and impartial investigation;
- monitor disarmament activities in Jonglei State and fully investigate reports of violations carried out by the SPLA and the SSPS Auxiliary Forces during the process; and hold perpetrators accountable for violations, with prosecutions before an independent tribunal that adheres to international fair trial standards;
- ensure more effective and timely systems to carry out investigations and hold perpetrators to account;
- take the necessary steps to strengthen its international and national human rights framework, including by reconfirming its obligations under international human rights treaties to which Sudan was party at the time of South Sudan's independence, while withdrawing reservations to them, and becoming party, without reservations, to other key international human rights treaties; and
- immediately impose an official moratorium on executions with a view to abolishing the death penalty and to commute all death sentences to terms of imprisonment.

Amnesty International urges Human Rights Council members and observers to work with South Sudan to establish an Independent Expert mandate under agenda item 10⁸, for a period of three years, and with a request to report to the Council twice a year.

⁸ Technical assistance and capacity-building