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Salva Kiir Mayardit
President of the Republic of South Sudan
Office of the President
Juba, South Sudan

Riek Machar Teny Dhurgon
First Vice President of the Republic of South Sudan
Office of the First Vice President
Juba, South Sudan

7 June 2021

Dear Mr. Salva Kiir Mayardit and Riek Machar Teny Dhurgon,

RE: LETTER OF APPEAL FOR TRUTH *AND* TRIALS IN SOUTH SUDAN

I write to you as Secretary General of Amnesty International, the global human rights movement with 10 million members and supporters.

Five years ago today, the *New York Times* published an op-ed in your names advocating for truth, not trials, and calling on the international community to reconsider the Hybrid Court for South Sudan (HCSS). Four days after its publication, Dr. Riek Machar Teny Dhurgon disavowed the op-ed saying he had not been consulted.

More than seven years after the outbreak of conflict in South Sudan and more than a year into the transitional period, justice remains elusive for millions of survivors and victims. I write to ask you to ensure survivors and victims of atrocities committed in South Sudan's conflict that broke out in December 2013 are given a comprehensive and holistic response to the harm they suffered, including truth *and* trials.

Amnesty International welcomes South Sudan's Council of Ministers' January 2021 decision to approve a plan by the Ministry of Justice and Constitutional Affairs to establish the HCSS, as well as the Commission for Truth, Reconciliation and Healing (CTRH) and the Compensation and Reparation Authority (CRA). I acknowledge the establishment of a taskforce to operationalize, amongst others, the establishment of these transitional justice mechanisms enshrined in Chapter V of the 2018 Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS).

I also take note of Ministerial Order 02/2021 issued by the Minister of Justice and Constitutional Affairs on 10 May 2021 establishing a reconstituted Technical Committee to conduct additional consultations to inform the enabling legislation for the CTRH as per article 5.2.1.3 of the R-ARCSS.

However, the apparent prioritizing and singling out of the CTRH raises concerns that the Government of South Sudan may prioritize truth over trials. We cannot overlook the importance of a transitional justice process where trials and truth go hand in hand and the HCSS and the CTRH are established simultaneously, in parallel with justice and security sector reform, paving the way for adequate, effective and prompt reparations.

In your op-ed you write that the only way to unite South Sudan is through an organized peace and reconciliation process centred around truth-telling and memorialization. Uncovering the truth of what happened during the years of war and remembering people lost is undeniably important. However, it is but a part of what is necessary to truly deal with the legacy of crimes under international law and other grave human rights violations.

In 2014, South Sudanese told the African Union Commission of Inquiry on South Sudan that accountability for atrocities is needed for peace in South Sudan. The Commission found that South Sudan's many customs combine both retributive

and restorative remedies for crimes. The Commission recommended a holistic transitional justice process, including truth and trials, which was made in careful consideration of the South Sudanese context and informed by South Sudanese. The recommendations followed international best practice and are in line with the AU's Transitional Justice Policy that was adopted in February 2019.

A 2015 study by the South Sudan Law Society and UN Development Programme found overwhelming support for criminal accountability of people responsible for conflict-related crimes. 93 percent of the 1525 respondents said that people responsible for crimes under international law should be prosecuted in courts of law. When asked directly, 83 percent of the 1525 respondents said they would support the involvement of international justice mechanisms in relation to crimes committed in relation to the conflict.

Only a holistic process that caters to the diversity of victims and their multiple needs and desires, that guarantees non-recurrence of the violations of international human rights and humanitarian law, and addresses a range of human rights including the right to truth, right to reparation and the right to justice can bring an end to violations in South Sudan. The architecture of the R-ARCSS reflects this and the implementation matrix tasks the Revitalized Transitional Government of National Unity (R-TGoNU) to initiate legislation to establish the HCSS, CTRH and CRA within three months of formation of the R-TGoNU.

I encourage you to implement a holistic, victim-centred process that pursues accountability, provides victims with reparations, uncovers the truth, reforms harmful institutions, and ultimately improves the human rights situation in the country. Specifically, I call on you to:

- Sign the enabling legislation for the HCSS and ensure that the court becomes promptly operational;
- Ensure judicial and legal reform to improve the domestic justice system's independence, impartiality and ability to address impunity for crimes committed in the context of the ongoing conflict, including by ensuring the incorporation of crimes under international law into the penal code, including but not limited to genocide, crimes against humanity, war crimes and torture in line with definitions under international law;
- Ensure the implementation of all other transitional justice provisions of the peace agreement, including those related to the Commission on Truth Reconciliation and Healing (CTRH), the Compensation and Reparation Authority (CRA) and reform of the security sector.

I remain available for a phone call or high-level mission to South Sudan.

For transparency purposes, Amnesty International will publish this as an open letter on 19 June 2021.

Yours sincerely,

Agnès Callamard
Secretary General