



AFRICAN UNION'S ABANDONED COMMITMENT TO JUSTICE IN AFRICA: THE CASE OF THE HYBRID COURT FOR SOUTH SUDAN

RESEARCH
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Cover illustration: The Hybrid Court for South Sudan and Lady Justice drowning as the African Union and the Government of South Sudan turn their backs on justice for the survivors of the conflict that has left a trail of destruction in South Sudan.
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1. BACKGROUND: CONFLICT IN SOUTH SUDAN

On 15 December 2013, following months of political disputes within the ruling Sudan People's Liberation Movement (SPLM) party, an armed confrontation started at the military barracks in the capital city, Juba, and escalated into full-blown conflict with violence quickly spreading to other areas of the country. Since then, South Sudan has been engulfed in a non-international armed conflict primarily between government forces loyal to president Salva Kiir Mayardit, (then) Sudan's People's Liberation Army (SPLA) and pro-government militias, and the armed group loyal to Riek Machar Teny, Sudan's People's Liberation Army-In Opposition (SPLA-IO) and pro-SPLA-IO militias. Both government and opposition forces are responsible for gross violations or abuses of international humanitarian law and international human rights law, including the deliberate killing of civilians, acts of sexual violence, including gang rape and rape of children, older people and pregnant women, forced recruitment of children, looting, forced displacements and enforced disappearances.¹

Although the large-scale nation-wide fighting between the (now) South Sudan's People's Defence Forces (SSPDF) and the SPLA-IO and their respective allied militias has decreased, the conflict is still ongoing and crimes against civilians continue.²

Fighting, including cattle raiding, amongst local ethnic groups and clans surged across the country in 2020.³ Supported by senior military and political officials from the Sudan People's Liberation Movement (SPLM) and the Sudan People's Liberation Movement – In Opposition (SPLM-IO), including through provision of military-grade weapons, local groups killed hundreds of people, including civilians.⁴

In December 2020, Amnesty International documented a series of extrajudicial executions, forced displacements, torture, and destruction of civilian property by government and SPLA-IO forces between April and June 2020 in Central Equatoria State, southwest of Juba. Since the conflict spread to the previously largely peaceful Equatoria region after the collapse of the 2015 peace agreement in July 2016, and clashes have continued in this southern part of the country between the rebel group known as the National Salvation Front (NAS) on the one hand, and SSPDF and SPLA-IO, on the other.⁵

In late 2021, Amnesty International documented the killings of dozens of civilians, displacement of more than 80,000 people, and destruction of civilian property during five-month clashes between armed groups in Western Equatoria state which resulted in a major humanitarian crisis. From June to

¹ Amnesty International, *Nowhere Safe: Civilians Under Attack in South Sudan* (Index: AFR 65/003/2014), May 2014, [amnesty.org/en/documents/af65/003/2014/en/](https://www.amnesty.org/en/documents/af65/003/2014/en/); Amnesty International, "South Sudan: Escalation of violence points to failed regional and international action", May 2015, [amnesty.org/en/latest/news/2015/05/south-sudan-escalation-of-violence-points-to-failed-regional-and-international-action/](https://www.amnesty.org/en/latest/news/2015/05/south-sudan-escalation-of-violence-points-to-failed-regional-and-international-action/); Amnesty International, *Their Voices Stopped: Mass Killing in a Shipping Container in Leer* (Index AFR 65/3598/2016), March 2016, [amnesty.org/en/documents/af65/3598/2016/en/](https://www.amnesty.org/en/documents/af65/3598/2016/en/); Amnesty International, *We Are Still Running: War Crimes in Leer, South Sudan* (Index AFR 65/4486/2016), July 2016, [amnesty.org/en/documents/af65/4486/2016/en/](https://www.amnesty.org/en/documents/af65/4486/2016/en/); Amnesty International, *We Did Not Believe We Would Survive: Killings, Rape and Lootings in Juba* (Index AFR 65/5028/2016), October 2016, [amnesty.org/en/documents/af65/5028/2016/en/](https://www.amnesty.org/en/documents/af65/5028/2016/en/); Amnesty International, *It Was As If My Village Was Swept By a Flood: Mass Displacement of The Shilluk Population From the West Bank of the White Nile* (Index AFR 65/6538/2017), June 2017, [amnesty.org/fr/documents/af65/6538/2017/en/](https://www.amnesty.org/fr/documents/af65/6538/2017/en/); Amnesty International, *If Men Are Caught, They Are Killed, If Women Are Caught, They Are Raped – Atrocities in Equatoria Region Turn Country's Breadbasket Into A Killing Field* (Index AFR 65/6612/2017), July 2017, [amnesty.org/fr/documents/af65/6612/2017/en/](https://www.amnesty.org/fr/documents/af65/6612/2017/en/); Amnesty International, *Do Not Remain Silent: Survivors of Sexual Violence in South Sudan Call for Justice and Reparations* (Index AFR 65/6469/2017), July 2017, [amnesty.org/en/documents/af65/6469/2017/en/](https://www.amnesty.org/en/documents/af65/6469/2017/en/); Amnesty International, *Anything That Was Breathing Was Killed – War Crimes in Leer and Mayendit, South Sudan* (Index AFR 65/8801/2018), September 2018, [amnesty.org/en/documents/af65/8801/2018/en/](https://www.amnesty.org/en/documents/af65/8801/2018/en/)

² United Nations Mission in South Sudan and the Office of the High Commissioner for Human Rights, "Attacks against civilians in southern Unity State, South Sudan February – May 2022", 6 September 2022, [unmiss.unmissions.org/attacks-against-civilians-southern-unity-state-south-sudan-february-%E2%80%93-may-2022](https://www.unmiss.unmissions.org/attacks-against-civilians-southern-unity-state-south-sudan-february-%E2%80%93-may-2022); Amnesty International, *If you don't cooperate, I'll gun you down: Conflict-related sexual violence and impunity in South Sudan* (Index Number: AFR 65/5569/2022), May 2022, [amnesty.org/en/documents/af65/5569/2022/en/](https://www.amnesty.org/en/documents/af65/5569/2022/en/); Amnesty International, "South Sudan: Survivors describe killings, mass displacement and terror amid fighting in Western Equatoria", December 2021, [amnesty.org/en/latest/news/2021/12/south-sudan-survivors-describe-killings-mass-displacement-and-terror-amid-fighting-in-western-equatoria/](https://www.amnesty.org/en/latest/news/2021/12/south-sudan-survivors-describe-killings-mass-displacement-and-terror-amid-fighting-in-western-equatoria/); Commission on Human Rights in South Sudan (CHRSS), "Detailed findings of the Commission on Human Rights in South Sudan", 18 February 2021, UN Doc. A/HRC/46/CRP.2, paras. 185 – 192; Amnesty International, "South Sudan: UN arms embargo must be maintained after surge in violence against civilians in 2020", November 2020, [amnesty.org/en/latest/news/2020/11/south-sudan-un-arms-embargo-must-be-maintained-after-surge-in-violence-against-civilians-in-2020-2/](https://www.amnesty.org/en/latest/news/2020/11/south-sudan-un-arms-embargo-must-be-maintained-after-surge-in-violence-against-civilians-in-2020-2/)

³ CHRSS, "Despite renewed political commitment, staggering levels of violence continued across South Sudan for the second successive year, UN experts note", 19 February 2021, [ohchr.org/en/press-releases/2021/02/despite-renewed-political-commitment-staggering-levels-violence-continued?LangID=E&NewsID=26761](https://www.ohchr.org/en/press-releases/2021/02/despite-renewed-political-commitment-staggering-levels-violence-continued?LangID=E&NewsID=26761)

⁴ United Nations Secretary General (UNSG), Situation in South Sudan, 26 February 2020, S/2020/145; UNSG, Situation in South Sudan, 15 June 2020, S/2020/536; UNSG, Situation in South Sudan, 8 September 2020, S/2020/890; UNSG, Situation in South Sudan, 9 December 2020, S/2020/1180. See also, CHRSS, "Detailed findings of the Commission on Human Rights in South Sudan", 18 February 2021, UN Doc. A/HRC/46/CRP.2

⁵ Amnesty International, "South Sudan: UN arms embargo must be maintained after surge in violence against civilians in 2020", November 2020, [amnesty.org/en/latest/news/2020/11/south-sudan-un-arms-embargo-must-be-maintained-after-surge-in-violence-against-civilians-in-2020-2/](https://www.amnesty.org/en/latest/news/2020/11/south-sudan-un-arms-embargo-must-be-maintained-after-surge-in-violence-against-civilians-in-2020-2/)

October 2021, competing local groups aligned with forces affiliated to the government's SSPDF on the one hand and the SPLA-IO on the other, fought each other in and around Tambura County. The violence can be traced to the allocation of the state to the SPLM-IO in May 2020 as part of a power-sharing agreement between parties to the 2018 peace deal. The First Vice-President Riek Machar's subsequent appointment of a governor angered key figures in the political elite among the Azande community.⁶

As recently as September 2022, the United Nations Mission in South Sudan (UNMISS) and the Office of the High Commissioner for Human Rights (OHCHR) published a report documenting violations and abuses of international human rights law and international humanitarian law including killings of civilians, forceful displacement of civilians, rape, gang rape and pillage of civilian and humanitarian properties. The violations were committed during fighting between "South Sudan's joint Government Forces and affiliated armed militias/groups – comprising community-based militias and elements who defected from the pro-Riek Machar Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO (RM)) [...] and the SPLA/M-IO RM".⁷ The clashes took place between February and May 2022 in southern Unity State.

At the time of writing, large-scale fighting⁸ has been reported in Upper Nile state, killing civilians, displacing thousands of civilians and preventing humanitarian actors to provide life-saving services.⁹

2. THE HYBRID COURT FOR SOUTH SUDAN (HCSS), AN AFRICAN UNION INITIATIVE

2.1 THE HCSS, AN AFRICAN UNION INITIATIVE

On 31 December 2013, just two weeks after the outbreak of the armed conflict in Juba, the African Union Peace and Security Council (AUPSC) mandated the establishment of a Commission of Inquiry on South Sudan (AUCISS) "to investigate human rights violations and abuses committed in the armed conflict in South Sudan and make recommendations on the best ways and means to ensure accountability, reconciliation and healing."¹⁰

In October 2014, the AUCISS provided a comprehensive report which, among other aspects, emphasized the importance of ensuring accountability for war crimes, crimes against humanity and other violations.¹¹ The Commission recommended the establishment of a hybrid judicial mechanism to bring those responsible for human rights violations to justice. In specific terms, the Commission recommended the establishment of "an Africa-led, Africa-owned, Africa-resourced legal mechanism under the aegis of the African Union supported by the international community, particularly the United Nations to bring those with the greatest responsibility at the highest level to account. Such a mechanism should include South Sudanese judges and lawyers."¹²

⁶ Amnesty International, "South Sudan: Survivors describe killings, mass displacement and terror amid fighting in Western Equatoria", December 2021, [amnesty.org/en/latest/news/2021/12/south-sudan-survivors-describe-killings-mass-displacement-and-terror-amid-fighting-in-western-equatoria/](https://www.amnesty.org/en/latest/news/2021/12/south-sudan-survivors-describe-killings-mass-displacement-and-terror-amid-fighting-in-western-equatoria/)

⁷ United Nations Mission in South Sudan and the Office of the High Commissioner for Human Rights, "Attacks against civilians in southern Unity State, South Sudan February – May 2022", 6 September 2022, unmiss.unmissions.org/attacks-against-civilians-southern-unity-state-south-sudan-february-%E2%80%93-may-2022

⁸ United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), "Daily Noon Briefing Highlights: South Sudan", 20 September 2022, [unocha.org/story/daily-noon-briefing-highlights-south-sudan-3](https://www.unocha.org/story/daily-noon-briefing-highlights-south-sudan-3)

⁹ UNOCHA, "South Sudan: Flash update on developments in Kodok, Upper Nile (As of 11 October 2022)", 11 October 2022, reliefweb.int/report/south-sudan/south-sudan-flash-update-developments-kodok-upper-nile-11-october-2022; UNOCHA, "Daily Noon Briefing Highlights: South Sudan", 20 September 2022, [unocha.org/story/daily-noon-briefing-highlights-south-sudan-3](https://www.unocha.org/story/daily-noon-briefing-highlights-south-sudan-3); UNOCHA, "Tonga clashes: Flash Update No. 2 (As of 22 August 2022)", 22 August 2022, reliefweb.int/report/south-sudan/tonga-clashes-flash-update-no-2-22-august-2022

¹⁰ AUPSC, Communiqué PSC/AHG/COMM.1, 31 December 2013

¹¹ AUCISS, Final report, 15 October 2014, peaceau.org/uploads/auciss.final.report.pdf

¹² AUCISS, Final report, 15 October 2014, para. 1148

The following year, in August 2015, after months of negotiations under the auspices of the Intergovernmental Authority on Development (IGAD),¹³ AUCISS's recommendation became a legally binding commitment in the peace agreement signed by parties to the conflict in South Sudan, including by Salva Kiir Mayardit representing the Government of South Sudan and Riek Machar Teny representing the SPLA-IO.¹⁴ Article 3 of Chapter V of the 2015 peace agreement reads as follows:

“3.1 Establishment of the Hybrid Court for South Sudan (HCSS)

3.1.1 *There shall be established an independent hybrid judicial court, the Hybrid Court for South Sudan (HCSS). The Court shall be established by the African Union Commission to investigate and prosecute individuals bearing the responsibility for violations of international law and/or applicable South Sudanese law, committed from 15 December 2013 through the end of the Transitional Period.*

3.1.2 The terms establishing the HCSS shall conform to the terms of this Agreement and the AUC shall provide broad guidelines relating 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.

3.1.3 The Chairperson of the Commission of the AU shall decide the seat of the HCSS.

3.2 Jurisdiction Mandate and Supremacy

3.2.1 The HCSS shall have jurisdiction with respect to the following crimes: genocide; crimes against humanity; war crimes; other serious crimes under international law and relevant laws of the Republic of South Sudan including gender based crimes and sexual violence.

3.2.2 The HCSS shall be independent and distinct from the national judiciary in its operations, and shall carry out its own investigations: the HCSS shall have primacy over any national courts of RSS. [...]” (emphasis added)

The peace agreement elaborates on various aspects of the future court, including provisions on the Court's personnel and appointment procedures (article 3.3 of Chapter V), rights of victims and witnesses (article 3.4 of Chapter V), and criminal responsibility, convictions and penalties (article 3.5 of Chapter V). The agreement does specify that the establishment of the HCSS requires the Government of South Sudan to adopt legislation to that effect,¹⁵ making the court a joint endeavour between the African Union and the Government of South Sudan.

In July 2016, the peace deal effectively collapsed when the SPLA and SPLA-IO resumed fighting in Juba. Another IGAD-led peace negotiation process led to the adoption of a revitalized peace agreement (R-ARCSS) in September 2018¹⁶, which reiterated the commitment of parties to the conflict and the African Union to establish the HCSS in quasi-identical terms.¹⁷

2.2 AFRICAN UNION'S COMMITMENTS ON JUSTICE

Article 4(o) of the African Union's (AU) Constitutive Act recognizes the “respect for the sanctity of human life, condemnation and rejection of impunity” as one of the AU's founding principles. From the start, as enshrined in its founding document, AU member states considered that the regional intergovernmental body has a major role in addressing conflicts on the continent and impunity of those who perpetrate mass crimes against African populations.¹⁸ Member states also conferred the

¹³ IGAD is an organisation of eight states from the East and Horn of Africa (Kenya, Uganda, Ethiopia, Djibouti, Somalia, Eritrea, Sudan and South Sudan) which promotes sustainable environmental and economic cooperation among its member states, as well as cooperation to promote peace and stability in the region.

¹⁴ Agreement on the Resolution of the Conflict in the Republic of South Sudan, 17 August 2015, peacemaker.un.org/node/2676

¹⁵ Chapter V article 1.1 of the peace agreement reads: “Upon inception, the Transitional Government shall initiate legislation for the establishment of the following transitional justice institutions: [...] An independent hybrid judicial body, to be known as the Hybrid Court for South Sudan (HCSS)”

That means that the Ministry of Legal Affairs and Constitutional Development, through its Directorate of Legislation, must draft a bill to the effect of establishing the HCSS. The draft bill is then tabled at the National Legislature, approved, and becomes law when the President assents to it and signs it into law.

¹⁶ Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), 12 September 2018, peaceagreements.org/viewmasterdocument/2112

¹⁷ Chapter V article 5.3 of the 2018 revitalized peace agreement is copied from Chapter V article 3 of the 2015 peace agreement quoted above.

¹⁸ Constitutive Act of the African Union, article 4(o), au.int/sites/default/files/pages/34873-file-constitutivact_en.pdf

African Union with the right to “intervene in a Member State ... in respect of grave circumstances, namely: war crimes, genocide and crimes against humanity.”¹⁹

In addition, under Article 3 of the Protocol Relating to the Establishment of the AUPSC, the member states have recognized the primary objective of the Union is to “promote peace, security and stability in Africa, in order to guarantee the protection of life and property.” Accountability for conflict-related crimes should be seen as contributing to “peace, security and stability” by deterring the commission of further such crimes.²⁰

The AU’s role in addressing conflict-related violations is also detailed in numerous AU policy documents, including Agenda 2063.²¹ Aspiration 3 of Agenda 2063 envisions “an Africa of good governance, democracy, respect for human rights, justice and the rule of law” while Aspiration 4 envisions “a peaceful and secure Africa”. The key flagship project under Aspiration 4 is the “silencing the guns” campaign which initially aimed to end all conflicts in Africa by 2020, a timeline that has now shifted to 2030. Apart from Agenda 2063, two other AU policy documents are particularly relevant: the Policy on Post-Conflict Reconstruction and Development (PCRD) and the Transitional Justice Policy.

In 2006, the AU adopted its PCRD²² which includes a section dedicated to “human rights, justice and reconciliation”. Article 41 reiterates “the total rejection of impunity”, and states that, among other measures, countries emerging from conflict must “make legal provisions for justice for victims of human rights violations” and “provide for remedies and reparations to victims of conflict”.

In 2009, the African Union, reinforcing its intention to take a leadership role on this question, mandated the AU Panel of the Wise²³ to embark on a more comprehensive study. Their report “Peace, Justice and Reconciliation in Africa: Opportunities and Challenges in the Fight Against Impunity” was adopted in May 2011.²⁴ It analyzed a series of “transitional justice” experiences on the continent and recommended that the AU draft and adopt a policy on transitional justice.

The AU Commission (AUC) was entrusted with developing this policy, through its then Department of Political Affairs and in consultation with AU member states. After several years, the African Union Transitional Justice Policy²⁵ was adopted by the AU Assembly in February 2019.²⁶ The policy presents various components of a holistic approach to transitional justice. On justice and accountability as an element of transitional justice, the policy provides that investigations and criminal prosecutions must target all sides to a conflict as well as all crimes, although the weight of responsibility of different sides must not be disregarded. The policy recommends that criminal accountability should be delivered

See also article 3(h) of the Act which provides that one of the AU’s objectives is to “promote and protect human rights and peoples’ rights in accordance with the African Charter on Human and Peoples’ Rights (ACHPR) and other relevant human rights instruments.” – which would include the right of survivors and victims of grave violations of international humanitarian or human right law to truth, justice and reparations. And article 4(h)

¹⁹ Constitutive Act of the African Union, article 4(h)

²⁰ African Union, Policy on Post-Conflict Reconstruction and Development, July 2006, peaceau.org/uploads/pcrd-policy-framework-eng.pdf, article 39: “the pursuance of human rights, justice and reconciliation is critical because abuse of human and peoples’ rights [...] can trigger or perpetuate conflicts.”

Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence and the Special Adviser to the Secretary-General on the Prevention of Genocide, *Joint study*, June 2018, un.org/en/genocideprevention/documents/A_HRC_37_65_AdvanceEditedVersion.pdf, para. 11: “Although transitional justice should not be conceived primarily as a peacemaking instrument, numerous indicators demonstrate that it can contribute to sustainable peace and security by helping to break cycles of violence and atrocities, delivering a sense of justice to victims and prompting examinations of deficiencies in State institutions that may have enabled, if not promoted, those cycles.”

²¹ African Union, Agenda 2063, “Our aspirations for the Africa we want”, au.int/en/agenda2063/aspirations

²² African Union, Policy on Post-Conflict Reconstruction and Development, July 2006, peaceau.org/uploads/pcrd-policy-framework-eng.pdf

²³ The AU Panel of the Wise is a panel of five “highly respected African personalities” mandated with a task to support the efforts of the AU Peace and Security Council and the AU Commission in the area of conflict prevention.

²⁴ The report was drafted as a collaboration between the AU Commission and the International Peace Institute (IPI) by two experts Dr Comfort Ero and Dr Gilbert Khadiagala, after consultations with others.

AU Panel of the Wise, *Peace, Justice and Reconciliation in Africa, Opportunities and Challenges in the Fight Against Impunity*, February 2013, ipinst.org/wp-content/uploads/publications/ipi_epub_peace_justiceafrica2.pdf

²⁵ African Union, *Transitional Justice Policy*, February 2019, au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf

The policy highlights nine principles as basic minimum values and standards that should inform any transitional justice action or process: African leadership; national and local ownership; inclusiveness, equity and non-discrimination; African shared values; context specificity; synergizing, sequencing and balancing transitional justice elements; due regard to the gender and generational dimensions of violations and transitional justice processes; cooperation and coherence; and capacity building and sustainability.

²⁶ Following the adoption of the Transitional Justice Policy, the African Commission on Human and Peoples’ Rights published two studies that elaborate on its approach to conflict-related violations and transitional justice. See African Commission on Human and Peoples’ Rights, *Study on Transitional Justice and human and peoples’ rights in Africa*, 2019, achpr.org/public/Document/file/English/ACHPR%20Transitional%20Justice_ENG.pdf; African Commission on Human and Peoples’ Rights, *Addressing human rights issues in conflict situations: Towards a more systematic and effective role for the African Commission on Human and Peoples’ Rights*, 2019, achpr.org/public/Document/file/English/ACHPR%20Conflict%20Study_ENG.pdf

through independent national courts, and where these courts lack capacity or the confidence of affected communities, “steps should be taken to use special courts, extraordinary chambers or hybrid courts”.²⁷ The policy also recommends that where member states are unable to mount prosecution of perpetrators, they should cooperate with relevant regional or international judicial processes that have jurisdiction.

Long before the adoption of the Transitional Justice Policy, the AU had already sought to pursue accountability and justice in respect of specific country situations. On Sudan, the AU appointed the AU High Level Panel on Darfur in 2008 with a mandate to conduct consultations in Sudan and make recommendations for addressing, among other things, justice, reconciliation and the fight against impunity in relation to the conflict in Darfur. The report of the High Level Panel, adopted in 2009 by the AUPSC, included a detailed proposal of an integrated justice and reconciliation response with domestic and hybrid courts tasked with ensuring individual criminal accountability for serious crimes committed in Darfur.²⁸ The report, while praised for its recommendations relevant for Darfur and more broadly for the continent, has not been implemented yet – perhaps partly because the report’s recommendations are not legally binding on Sudanese authorities.

Much earlier in 2006, the same year the PCRD was adopted, the AU passed a resolution with regards to Hissene Habré, the former president of Chad who had found refuge in Senegal and whose victims sought to have him prosecuted for the crimes committed under his regime. The AU Assembly’s 2006 decision explicitly reads that “the crimes of which Hissene Habré is accused fall within the competence of the African Union”. It mandated Senegal to prosecute Habré “on behalf of Africa”.²⁹ However, it was not until 2013 that the AU entered into an agreement with Senegal, setting up the Extraordinary African Chambers, with jurisdiction to try crimes under international law committed in Chad during Habré’s presidency.³⁰ Habré was prosecuted and convicted for crimes against humanity in April 2017.³¹ When the verdict convicting Habré was upheld, the AU stated that “the judgment brings alive the AU’s determined fight against impunity and human rights violations across the continent, while promoting accountability.”³²

3. DELAYED ESTABLISHMENT OF THE HCSS BOLSTERS IMPUNITY

3.1 THE GOVERNMENT OF SOUTH SUDAN AND THE AU ABANDON SURVIVORS OF THE CONFLICT

Since August 2015, when the parties to South Sudan’s conflict made a legally binding commitment to create the HCSS, not much has been done for it to become reality. Seven years later, the Court still does not exist, not even on paper.

South Sudanese leaders have not adopted any legislation establishing the Court as required by the peace agreements and have also repeatedly taken steps to block such establishment. In June 2016, Kiir and Machar published a joint op-ed in the New York Times entitled ‘South Sudan needs truth, not trials’ calling on the international community to reconsider the HCSS.³³ In April 2019, the Government

²⁷ AU Transitional Justice Policy, paras. 77 and 78

²⁸ Report of the African Union High-Level Panel on Darfur, October 2009, PSC/AHG/2(CCVII), paras. 318 to 337

²⁹ African Union, Assembly/AU/ Dec.127(VII), archives.au.int/bitstream/handle/123456789/955/Assembly%20AU%20Dec%20127%20%28VII%29%20_E.PDF?sequence=1&isAllowed=y

³⁰ AU-Senegal agreement creating the EAC chambresafraicaines.org/pdf/accord%20UA-Senegal%20Chambres%20afraicaines%20extra%20Aout%202012.pdf

³¹ Chambre africaine extraordinaire d’assises d’appel, Le Procureur Général c. Hissène Habré, Arrêt, 27 avril 2017, chambresafraicaines.org/index.php/le-coin-des-medias/communiqu%C3%A9-de-presse/653-document-jugement-complet-et-r%C3%A9sum%C3%A9-du-verdict.html

³² African Union, press release, au.int/en/pressreleases/20170502/au-welcomes-appeal-outcome-hissene-habre-case-african-extraordinary-chambers

³³ “South Sudan needs truth, not trials”, 8 June 2016, New York Times, nytimes.com/2016/06/08/opinion/south-sudan-needs-truth-not-trials.html?_r=0. Four days after its publication Machar denied that he had co-authored the op-ed.

of South Sudan contracted a US-based lobby firm to, among other things, “delay and ultimately block the establishment of the HCSS.”³⁴ This provision was later removed from the contract following public outrage. Time and time again over the years, including through making public statements arguing that reconciliation should be preferred to accountability,³⁵ South Sudanese officials have repeatedly shown they have no intention of cooperating with the AU in order to establish the HCSS.

In what seemed to signify an apparent change of attitude, on 29 January 2021, South Sudan’s Council of Ministers approved a plan by the Ministry of Justice and Constitutional Affairs for the establishment of the HCSS and the other “transitional justice institutions” provided for in the peace agreements. The AUC chairperson, Moussa Faki Mahamat, welcomed the plan’s approval noting that it could end the delay in establishing the HCSS and other institutions relevant to bring justice and healing to all South Sudanese.³⁶ Similarly, the African Commission on Human and Peoples’ Rights (ACHPR) commended the approval of the plan and observed that it presented “a long-awaited opportunity to fulfil the promise of the R-ARCSS to address gross violations of human and peoples’ rights that occurred during the conflict”.³⁷

The approval of the plan and the formation of a taskforce to implement it³⁸ are the only known steps taken towards the establishment of the HCSS, which falls short of South Sudan’s obligation to enact enabling legislation and cooperate with the AU. While the plan’s approval in theory empowered the Ministry of Justice and Constitutional Affairs to take forward the establishment of the HCSS, at the time of writing, almost 21 months later, it has not been followed by concrete actions towards its establishment. The government justifies this lack of action by the fact that it would be waiting on the AUC to provide “broad guidelines [...] including the location of the HCSS, its infrastructure, funding, mechanisms, enforcement mechanisms, the applicable jurisprudence, number and composition of judges, privileges and immunities of court personnel”.³⁹

On 2 August 2022, the parties to the 2018 peace deal agreed to a roadmap that extends the transitional period by 24 months and provides a new timeline for the implementation of the outstanding provisions. In doing so, the parties affirmed, among other things, that “The initiative for the establishment of the HCSS is with the African Union. [...] Generally, the R-TGoNU [South Sudanese revitalized transitional government] is only called upon to support and facilitate its operation [...] and to fully cooperate and seek assistance of the AU, UN and AUC on Human Rights [...]”⁴⁰. The government of South Sudan thus reiterated its position that the establishment of the HCSS is now in the AU’s hands. It is noteworthy that the introductory text⁴¹ to the status implementation update of Chapter V makes no reference to accountability and justice despite the HCSS’s prominent role as one of three transitional justice mechanisms under Chapter V.

The annexed roadmap for the implementation of Chapter V however, contains two activities that mention the HCSS. The first tasked the RTGoNU to “seek assistance and cooperate with AU, UN, ACPHR(sic) to design, implement and facilitate CTRH, HCSS and CRA” before the end of January 2021. The second tasks the R-TGoNU, AUC, and Ministry of Justice and Constitutional Affairs to

³⁴ Gainful Solutions Inc., Consulting Contract Agreement with the Government of South Sudan, 2 April 2019, efile.fara.gov/docs/6667-Exhibit-AB-20190418-2.pdf

³⁵ Amnesty International, “Do you think we will prosecute ourselves?” *No Prospects for Accountability in South Sudan*, October 2019, Index Number: AFR 65/1105/2019, [amnesty.org/en/documents/afr65/1105/2019/en/](https://www.amnesty.org/en/documents/afr65/1105/2019/en/), Section 6.2; President Salva Kiir Mayardit, “Press Statement”, 28 March 2022, on file with Amnesty International

³⁶ Statement by H.E. Mr. Moussa Faki Mahamat, Chairperson of the African Union Commission, on African Union Hybrid Court of South Sudan, 30 January 2021, [au.int/pt/node/39911](https://www.au.int/pt/node/39911)

³⁷ African Commission on Human and Peoples’ Rights, ‘The African Commission hails South Sudan’s decision to implement the transitional justice chapter of South Sudan’s peace agreement’, 2 February 2021, [achpr.org/news/viewdetail?id=218](https://www.achpr.org/news/viewdetail?id=218)

³⁸ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – South Sudan*, A/HRC/WG.6/40/SSD/1, 18 November 2021, para. 26

³⁹ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – South Sudan*, A/HRC/WG.6/40/SSD/1, 18 November 2021, para. 29

⁴⁰ High-Level Standing Committee of the Parties Signatory to the A(sic)-ARCSS, Juba, South Sudan, Agreement on the Roadmap to a Peaceful and Democratic end of the Transitional Period of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), 2 August 2022, pg. 8, on file with Amnesty International

⁴¹ “The institutions to be established under this chapter have impact on the democratic transformation of South Sudan in that they will build truth, reconciliation and healing, and compensation and reparation. The combination of these processes address the legacy of conflict, promoting peace, national reconciliation and healing to create a conducive environment for the return of refugees and preparations for democratic election.” High-Level Standing Committee of the Parties Signatory to the A(sic)-ARCSS, Juba, South Sudan, Agreement on the Roadmap to a Peaceful and Democratic end of the Transitional Period of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), 2 August 2022, pg. 7, on file with Amnesty International

initiate legislation to establish all three mechanisms by September 2022.⁴² At the time of writing and to Amnesty International's best knowledge, these tasks were not completed.

The failure to establish the HCSS reflects a lack of political will in South Sudan's government to hold those most responsible for serious crimes, which are likely to include senior political and military officials, to account. "Do you think we will prosecute ourselves?" a senior government official said during a panel discussion on accountability for crimes under international law in Juba in June 2018.⁴³

On its part, the AU has taken some limited steps towards the creation of the HCSS. In 2016, at the request of the AUPSC, the AU Office of the Legal Counsel drafted the key instruments required for establishing the Court, mainly a Statute for the HCSS and a Memorandum of Understanding to be signed between the AU and South Sudan. Following these draft legal instruments, the Office of the Legal Counsel estimated that it would take around three years, until the last quarter of 2019, to have an operational HCSS.⁴⁴ In July 2017, the Office of the Legal Counsel held an initial consultative meeting in Juba with relevant South Sudanese government officials. This was followed by a working session in August 2017 where officials from the AU and South Sudan's government reviewed the draft legal instruments. A statement issued after the meeting indicated that the parties "made significant amendments" to the draft legal instruments and they appended their signatures to signify their authenticity. More importantly, the meeting agreed on a timeline for concluding and official signing of the legal instruments.⁴⁵

From the August 2017 working session, the process of developing the legal instruments appeared at an advanced stage and was reportedly to be concluded within a short time. However, two years passed without any visible tangible action. In December 2019, the Office of the Legal Counsel convened a high-level expert meeting in Dar es Salaam, Tanzania, to finalize the legal instruments. Despite civil society pressure⁴⁶ there has been no concrete progress since the December 2019 meeting to date.

Calls by the AUPSC for the speedy establishment of the HCSS have not been heeded. In April 2020, the AUPSC asked the AUC to urgently finalize the legal instruments and submit a report to it within two months.⁴⁷ Despite this timeline, the AUPSC received an update from the Office of the Legal Counsel on progress in establishing the HCSS about five months later in September 2020 during its 945th meeting. While it explicitly called on South Sudanese authorities to establish the other transitional justice mechanisms envisaged in the peace agreements, the AUPSC in its communiqué of the meeting simply took note "all efforts being deployed by the AU Commission, working with the Government of South Sudan, towards the establishment of the Hybrid Court of South Sudan".⁴⁸ In its communiqué of the 1060th meeting convened in January 2022 to consider the situation in South Sudan, the AUPSC made no reference to the HCSS.⁴⁹

A lack of financial and human resources cannot be cited as cause for the failure to establish the HCSS in a timely manner. In 2015, the United States of America availed five million USD to the AU to help establish the HCSS.⁵⁰ In 2018, the AU sought to recruit a project coordinator to lead work relating to

⁴² High-Level Standing Committee of the Parties Signatory to the A(sic)-ARCSS, Juba, South Sudan, Agreement on the Roadmap to a Peaceful and Democratic end of the Transitional Period of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), 2 August 2022, pg. 34, on file with Amnesty International

⁴³ Amnesty International, "Do you think we will prosecute ourselves?" No Prospects for Accountability in South Sudan, October 2019, Index Number: AFR 65/1105/2019, [amnesty.org/en/documents/afr65/1105/2019/en/](https://www.amnesty.org/en/documents/afr65/1105/2019/en/)

⁴⁴ UN Commission on Human Rights in South Sudan, Final report of the CoHRSS, 6 March 2017, [ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx](https://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx), para. 63.

⁴⁵ African Union, "African Union Commission and the Republic of South Sudan successfully conclude working session on the draft legal instruments of the Hybrid Court for South Sudan", 14 August 2017, [au.int/en/pressreleases/20170814/african-union-commission-and-republic-south-sudan-successfully-conclude](https://www.au.int/en/pressreleases/20170814/african-union-commission-and-republic-south-sudan-successfully-conclude)

⁴⁶ See section 4.1

⁴⁷ AUPSC, Communiqué of the 917th meeting of the PSC held online on 9 April 2020, on the situation in South Sudan, para 14, [peaceau.org/en/article/communique-of-the-917th-meeting-of-the-psc-held-online-on-9-april-2020-on-the-situation-in-south-sudan](https://www.peaceau.org/en/article/communique-of-the-917th-meeting-of-the-psc-held-online-on-9-april-2020-on-the-situation-in-south-sudan)

⁴⁸ AUPSC, Communiqué of the 945th meeting of the PSC held on 15 September 2020, on the Report of the Chairperson of the Commission on the Situation in the Republic of South Sudan, para 17, [peaceau.org/en/article/communique-of-the-945th-meeting-of-the-psc-held-on-15-september-2020-on-the-report-of-the-chairperson-of-the-commission-on-the-situation-in-the-republic-of-south-sudan](https://www.peaceau.org/en/article/communique-of-the-945th-meeting-of-the-psc-held-on-15-september-2020-on-the-report-of-the-chairperson-of-the-commission-on-the-situation-in-the-republic-of-south-sudan)

⁴⁹ AUPSC, Communiqué of the 1060th meeting of the PSC held on 25 January 2022 on the situation in South Sudan, [peaceau.org/en/article/communique-of-the-1060th-meeting-of-the-psc-held-on-25-january-2022-on-the-situation-in-south-sudan](https://www.peaceau.org/en/article/communique-of-the-1060th-meeting-of-the-psc-held-on-25-january-2022-on-the-situation-in-south-sudan)

⁵⁰ United States, Press statement, "South Sudan: United States Provides Support for Justice and Accountability", May 2015, 2009-2017.state.gov/r/pa/prs/ps/2015/05/241927.htm

the establishment and operationalization of the HCSS.⁵¹ This position was never filled, and no public explanation provided. Following the January 2021 approval of the plan to establish the HCSS and other transitional justice mechanisms by South Sudan's Council of Ministers, the AU in June 2021 sought to recruit four posts relating to the HCSS: a senior prosecution expert; an associate legal expert; a translation and legal expert; and a transitional justice expert.⁵² The recruitment process was aborted mid-way and the posts were never filled. In 2021, six years after receiving funds from the United State of America, the AU had not done much beyond developing the draft legal instruments. With the funds barely touched, the USA reallocated the funds.⁵³

3.2 TRUTH AND JUSTICE ARE COMPLEMENTARY

Alongside the HCSS, Chapter V of the peace agreements also provides for the establishment of two other transitional justice mechanisms: a Commission for Truth, Reconciliation and Healing (CTRH) and a Compensation and Reparation Authority (CRA).⁵⁴ Chapter V also includes a *de facto* vetting process by making HCSS indicted individuals ineligible for participation in the current transitional government or successor governments.⁵⁵ Even though none of these mechanisms have become reality yet, South Sudanese authorities have taken some steps towards the establishment of the CTRH, in contrast to the HCSS. In May 2021, the government re-established⁵⁶ a technical committee which was officially launched by the now First Vice President Riek Machar in June 2021 and, at the time of writing, had commenced consultations across the country that are to inform the CTRH's enabling legislation.⁵⁷

Truth-seeking processes such as the CTRH are not aimed at ensuring criminal accountability for past crimes, and, if they are used as alternatives to judicial processes, could be detrimental to addressing impunity. The AU Panel of the Wise in its 2013 report stated:

“Truth commissions have their limitations. They require sustained funding and political support to be effective, and *there is a real danger that they are increasingly seen as a panacea, inserted into peace agreements in order to provide options for leaders seeking to avoid criminal accountability.* Overall, truth commissions can have a powerful effect when used appropriately and effectively. When conducted in consultation with local actors, they have the potential to contribute to stability, building a just society, and laying the foundations for deepening the rule of law.”⁵⁸

Judicial processes and non-judicial processes are not necessarily mutually exclusive or opposed to each other. They serve different goals and are complementary in addressing needs for truth, justice, reparations and guarantees of non-repetition in a conflict or post-conflict situation. In that regard, the AU Panel of the Wise stated that “[t]he important lesson is that no mechanism can work in isolation. [...] Truth commissions can be a critical first step in the search for justice by ensuring that rigorous documentary evidence is preserved for future prosecutions. Similarly, prosecutions are unlikely to end impunity if they are not accompanied by serious institutional reform efforts.”⁵⁹

⁵¹ The advert posted on the AU website for this post has since expired, but see, for example: “project coordinator, Hybrid Court for South Sudan”, March 2018, cdiscussion.com/offre-d-emploi/?details-job=1036169

⁵² The adverts posted on the AU website for these roles have since expired, but see, for example: “Senior Prosecutor Expert”, July 2021, ngojobsinafrica.com/job/senior-prosecution-expert/; “Associate Legal Expert”, July 2021, ngojobsinafrica.com/job/associate-legal-expert-2/

⁵³ Foreign Policy, “US Quietly Gives Up on South Sudan War Crimes Court”, July 2021, foreignpolicy.com/2021/07/20/south-sudan-war-crimes-court-state-department-africa-biden-human-rights/

⁵⁴ Chapter V article 5.2 and 5.4 of the 2018 revitalized peace agreement. In addition to Chapter V, the (R)-ARCSS chapters include provisions for broader institutional reform processes as a guarantee for non-recurrence, including the development of a permanent constitution, and reforms of judicial, security and financial institutions.

⁵⁵ Chapter V article 5.5 of the 2018 revitalized peace agreement.

⁵⁶ In December 2016, the government established the first technical committee for the establishment of the CTRH.

⁵⁷ *Council resolution 16/21 – South Sudan*, A/HRC/WG.6/40/SSD/1, 18 November 2021, para. 29

⁵⁸ Human Rights Council, *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 – South Sudan*, A/HRC/WG.6/40/SSD/1, 18 November 2021, paras. 26 – 28.

⁵⁹ AU Panel of the Wise, *Peace, Justice and Reconciliation in Africa, Opportunities and Challenges in the Fight Against Impunity*, February 2013, ipinst.org/wp-content/uploads/publications/ipi_epub_peace_justiceafrica2.pdf, pp. 20-21 (emphasis added)

⁶⁰ AU Panel of the Wise, *Peace, Justice and Reconciliation in Africa, Opportunities and Challenges in the Fight Against Impunity*, February 2013, ipinst.org/wp-content/uploads/publications/ipi_epub_peace_justiceafrica2.pdf, p. 38

Former and current UN Special Rapporteurs on truth, justice and reparation have repeatedly taken similar views. For instance, in Pablo de Greiff's 2012 report, he affirms that "the four components of the mandates, truth, justice, reparations and guarantees of non-recurrence as a set of measures that are related to, and can reinforce, one another, when implemented to redress the legacies of massive human rights violations and abuses. [...] Truth-seeking initiatives, for their part, need to be saved from being interpreted as a form of whitewash in which the truth emerges but no consequences follow."⁶⁰

The way states and societies address legacies of past crimes may and should include a range of various measures, which are complementary to one another and address the diverse and ever-changing needs of survivors. That combination of transitional justice measures is what was decided by South Sudanese parties to the conflict and supporting stakeholders primarily in Chapter V of the peace agreements, with three complementary processes aimed at addressing the needs for truth, justice and reparations.

These three processes – the HCSS, the CTRH and the CRA – could be established in parallel and in a complementary manner alongside other reforms such as justice and security sector reform. This is especially so in South Sudan where the population has little trust in authorities and domestic institutions.⁶¹ Establishing the CTRH long before, or instead of, the HCSS will send a sign that truth is being used to escape judicial accountability. Taking steps towards the creation of the HCSS will enhance public confidence in both the CTRH and the HCSS.

In addition, bridges may be considered between the two institutions. The CTRH findings could contribute to judicial investigations with a view to prosecuting individuals.⁶² Such mechanisms have been developed for other truth commissions in Africa and beyond, where sometimes truth commissions have the possibility to transfer cases to courts or to make recommendations on investigations and prosecutions of specific matters or individuals.⁶³ The AU and South Sudanese authorities should consider creating these paths for the CTRH and the HCSS to function in the most complementary manner possible, contributing to and reinforcing each other's work.

3.3 NO OTHER VIABLE AVENUES FOR JUSTICE FOR SOUTH SUDANESE SURVIVORS

The delay in establishing the HCSS effectively means that there are no justice avenues available for victims of serious crimes committed in the context of the conflict in South Sudan since 2013. The International Criminal Court (ICC) is *a priori* not competent since South Sudan has not ratified the Rome Statute,⁶⁴ and the chance of a referral by the UN Security Council to the ICC is extremely low, currently and possibly in the coming years.

⁶⁰ Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, August 2012, A/HRC/21/46, ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_en.pdf, paras. 21 and 25.

Also see Report of the Special Rapporteur on the promotion of truth, justice, reparations and guarantees of non-recurrence, Fabian Salvioli, July 2021, A/HRC/48.60, undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2F48%2F60&Language=E&DeviceType=Desktop&LangRequested=False, paras. 18 and 19: "States need not choose between truth and justice. Transitional justice mechanisms should not be seen as an alternative to the criminal responsibility of perpetrators of serious violations of human rights and international humanitarian law. The international human rights obligations of States are fully applicable to transitional processes."

⁶¹ David Deng, Sophia Dawkins, Christopher Oringa and Jan Pospisil, National survey on perceptions of peace in South Sudan, 19 May 2022, peacerep.org/wp-content/uploads/2022/05/Sudan-Report-Digital-min.pdf

⁶² UN Office of the High Commission for Human Rights, Rule of Law Tools for Post-Conflict States, ohchr.org/sites/default/files/Documents/Publications/RuleofLawTruthCommissionsen.pdf p. 27: "the information collected by a truth commission may be useful to those investigating cases for prosecution, be it while the commission is still operating, immediately after its conclusion or many years later. Generally, a truth commission should be viewed as complementary to judicial action."

⁶³ These include truth commissions in the Gambia, Guatemala, Liberia, Timor Leste, and Tunisia. They all had possibility to recommend prosecutions and/or to refer cases for criminal prosecution.

⁶⁴ In July 2022, during the adoption of South Sudan's second Universal Periodic Review outcome report, South Sudan noted all four recommendations regarding ratification of the Rome Statute. Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review – South Sudan*, A/HRC/WG.6/40/L.10, 4 February 2022 and Human Rights Council, *Draft report of the Working Group on the Universal Periodic Review – South Sudan*, A/HRC/50/14/Add.1, 1 June 2022 recommendations 6.19 (Timor-Leste), 6.23 (Paraguay), 6.24 (Senegal), 6.31 (Costa Rica)

Domestic courts are not independent and impartial enough and lack the necessary capacity to deal with most crimes committed on mass scale and for which people in power are likely to be suspected. Many survivors or lawyers do not feel safe enough to go before these courts.⁶⁵

Moreover, there are indications that the commitment to establish the HCSS has made attempts to obtain justice before existing national courts more difficult. A high-level member of the SSPDF told Amnesty International in 2022 that military tribunals only respond to incidents of recent and ongoing crimes against civilians across the country as opposed to those committed in the earlier years of the conflict because “those fall under the jurisdiction of the HCSS”.⁶⁶ According to him, judicial actors may be reticent to deal with crimes which would hypothetically one day fall under the HCSS’s jurisdiction. Amnesty International is yet to verify this information with other sources but is concerned with such erroneous interpretation of the mandate and temporal jurisdiction of the HCSS. The temporal jurisdiction of the hybrid court will run from 15 December 2013 to the end of the Transitional Period (therefore covering crimes of both earlier years of the conflict as well as more recent crimes given the transitional period has not yet lapsed) and national courts remain competent alongside the HCSS.

The delay also constitutes an unacceptable wait for survivors and victims of the conflict and harms future access to justice. Long delays are challenging for collection and preservation of evidence of crimes for future judicial proceedings. Evidence will be lost, especially in a conflict context, with documents destroyed, witnesses displaced or killed, and crime scenes transformed. This is already likely the case in South Sudan where the conflict is in its ninth year.

3.4. A LITMUS TEST FOR REGIONAL SOLIDARITY

One principle on which the AU’s Transitional Justice Policy is anchored is African leadership. The policy details the AU’s strategic leadership and oversight role of transitional justice on the continent. Establishing the HCSS is a key test of the AU’s leadership in this regard. It is an opportunity for the AU to demonstrate African leadership on justice for the most serious crimes in Africa, a real commitment to the organization’s principles and to demonstrate that the AU stands with survivors and victims of crimes for which impunity cannot be tolerated.

South Sudan marks the first time that a peace agreement, negotiated in a conflict setting, includes a provision for the creation of an AU-led hybrid court. It is the first time that the AU is required by a peace agreement to establish a hybrid court, including as a measure to address ongoing conflict. It sets precedent for the AU to be entrusted with leading, rather than supporting, implementation of justice efforts. If the HCSS materializes, it leaves open AU-led hybrid courts as an option in future peace agreements on the continent, where the domestic judicial system is unwilling or unable to act – as opposed to UN-led hybrid courts or international courts. Conversely, if the HCSS is not established, peace mediators as well as African survivors and victims of grave human rights violations will have no other option than to turn to the UN or other stakeholders instead of an African-led solution for justice.

⁶⁵ Amnesty International, “Do you think we will prosecute ourselves?” *No Prospects for Accountability in South Sudan*, October 2019, Index Number: AFR 65/1105/2019, [amnesty.org/en/documents/afr65/1105/2019/en/](https://www.amnesty.org/en/documents/afr65/1105/2019/en/); Amnesty International, “If you don’t cooperate, I’ll gun you down”: *Conflict-related sexual violence and impunity in South Sudan* (Index Number: AFR 65/5569/2022), May 2022, [amnesty.org/en/documents/afr65/5569/2022/en/](https://www.amnesty.org/en/documents/afr65/5569/2022/en/)

⁶⁶ Interview with SSPDF member (name withheld for security reasons), 25 February 2022, Central Equatoria State. Note that Amnesty International opposes military courts having jurisdiction over crimes committed against civilians.

4. INERTIA ON THE HCSS IS NOT AN OPTION FOR THE AFRICAN UNION

4.1 CALLS FOR ACTION BY SOUTH SUDANESE CIVIL SOCIETY AND OTHERS

In 2014, the AU Commission of Inquiry on South Sudan acknowledged that: “What is indisputable is that the people of South Sudan feel aggrieved for historical wrongs for which they considered there had been no accountability and reconciliation, and which has exacerbated the pain of the current atrocities. The importance of accountability for this current round of conflict was a constant refrain.”⁶⁷

A 2015 study by the South Sudan Law Society and UN Development Programme also found that South Sudanese people surveyed overwhelmingly support criminal accountability. 93 percent of respondents said that individuals responsible for crimes under international law should be prosecuted in court.⁶⁸ National, regional and international civil society have amplified this in support of criminal accountability and the HCSS.⁶⁹

South Sudanese civil society and other observers are increasingly frustrated and disappointed by AU’s inaction. In 2020, in a letter to the AU, dozens of civil society organizations from South Sudan and beyond encouraged the AUPSC to “consider the stalled establishment of the HCSS and to direct the AU Commission to take unilateral action to enable the court’s creation immediately”. They highlighted that “delays in establishing the HCSS [...] prevent survivors and families of victims from seeking justice for themselves and their loved ones” and that “South Sudanese authorities should not be permitted to hold hostage the vital process to enable justice for victims of the conflict in South Sudan”.⁷⁰ The following year, in 2021, another letter from civil society groups to the AU stated: “the AU’s apparent inaction raises serious questions about the AU’s credibility not only in atrocity prevention in South Sudan, but across the African continent where many are looking to you for justice.”⁷¹

As a South Sudanese woman human rights defender recently told Amnesty International, “We are frustrated by the African Union as civil society. Their resolution on South Sudan⁷² [includes] nothing on transitional justice process – a deliberate focus on political developments rather than what will fix South Sudan. But people want this process, they want to speak.”⁷³

4.2 THE AFRICAN UNION SHOULD NOT WAIT LONGER TO ACT

It has been more than seven years since the first peace deal was signed and with it a commitment made to set up the HCSS. The establishment of this court should not have been delayed for so long. Justice takes time, the road ahead is long and there is no excuse not to start the process. Now is the time for long awaited and bold action from the AU. The AU must not hide behind South Sudan’s failure to comprehensively implement Chapter V of the peace deals to justify its own failure to implement it. The 2015 and 2018 peace agreements provide that: “There shall be established an

⁶⁷ AUCISS, Final report, 15 October 2014, para. 1140

⁶⁸ South Sudan Law Society, “Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan”, June 2015, undp.org/south-sudan/publications/perception-survey-truth-justice-reconciliation-and-healing-south-sudan

⁶⁹ Letter to the AU Peace and Security Council regarding session on South Sudan, 16 July 2020, [amnesty.org/en/documents/afr65/2744/2020/en/](https://www.amnesty.org/en/documents/afr65/2744/2020/en/); Letter to AU Commission Chairperson on South Sudan from Civil Society Organizations (Index Number: AFR 65/5780/2021), June 2021, [amnesty.org/en/documents/afr65/5780/2021/en/](https://www.amnesty.org/en/documents/afr65/5780/2021/en/)

⁷⁰ Letter to the AU Peace and Security Council regarding session on South Sudan, 16 July 2020, [amnesty.org/en/documents/afr65/2744/2020/en/](https://www.amnesty.org/en/documents/afr65/2744/2020/en/)

⁷¹ Letter to AU Commission Chairperson on South Sudan from Civil Society Organizations (Index Number: AFR 65/5780/2021), June 2021, [amnesty.org/en/documents/afr65/5780/2021/en/](https://www.amnesty.org/en/documents/afr65/5780/2021/en/)

⁷² AUPSC, Communique of the 1060th meeting held on 25 January 2022 on the situation in South Sudan, [eng-com-of-the-1060th-psc-meeting-on-south-sudan-25-january-2022.pdf](https://www.eng-com-of-the-1060th-psc-meeting-on-south-sudan-25-january-2022.pdf)

⁷³ Interview in person with South Sudanese woman human rights defender (name withheld for security reasons), 24 February 2022, Central Equatoria State.

independent hybrid judicial court, the Hybrid Court for South Sudan (HCSS). The Court shall be established by the African Union Commission”.⁷⁴

In addition, the AU, through its Peace and Security Council (PSC), has the power to unilaterally establish a tribunal through a communiqué of the PSC to which the statute of the tribunal would be annexed. Under Article 7(b) of the PSC Protocol the PSC can “undertake peace-making and peace-building functions to resolve conflicts where they have occurred”, in line with the AU’s objective and function of peace-building and the prevention of the resurgence of violence in conflict countries as defined under Articles 3(c) ad 6(e) of the PSC Protocol. Article 8(5) of the PSC Protocol also provides that the PSC “may establish such subsidiary bodies as it deems necessary for the performance of its functions.” The tribunal could be created as a subsidiary body of the PSC within the meaning of this article, albeit with all the attributes of a judicial body, including independence and autonomy.

In conclusion, Amnesty International believes that the PSC may unilaterally establish a tribunal for South Sudan pursuant to its obligation to implement the peace agreements and in exercise of its power relating to implementation of peace-building measures and prevention of the resurgence of violence in South Sudan.

4.3 RECOMMENDATIONS ON IMMEDIATE CONCRETE STEPS

To do so, the AU Commission should prioritize the following actions:

FINALISATION, ADOPTION AND PUBLICATION OF THE COURT’S STATUTE

A draft Statute for the HCSS was elaborated in 2016 and reviewed again by experts late 2019. This should be finalized, adopted and made publicly available by the AU Commission without further delay. The HCSS Statute must confirm that the mandate of the Court is to investigate and prosecute individuals suspected of genocide, crimes against humanity, war crimes or other serious crimes under international law committed from 15 December 2013 through the end of the Transitional Period in accordance with Chapter V articles 5.3.1.1 and 5.3.2.1 of the 2018 R-ARCSS.

It should also guarantee the independence of the HCSS, that the Court’s jurisdiction has supremacy over national courts and that the Court cannot be impeded or constrained by any statutes of limitations or the granting of pardons, immunities or amnesties by South Sudanese authorities or any other authority. The Statute’s provisions should comply in full with Chapter V article 5 of the 2018 peace deal.

The Court’s Statute and/or the Court’s future Rules may also address the question of relationships and complementarity between the HCSS and both the Commission for Truth, Reconciliation and Healing (CTRH) and the Compensation and Reparations Authority (CRA), the two other mechanisms that need to be established under Chapter V of the peace agreements. For instance, the Court’s key documents could create processes that would allow the CTRH to refer cases or transfer evidence to the HCSS.

Finally, the Court Statute should provide for a robust outreach department within the Registry of the HCSS to ensure that the South Sudanese people can access and are able to understand and follow proceedings before the HCSS, especially as the Court would most likely be located outside of the country.

The accessibility of the HCSS for South Sudanese people and the legacy of the HCSS in South Sudan must be explicitly ensured in the Court’s Statute. This may include provisions with regards to representation of South Sudanese people within the Court’s staff, training opportunities for South

⁷⁴ Article 3.1.1 of the 2015 peace agreement; article 5.1.1 of the 2018 peace agreement

Sudanese staff, transfer of infrastructure, evidence, and archives to the South Sudanese justice system during or at the end of the HCSS's mandate, and/or other measures aimed at reforming and strengthening the domestic justice system through the HCSS. It may also include the possibility for the Court to organize/participate in trainings or discussions with South Sudanese political leaders and justice sector staff to sensitize on issues related to fair trial rights, victim and witness protection, investigation and prosecution of crimes under international law, reform of South Sudanese criminal law and procedure, and applicability of HCSS jurisprudence in South Sudan.

DECISION ON THE LOCATION OF THE HCSS'S SEAT

The Chairperson of the African Union Commission is already mandated to decide the seat of the HCSS, as provided under Chapter V article 5.3.1.3. As such, the AU Commission or any other relevant body within the AU should re-start discussions with potential host States without further delay, to identify the location of the seat of the HCSS.

This decision must be based on an evaluation of available hosting offers, security and safety, distance from South Sudan, infrastructure needs and opportunities, guarantees for independence and impartiality of the Court, costs, and other related issues.

Geographical distance to/from South Sudan should be considered to facilitate investigations and prosecution (travels to crime sites, travels of witnesses called to testify, etc) and the work of lawyers of both victims and accused persons. More importantly, the location of the HCSS is a crucial component of access to and appropriation of justice. The designers of the Court must have at heart that South Sudanese people will be able to follow the proceedings and see and feel that justice is being done for them, or the Court will not have the impact it intends to have.

Given the government of South Sudan's overt unwillingness to bring perpetrators to court, Amnesty International believes that the HCSS should not be located in South Sudan for the time being. The Court must be located in another African state, but its statute should provide for the option to hold hearings in South Sudan or re-locate the Court to South Sudan in the future as and when the situation on the ground becomes possible.

RECRUITMENT OF HCSS ESSENTIAL STAFF

To not further delay justice processes, the AU Commission should identify key staff that need to be recruited as soon as possible, to start working remotely before the Court is fully established.

These early recruitments must include people in charge of investigations - collection and preservation of evidence is a top priority to ensure future judicial proceedings. There will be no effective prosecution if evidence is not solid or sufficient to demonstrate the commission of crimes or the responsibility of individuals for these crimes.

Early recruitments must also include victim and witness protection experts to ensure the security and safety of anyone who comes forward to assist the Court's investigations, as well as outreach staff so that people are informed about the Court's mandate and its ongoing work from the very start, when they may contribute to investigations. This is crucial both for the success of judicial proceedings and for the people of South Sudan to build trust and confidence in the Court and, in turn, in the fact that they can obtain justice.

In line with the HCSS's goal to leave a positive legacy on the South Sudanese justice system, and provided their security can be ensured, essential staff recruited from early on must include South Sudanese people. The long-term impact of the HCSS in South Sudan must be taken into account at all stages of the implementation of the HCSS mandate.

JOINT CIVIL SOCIETY LETTERS TO THE AFRICAN UNION RE HCSS SINCE AUGUST 2015

1. Letter to the AU Commission Chairperson (9 June 2021)

Letter to AU Commission Chairperson on South Sudan from Civil Society Organizations

AI Index Number: AFR 65/5780/2021
H.E. Moussa Faki Mahamat Chairperson
African Union (AU) Commission Addis Ababa, Ethiopia
June 9, 2021

Re: Accountability Mechanisms in South Sudan
Dear Chairperson:

We write to express our deep concern over the slow progress in establishing accountability mechanisms in South Sudan, including the Hybrid Court for South Sudan.

Your statement following the January 29, 2021 announcement of the Government of South Sudan's approval for the establishment of this court and other accountability mechanisms provided for under the Revitalized Agreement for Resolving the Conflict in South Sudan (R- ARCISS) was welcome and gave hope to South Sudanese that justice, at last, was going to be served. The statement also confirmed that the AU leadership considers justice and accountability as key elements in stabilizing the country.

AU leadership on South Sudan matters:

- Before and after independence, South Sudan has experienced a long and bloody conflict where people have suffered brutal human rights violations and abuses;
- South Sudan, as Africa's youngest state, has benefitted greatly from AU support for the country's development at the highest level, through eminent personalities such as former presidents Olusegun Obasanjo and Thabo Mbeki; and
- The AU took the lead on advancing accountability in South Sudan, as embodied by its decision to create the AU Commission of Inquiry on South Sudan, which recommended a hybrid court to bring justice for crimes under international law.

Since your statement, however, it appears to us that no further concrete steps by the AU have been taken. We understand the South Sudanese Ministry of Justice and Constitutional Affairs requested to meet with the AU Office of Legal Counsel (OLC), which has been the AU Commission's lead on the Court's establishment, in November to discuss the court. The meeting was scheduled for December, but the OLC postponed it. The meeting was supposed to be rescheduled for late March or April, but to the best of our knowledge the meeting has yet to be rescheduled. South Sudanese officials have indicated to civil society that they are waiting on the AU to discuss the court's establishment.

We also note that civil society organizations, especially local groups, have also faced challenges in connecting with the OLC on South Sudan, which has led to a lack of clear understanding and knowledge by organizations concerning the status of efforts to establish the Hybrid Court for South Sudan.

The people of South Sudan have waited more than seven years for accountability for widespread, and horrific crimes committed in their country. They entrusted the AU to ensure that justice is delivered and contributes to ending the culture of impunity. Meanwhile, the lack of justice is fueling new abuses and threatens the prospects for long-term security. We are concerned that the continued absence of credible judicial proceedings to hold perpetrators to account will foster further revenge attacks by

individuals and communities that will plunge the country into additional cycles of violence and human rights violations.

The AU's apparent inaction raises serious questions about the AU's credibility not only in atrocity prevention in South Sudan, but across the African continent where many are looking to you for justice. The current paralysis undermines the notion of African solutions to African problems, and risks signaling that the AU is unable and unwilling to exert leadership where it matters most for the people whom the AU represents. The inaction also risks demonstrating the AU's failure to implement its own Transitional Justice Policy. The adoption of the AU Transitional Justice Policy will be meaningless if the AU does not act when it has taken on a lead role in advancing accountability, as it did in South Sudan.

We the undersigned South Sudanese, African, and international organizations with a presence and, in some cases, a membership in Africa reiterate that it is incumbent on the AU Commission, and particularly the OLC, to take immediate action to show that it remains committed to the inherent right of the people of South Sudan to have justice. To that end, we urge you to:

- Immediately establish the Hybrid Court for South Sudan;
- Operationalize the court's investigative capacity as a particular priority to collect and preserve evidence; and
- Provide a public update on the status of the court's operationalization with a clear timeline.

The victims and survivors of serious crimes committed during South Sudan's conflict deserve no less.

Sincerely,

African Centre for Justice and Peace Studies (ACJPS); Africa Center for International Law and Accountability (ACILA) Africa Legal Aid (AFLA); Amnesty International; Assistance Mission for Africa (AMA) – South Sudan Center for Peace and Advocacy (CPA) – South; Sudan Centre for Accountability and Rule of Law – Sierra Leone; Civil Society Coalition on Defense of Civic Space – South Sudan Civil Society Human Rights; Advocacy Platform of Liberia; Community Empowerment for Progress Organization (CEPO) – South Sudan Crown The Woman – South Sudan ; Dialogue and Research Institute – South Sudan; Forum for Peace and Unity – South Sudan; Foundation for Democracy and Accountable Governance (FODAG) – South Sudan Human Rights Watch; Human Rights Concern Eritrea International Commission of Jurists (ICJ) INTREPID South Sudan; Legal Action Worldwide Nigerian Coalition for the ICC; Organization for Responsive Governance (ORG) – South Sudan Pan African Lawyers Union (PALU); Parliamentarians for Global Action (PGA); Solidarity Ministries Africa for Reconciliation & Development (SMARD) – South Sudan Southern; African Centre for the Constructive Resolution of Disputes (SACCORD) Southern Africa Litigation Centre (SALC); South Sudan Civil Society Forum (SSCSF); South Sudan Human Rights Defenders Network (SSHRDN) South Sudan Law Society (SSLS); South Sudan Women Empowerment Network (SSWEN) South Sudan Youth Transitional Justice Academy; South Sudan Centre for Inclusive Governance, Peace and Justice (CIGPJ) Transitional Justice; Working Group (TJWG) – South Sudan; Victim Advocates International

cc:

H.E. President Felix-Antoine Tshisekedi Tshilombo, Chairman of the African Union Hon. Dr. Peter Mutuku Mathuki, Secretary General of the East African Community; H.E. Dr. Workneh Gebeyehu, Executive Secretary of the Intergovernmental Authority on Development; H.E. Amb. Bankole Adeoye, AU Commissioner for Political Affairs & Peace and Security Hon. Dr.; Solomon Derso, Chairperson of the African Commission on Human and Peoples' Rights; H.E. Amb. James Pitia Morgan, South Sudan Ambassador to Ethiopia; H.E. Amb. Joram Biswaro, Special Representative of the Chairperson of the AU Commission for South Sudan; H.E. Amb. Dr. Namira Negm, AU Legal Counsel

2. Letter to the AU Peace and Security Council (16 July 2020)

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).

3. Letter to the AU Commission Chairperson (23 September 2015)

TIGO IOR 63/2015.049

September 23, 2015

H.E. Dr. Nkosazana Dlamini Zuma
Chairperson, African Union Commission
Addis Ababa, Ethiopia
CC: Members of the Peace and Security Council
CC: Members of the African Commission on Human and Peoples' Rights

Your Excellency,

We write as a group of South Sudanese and international non-governmental organizations to encourage you to take advantage of the African Union Peace and Security Council meeting on South Sudan scheduled for September 26, 2015 in New York to express your commitment to establish the Hybrid Court for South Sudan and to help ensure publication of the report of the African Union Commission of Inquiry on South Sudan (AUCISS) without delay. These actions would make clear the African Union Commission's commitment to justice and to South Sudanese victims of crimes under international law in a conflict that has devastated millions of lives.

As you are aware, the Agreement on the Resolution of the Conflict in the Republic of South Sudan, signed by South Sudan's government on August 26, 2015 and the Sudan People's Liberation Army-in Opposition on August 17, 2015, provides for a Hybrid Court for South Sudan to be established by the African Union Commission as well as a Truth, Reconciliation and Healing Commission and a Compensation and Reparations Authority.

A credible, independent, hybrid court to try crimes under international law committed during the conflict and that meets internationally accepted standards of fairness and impartiality has the potential to provide an essential contribution for South Sudanese looking for sustainable peace following a war that has destroyed civilian towns and villages, killed thousands of civilians, displaced over 2 million people and plunged much of the country into humanitarian crisis. Investigations into these crimes and the identification of perpetrators should start now before further evidence is lost or disappears.

Experience has shown the failure to address past crimes has fueled renewed abuse. Lasting stability, national healing and opportunity for South Sudanese looking to build a human rights-respecting state will require that crimes committed are addressed. Swift and robust support from the AU and others is crucial for these hopes to become reality.

Publication of the report of the AUCISS report remains of great importance. Both the Government of the Republic of South Sudan (GRSS) and the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) were provided with copies of the report, but the victims of human rights violations, many of whom provided information to the AUCISS at great personal risk, are left with no information about its findings and recommendations. Publication of the report may also prove important to future investigators. The AU took a significant step in creating this commission, and international and local partners continue to eagerly await publication of the commission's report in order to consider its contents.

Sincerely,

Amnesty International; Affirmative Action Initiative for Women (Nigeria); Arab Coalition for Sudan (Egypt); Assistance Mission for Africa (South Sudan); Centre for Livelihood, Research and Poverty Reduction (South Sudan); Citizens for Peace and Justice (South Sudan); Civil Resource Development and Documentation Center (Nigeria); Club des Amis de Droit du Congo (DRC); Coalition for the International Criminal Court (Benin); Coalition of Eastern NGOs (Nigeria); Community Empowerment for Progress Organization (South Sudan); Darfur Relief and Documentation Centre (Switzerland); Dialogue and Research Initiative (South Sudan); East and Horn of Africa Human Rights Defenders Project (Uganda); End Impunity Organization (South Sudan); The Enough Project (USA); Fédération internationale des ligues des droits de l'Homme (FIDH); Humanity United (USA); Human Rights Development Organization (South Sudan); Human Rights Watch (USA); International Justice Project (USA); International Centre for Policy and Conflict (Kenya); Jewish World Watch (USA); People4Sudan (Switzerland); South Sudan Action Network on Small Arms (South Sudan); South Sudan Human Rights Society for Advocacy (South Sudan); South Sudan Law Society (South Sudan); South Sudanese Network for Democracy and Elections (South Sudan); South Sudan Network for Democracy and Elections (South Sudan); Soweto Community-Based Organization (South Sudan); Standard Action Liaison Focus (South Sudan); The Strategic Initiative for Women in the Horn of Africa (Uganda); Sudan Advocacy Action Forum (Sudan); Sudan Social Development Organization (United Kingdom); Support Peace Initiative Development Organization (South Sudan); United to End Genocide (USA); Voice for Change (South Sudan); Zorga Organization for Rural Development (Sudan).

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We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and individual donations. We believe that acting in solidarity and compassion with people everywhere can change our societies for the better.

The Transitional Justice Working Group (TJWG) is a coalition of South Sudanese civil society organisations that work together to advocate for transitional justice; ensure a strengthened civil society voice in the debates around the design and implementation of transitional justice processes; and co-ordinate a complementary civil society role within those processes, including through the promotion of human rights.

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