



**To: Permanent Representatives of Members of the Human Rights Council and Observer States**

**Geneva, 15 September 2014**

A panel discussion on South Sudan is scheduled to take place on 24 September 2014 during the 27<sup>th</sup> session of the UN Human Rights Council (HRC).

We hope that Council members and observer states will take the opportunity provided by the panel discussion to assess the efforts by the Government of South Sudan, the African Union Commission of Inquiry on South Sudan (AUCISS), the UN Mission in South Sudan (UNMISS), and the Intergovernmental Authority on Development (IGAD) to document and investigate human rights and humanitarian law violations and abuses, to identify those responsible, and to establish independent and credible judicial mechanisms, which meet international standards, to ensure accountability.

Amnesty International, Community Empowerment for Progress Organization, Human Rights Watch and the South Sudan Law Society have prepared this briefing to share key human rights concerns and recommendations with Council members prior to the convening of the panel.

The panel provides an important opportunity for the Council to emphasise that fair and credible investigations and prosecutions of crimes under international law are essential for South Sudan to break a cycle of brutality fuelled by impunity. The Council should highlight that because of the limited capacity and independence of South Sudan's judicial system, which has been noted on multiple occasions by the Office of the High Commissioner for Human Rights (OHCHR), a purely domestic initiative to try serious crimes is not viable.<sup>1</sup> The Council should therefore urge South Sudan to commit to investigation and prosecution of all crimes under international law with necessary international participation and expertise, and to this end to consider establishing a hybrid judicial mechanism. The Council should further urge South Sudan to both accede to the Rome Statute and to consider making a declaration under article 12 (3) of the Statute granting the ICC jurisdiction over crimes that have occurred during the conflict. Such steps would ensure the prosecution of crimes under international law and particularly that those most responsible do not enjoy impunity. HRC members should also use this opportunity to clearly state that any peace agreement must exclude amnesties for perpetrators of crimes under international law. Finally, members should reiterate their calls for UNMISS to report publicly and regularly on the human rights situation in South Sudan.

Council members should support the establishment of a special rapporteur for South Sudan. A special rapporteur could serve as a liaison for the Human Rights Council and UNMISS, IGAD, and the AUCISS, even ahead of the publication of the AUCISS report; could eventually help rally international support for implementation of AUCISS recommendations; and could help promote fair and credible prosecutions and broader accountability measures, with support by the international community.

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<sup>1</sup> The June 2013 report of the High Commissioner for Human Rights on technical assistance and capacity building in South Sudan described the justice system as "weak and ineffective" and noted the shortage of qualified judges and lawyers, poor infrastructure, the absence of legal aid including for individuals who are sentenced to death, and frequent prolonged and arbitrary detention. See Report of the UN High Commissioner for Human Rights, Progress of technical assistance and capacity building for South Sudan in the field of human rights, 4 June 2013, A/HRC/23/31, paras. 23-26. The May 2015 UNMISS report recommended that national processes be complemented by international assistance through a special or hybrid court and that consideration be given to international assistance to pursue serious and independent investigations. See UNMISS, Conflict in South Sudan: A Human Rights Report, 8 May 2014, para. 312. Secretary General Ban Ki Moon reiterated this recommendation in a May briefing to the Security Council, saying that "A special or hybrid tribunal with international involvement should be considered." <http://www.un.org/sg/statements/index.asp?nid=7666>, 12 May 2014.

### **The Government of South Sudan**

Since the outbreak of violence in Juba in mid December 2013, the Government of South Sudan has not demonstrated the will to conduct credible and independent investigations with a view to prosecuting and holding accountable persons suspected of crimes under international law and serious violations of human rights. Though multiple government investigations were initiated, none have led to the release of a public report or prosecutions.

A presidential investigation committee mandated 'to investigate on human rights abuses in the attempted coup of 15<sup>th</sup> December, 2013' was established by presidential order on 24 January and given an initial 45 day-mandate, which has since been renewed.<sup>2</sup> The committee's eight members were selected by the office of President Salva Kiir, its activities are also funded by the presidency, and it reports directly to the president. Due to this body's apparent lack of independence, and because there are no mechanisms for victim and witness protection, many victims are reluctant to contribute information to this committee. The committee has also refused to cooperate with the AUCISS, though its terms of reference require such cooperation. No report, or update on its findings, has been made public. As such, though the work of the committee is ongoing, it cannot be considered to fulfil the government's obligation to conduct impartial, independent and transparent investigations and has so far not contributed to ensuring accountability.

Further, the investigations previously initiated by the military and police were suspended following President Kiir's establishment of this committee.

Therefore, the Council members and observer states should ask the Government of South Sudan to:

- Indicate what steps it has taken to ensure accountability for crimes under international law and serious violations and abuses of international human rights law committed during the conflict;
- Consider the establishment of a hybrid justice mechanism, which would have South Sudanese and international judges, prosecutors, and investigators working together to try the most serious crimes;
- Accede to the Rome Statute and consider making a declaration under article 12 (3) of the Statute granting the ICC jurisdiction over crimes that have occurred during the conflict;
- Indicate what steps are being taken to reform and build capacity within the justice system;
- Provide an update on the work of the investigation committee established by President Kiir, including how the body will fulfil its mandate to support AUCISS investigations; and
- Clarify the progress of promised investigations, including into the killings that occurred in Juba during the first days of the conflict, the attack on the UN base in Bor, Jonglei State on 17 April 2014, the killing of five humanitarian workers in Maban County in early August, and the shooting down of a UN helicopter on 26 August 2014.

### **The UN Mission in South Sudan**

The mandate of UNMISS was revised by Security Council Resolution 2155 in May 2014 to increase the focus of the mission on the protection of civilians, human rights reporting, and the facilitation of humanitarian access. Previously, in March 2014, the Human Rights Council had also encouraged UNMISS to carry out regular public reporting on the human rights situation in the country.<sup>3</sup> UNMISS has a large team of human rights monitors that have already produced two important reports that should lay the foundation for further and regular public reporting. The Human Rights Division has not produced any public reporting since May.

There are now over 95,000 people sheltered on UN bases across the country, where they face persistent security risks. Given that the conflict is ongoing, many civilians outside of the UN bases are also in need of protection. There are persistent and serious concerns of ongoing international humanitarian law and human rights violations and abuses.

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<sup>2</sup> The Republican Order No. 06/2014 for the Formation of Investigation Committee to Investigate on Human Rights Abuses in the Attempted Coup of 15<sup>th</sup> December 2013, A.D., 24 January 2014.

<sup>3</sup> UN Human Rights Council : Situation of human rights in South Sudan (PRST 25/2), 28 March 2014

The Council members and observer states should:

- Inquire what steps UNMISS is taking to ensure the mission monitors, investigates and publicly and regularly reports on the human rights situation, as required by the revised mandate;
- Call on UNMISS to issue detailed public reports on the 19 December attack on the UN base in Akobo, the 17 March attack on the UN base in Bor, the killings of five humanitarian workers on 4 and 5 August, and the 26 August shooting down of a UN helicopter. These reports should assess the actions of peacekeepers as well as the steps the government is taking to protect civilians and to conduct its own investigations;
- Call on UNMISS to establish a database identifying those allegedly responsible for crimes under international law and serious violations of international human rights for use in future vetting processes; and
- Ask for an update on what steps UNMISS has taken to use their new mandate to protect civilians under threat of harm both inside but also around UN bases and in towns where peacekeepers have a presence.

### **The AU Commission of Inquiry**

The African Union Peace and Security Council called for the establishment of the Commission of Inquiry on South Sudan on 30 December 2013, with the mandate “to investigate the human rights violations and other abuses committed during the armed conflict in South Sudan and make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities.” The AUCISS was slow to be formed and to begin work, and its members have spent limited amounts of time in South Sudan and very few days in the conflict-affected areas. Six investigators, including forensic experts, arrived in South Sudan only in late August.

In a June interim report, the AUCISS said it was “not yet in a position to pronounce itself definitively on whether [allegations of human rights and humanitarian law violations] amount to international crimes.” We remain concerned about whether the Commission has been adequately staffed and whether investigators have spent enough time in South Sudan to be able to identify perpetrators with a view to ensuring accountability for those responsible.

The Council members and observer states should:

- Call on the AUCISS to ensure the adequacy of its staffing and financial resources, and ask whether any additional support is required from OHCHR or from the international community generally;
- Ask the AUCISS about the level of cooperation it has received from both the Government and the SPLM-In Opposition and how implementation of its recommendations will be monitored after its mandate ends; and
- Emphasize to the AUCISS the need for prompt, independent and credible investigations and prosecutions of crimes allegedly committed during the conflict, including crimes under international law, and for trials of alleged perpetrators that meet international standards as a critical step towards ending impunity in South Sudan.

### **The Intergovernmental Authority on Development (IGAD)**

Progress in the IGAD-led peace process for South Sudan taking place in Addis Ababa has been slow since its inception on 6 January 2014. Both the government and opposition have several times refused to attend negotiations and have failed to respect or implement agreements signed, including a 23 January Cessation of Hostilities Agreement.

An IGAD Monitoring and Verification Mechanism (MVM) is in place to monitor the Cessation of Hostilities Agreement, but teams do not include sufficient specialists in international human rights and humanitarian law to assess the parties’ respect for stipulations in the Cessation of Hostilities agreement banning attacks on civilians and civilian property and requiring respect for international law. For example, the MVM teams do not have adequate staffing to investigate or report on incidents of sexual violence. Some initial public reporting by IGAD of cessation of hostilities violations in August 2014 was welcome and should be followed by comprehensive public reporting on investigations into abuses by both sides.

We were encouraged to see that leaders from IGAD member states, together with the South Sudan government, signed a “Protocol on Agreed Principles on Transitional Arrangements towards Resolution of

the Crisis in South Sudan” in late August that includes a commitment that individuals named as responsible for war crimes by the AUCISS will be excluded from any transitional government or forced to resign. The signatories also committed to a national reconciliation process and to the establishment of an ‘independent’ judicial body to investigate and prosecute those responsible for violations of international humanitarian law.

The Council members and observer states should:

- Ask what steps are being taken by IGAD to enhance the capacity of the MVM to monitor violations of international humanitarian and human rights law, particularly obstruction of humanitarian access and attacks on civilians including sexual and gender-based violence;
- Call on IGAD to increase public and timely reporting following MVM investigations, particularly on evidence of international humanitarian and human rights law violations or abuses;
- Call on IGAD to continuously emphasise to the parties that amnesties for serious crimes need to be excluded from any peace agreement and to insist that the parties commit to trials of the most serious crimes with international participation and expertise; and
- Call on IGAD to sustain its support for the establishment of an independent judicial body to try alleged crimes under international law and to ensure that accountability measures that meet international standards are included in any final peace agreement.

### **The South Sudan Human Rights Commission**

The South Sudan Human Rights Commission (SSHRC) is the primary government body mandated to monitor, document and report on human rights. It issued its first report on violations related to the current conflict on 15 March 2014. The 13-page report is based largely on secondary information as human rights monitors were unable to conduct field investigations in Unity, Jonglei or Upper Nile states but did include some reporting by the body following investigations in Juba.

The report did however recommend that the government strengthen protection measures; expedite investigations and prosecutions; stop its forces from violating human rights; and allow humanitarian access to affected populations. It requests the government to empower and support the SSHRC to carry out its mandate more effectively, including through fully funding the body. The report also calls on armed opposition groups to respect human rights, refrain from killing civilians and cease destruction and looting.

The Council Members and observer states should:

- Inquire into the challenges faced by the SSHRC and the reasons for the limited nature of the its reporting; and
- Call on the Government of South Sudan to cooperate with and strengthen the SSHRC, including by making available the necessary financial support.