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30 May 2014

IGAD Special Envoy and Chairman of the Mediation Team
Ambassador Seyoum Mesfin

IGAD Special Envoy General Lazarus Sumbeiywo

IGAD Special Envoy General Mohammed Ahmed Moustafa El Dabi

Dear Honorable Special Envoys,

Human Rights Watch is an independent, international human rights organization that conducts research on human rights situation in more than 90 countries globally. We have worked in the east African region including Sudan for over two decades, and have closely monitored the recent developments in South Sudan.

We have followed with great interest the work of the Intergovernmental Authority on Development (IGAD) mediating between the two parties. We understand talks are currently in recess until early June. We would like to take this opportunity to raise several issues concerning the horrific attacks on civilians that have taken place during this conflict.

The first is the importance of supporting justice – and excluding amnesty – for serious crimes committed in violation of international law. As has often been the case in the South Sudan context in the past, the parties to the conflict may propose a peace deal that provides for amnesty.

Human Rights Watch research during the crisis has found that forces from both sides have been responsible for serious violations of international human rights and international humanitarian law. Targeting of civilians, often because of their ethnicity and including in gruesome massacres, has been widespread. Forces on both sides have also committed massive looting and destruction of civilian property, including many medical and humanitarian facilities that enjoy protection from attack under international law, and which people need to survive.

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We appreciate that leaders of IGAD countries and the secretariat have expressed a strong commitment to ensuring a lasting peace in South Sudan. We have seen that the absence of accountability has fuelled many decades of brutal violence in South Sudan, and it has further destabilized the region. Even in the context of the current crisis, the lack of accountability continues to drive the conflict, with many attacks carried out in reprisal for prior attacks based on ethnicity.

International law is clear that serious crimes committed in violation of international law should be fairly prosecuted, which is well reflected in the UN's Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity (E/CN.4/2005/102/Add.1, principle 19), the International Covenant on Civil and Political Rights (ICCPR) (A/6316, art. 2(3)), and Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (G.A. Res. 60/147, parts VII and VIII).

The Convention against Torture and the Geneva Conventions, all of which South Sudan's parliament has ratified, expressly call for fair prosecutions of serious crimes.

A bar on amnesties for serious crimes as part of peace agreements is expressly addressed by the updated UN principles on combating impunity which state: "Even when intended to establish conditions conducive to a peace agreement or to foster national reconciliation, amnesty and other measures of clemency" should not extend to serious crimes (E/CN.4/2005/102/Add.1, principle 24).

The UN secretary-general's seminal 2004 report on transitional justice similarly notes that peace agreements should "[r]eject any endorsement of amnesty for genocide, war crimes, or crimes against humanity" (S/2004/616, para. 64(c)). Consistent with this approach, when the 1999 Lomé Peace Accord on the Sierra Leone conflict was negotiated, the UN special representative attached a reservation to the agreement indicating that the amnesty provisions would not be applicable to genocide, crimes against humanity, war crimes, and other serious violations of international humanitarian law.

The African Commission on Human and Peoples' Rights' Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa states that "the granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy" (DOC/OS(XXX)247, art. C (d)).

Experience by Human Rights Watch over the past 20 years in many different countries also suggests that the impact of justice is too often undervalued when weighing objectives in resolving an armed conflict.

Prosecutions send the message, especially to would-be perpetrators, that no one is above the law. Making provision for and underscoring the importance of the rule of law helps cement peace and stability, in addition to giving redress to victims.

The mediators thus can provide an essential contribution and ensure the credibility of any agreement achieved to end the conflict by ensuring that the parties not only exclude any amnesty for serious crimes, but that they support criminal investigation and prosecution in accordance with international standards, in addition to broader accountability measures such as truth telling.

The African Union's Commission of Inquiry, the United Nations Mission in South Sudan's human rights reporting, and various international and national non-governmental organizations have already provided or are planning to offer recommendations on how South Sudan might achieve justice. Whether before national courts, a hybrid approach combining national and international elements, or an international court, trials for serious crimes committed in violation of international law should meet the following benchmarks, which are effectively the same standards that should apply for the trial of any person brought to justice for a serious criminal offense, namely: credible, independent and impartial investigation and prosecution; rigorous implementation of internationally recognized standards of fair trial; and penalties on conviction that are appropriate and reflect the gravity of the crime. (See UN updated principles, principle 19; ICCPR, arts. 7 and 14).

While mediators and the parties work toward a clear vision of how justice will be implemented, IGAD can also play an important role in minimizing the human rights abuses that occur during this conflict, through timely and ideally public reporting. IGAD should make sure that the monitoring and verification mechanism set up to monitor violations of the January 23, 2014, cessation of hostilities agreement, report not only the time and place of conflicts, but also provide details on the types of attacks and civilian damage caused, as well as human rights abuses. The cessation of hostilities agreement specifically mandates the teams to do this.

These reports should be shared with the UN Mission in South Sudan Human Rights Division and with the African Union Commission of Inquiry in a timely manner.

IGAD monitors should be sufficiently resourced and staffed, with technical and logistic capacity to do the job. The team should include civilian monitors who are experts in the laws of war, experts in violence against women, and experts in South Sudan, for example. They need to develop and maintain connections to communities, possibly through South Sudanese nongovernmental groups so that South Sudanese and internationals working in conflict areas can report violations to them safely.

We would welcome the opportunity to discuss this further with you or your staff. I can be reached at bekeled@hrw.org.

Sincerely,

A handwritten signature in black ink that reads "Daniel Bekele". The signature is written in a cursive, flowing style.

Daniel Bekele
Director, Africa Division

CC:

European Special Representative to the Horn of Africa, Mr. Alexander Rondos

Norwegian Special Envoy for Sudan and South Sudan, Ambassador Jens-Petter Kjemprud

UK Envoy to the South Sudan Peace Talks, Ambassador Tim Morris

US Special Envoy to Sudan and South Sudan, Ambassador Donald Booth