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**Transmitted via E-mail**

**Re: Proposed meeting between South Sudan and African Union representatives to address Hybrid Court for South Sudan**

Your excellencies,

Please accept my regards on behalf of Human Rights Watch, an independent, nongovernmental organization that monitors human rights developments in more than 90 countries around the world. We have documented human rights violations throughout the Sudans for more than 20 years and have reported on human rights concerns in South Sudan since its independence.

We write to you because we believe that you have, through the "revitalized" peace agreement, committed to ensuring accountability for the grave human rights abuses committed in South Sudan's armed conflict.

Human Rights Watch staff met with representatives of South Sudan's government, the African Union, United Nations, diplomats, other regional and civil society interlocutors in Juba, South Sudan and Addis Ababa in August and September 2019. The discussions revealed a lack of shared understanding between the government and AU as to the status of the establishment of the Hybrid Court for South Sudan (HCSS) and next steps to operationalize the court.

With the deadline for establishing the Revitalized Transitional Government of National Unity (R-TGoNU) approaching, we believe a meeting with representatives of the government, opposition figures, the AU Commission and the AU Ad-hoc

High-Level Committee for South Sudan is urgently needed to clarify the situation and chart a course forward, with the support of South Sudan's regional and international partners. The meeting is important to reinforce a commitment to justice and support victims of atrocities during the conflict.

As the AU Peace and Security Council is scheduled to hold a session on South Sudan on October 23 and 24, 2019, we urge the AU through its relevant organs to seize this opportunity to hold a meeting on the HCSS in the margins of this session.

### **Lack of shared understanding**

Some government officials we met with in Juba in August indicated that no action on the HCSS is possible until the R-TGoNU is formed (currently scheduled for November 12). This is based on the implementation matrix annexed to the "revitalized" peace agreement, which provides that legislation establishing the HCSS and other transitional justice mechanisms will be enacted within three months of the formation of the R-TGoNU. Some representatives from the Joint Monitoring and Evaluation Commission (JMEC) and other regional partners echoed this sentiment.

At the same time, individuals within the government, policy analysts, civil society activists, and AU officials indicated that important preparatory steps can and should be taken ahead of the R-TGoNU's formation. This includes signing the Memorandum of Understanding (MOU) that was negotiated in 2017 by South Sudanese and AU Commission representatives, along with a draft statute for the court. While South Sudan's council of ministers reportedly signed off on the MOU in December 2017, the president, who is required to sign, has yet to do so.

Meanwhile, in April the government secured a lobbying firm to work to delay and block the establishment of the HCSS, among other services. The contract was later revised.

In addition, in June members of South Sudan's parliament, civil society and the ministry of justice visited Uganda, where they explored the country's domestic accountability mechanism, the International Crimes Division, for possible adaptation in South Sudan. South Sudan's chief justice also announced in August the establishment of new courts to prosecute gender and sexual-based crimes. How such efforts may interrelate with the HCSS is unclear and AU interlocutors were unaware of these developments during our meetings with them.

### **Next steps**

The parties to the conflict expressly agreed to the establishment of the HCSS, both in the 2015 Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) and the 2018 revitalized ARCSS, as a court with South Sudanese and other African judges, prosecutors and staff to try international crimes committed in the conflict.

The agreements state under Chapter V that the court "shall be established by the African Union Commission," and that the AUC 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 matters."

Despite these provisions, it appears that there is no clear communication between the government and AU representatives relating to the HCSS.

In the face of delays on the signing of the MOU by the government, Human Rights Watch has urged the AUC to move ahead unilaterally to create the court consistent with the language of the peace agreement.

Even if that option is not considered at this time, at a minimum a meeting with all relevant South Sudanese stakeholders and AU representatives would provide a much-needed forum to build a shared understanding and commitment to a path ahead for the HCSS. Participation by representatives of IGAD, JMEC, and the UN, which were involved in consultations on the MOU, along with funding partners, would increase the value and impact of this meeting in charting a way forward.

### **Impetus for progress on justice for grave crimes committed in South Sudan**

Human Rights Watch has extensively 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, and obstruction of humanitarian assistance. All sides in the conflict have targeted and collectively punished civilians based on their ethnicity or perceived political affiliation.

While large-scale fighting has decreased, abuses continue such as in parts of Central Equatoria. On August 30, three rebel groups also merged and vowed to "use all means possible to bring about change." In September, the Office of the UN High Commissioner for Human Rights' Commission on Human Rights in South Sudan warned that sexual violence and recruitment of children was increasing even as forces affiliated with signatories to the peace deal were being cantoned as part of the implementation of security arrangements.

Impunity for past and ongoing abuses has catalyzed the conflict and ensured future abuses. For a peace to be durable, justice for the victims and accountability for the crimes committed are crucial. It is an important step for the people of South Sudan to heal and rebuild their lives.

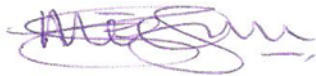
The government should also ensure a conducive civic and political environment for critical and open dialog on human rights and justice issues. A durable peace will be difficult to obtain when South Sudanese activists, journalists and perceived dissidents continue to be subject to harassment, arbitrary arrest and detention, and enforced disappearances by the security service. As one South Sudanese activist told us: "For us, campaigning for the hybrid court is a security issue.... We talk but with reservations, we sugar coat but no real words. There is no free space."

International treaties that South Sudan has ratified—the Convention against Torture and the Geneva Conventions of 1949 and their Additional Protocols—provide that alleged serious crimes need to be investigated and fairly prosecuted. The limited capacity of South Sudan's domestic justice system underscores the need for an independent hybrid war crimes court, which is also consistent with the AU's new transitional justice policy, which supports establishment of accountability mechanisms, and in particular hybrid courts.

The court, an African judicial mechanism, would also be consistent with article 4(o) of the AU Constitutive Act, which rejects impunity, and is supported by the conclusions of the unprecedented Commission of Inquiry on South Sudan the AU created in 2014, detailing serious crimes committed by all parties to the conflict and supporting a hybrid court.

We thank you for your attention and look forward to hearing from you on this important matter. Please do not hesitate to contact Nyagoah Tut Pur, researcher on South Sudan, at [puhn@hrw.org](mailto:puhn@hrw.org), if you require further information.

Sincerely,



Mausi Segun

Executive Director, Africa Division

Human Rights Watch

CC: H. E Amb. Dr. Ismail Wais, Special Envoy for South Sudan, Intergovernmental Authority on Development

CC: H.E. Lt Gen. Augustino Njoroge, Acting chairperson, Revitalised Joint Monitoring and Evaluation Commission

CC: Dr. Namira Negm, AU Legal Counsel, Office of Legal Counsel

CC: African Union High-Level Ad Hoc Committee for South Sudan, comprising South Africa (Chair), Algeria, Chad, Nigeria and Rwanda

CC: H. E Paulino Wanawilla, Minister for Justice and Constitutional Affairs, Republic of South Sudan