



# SOUTH SUDAN

## AMNESTY INTERNATIONAL SUBMISSION FOR THE UN UNIVERSAL PERIODIC REVIEW 26<sup>TH</sup> SESSION OF THE UPR WORKING GROUP, OCTOBER-NOVEMBER 2016

### FOLLOW UP TO THE PREVIOUS REVIEW

The first UPR of Sudan was held in May 2011. At the time, the then Southern Sudan had already voted in a referendum on self-determination to secede from Sudan and was on the verge of declaring independence. Although Southern Sudan was represented during the UPR Working Group session, the National Report and the two reports compiled by OHCHR<sup>1</sup> focused on Northern Sudan, and only four recommendations were directed to Southern Sudan.<sup>2</sup>

The upcoming review of Southern Sudan during the 26<sup>th</sup> session of the UPR Working Group should therefore be considered its first review.

### THE NATIONAL HUMAN RIGHTS FRAMEWORK

#### Human rights treaties

The 2011 Transitional Constitution of South Sudan provides that "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill [of Rights]".<sup>3</sup>

In his Independence Day speech on 9 July 2011, President Salva Kiir pledged that South Sudan would seek accession to human rights treaties as soon as possible.<sup>4</sup> However, despite this promise, South Sudan is a party to only five of the core international human rights treaties. South Sudan became a party to the UN Convention on the Rights of the Child in January 2015. In April 2015, South Sudan completed accession to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and to the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol. South Sudan has also ratified the four Geneva Conventions of 12 August 1949 and the three Additional Protocols in 2013.

South Sudan is the only country in Africa that is not party to the African Charter on Human and Peoples' Rights (African Charter). The National Legislative Assembly approved ratification of the African Charter in October 2013; however, the

<sup>1</sup> Human Rights Council, *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council resolution 5/1: Sudan*, A/HRC/WG.6/11/SDN/3, 25 February 2011; Human Rights Council, *Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(b) of the annex to Human Rights Council resolution 5/1: Sudan*, A/HRC/WG.6/11/SDN/2, 24 February 2011.

<sup>2</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Sudan*, A/HRC/18/16, 11 July 2011, recommendations 85.1 (Norway), 85.2 (Norway), 85.3 (France), 85.4 (Italy).

<sup>3</sup> Transitional Constitution of South Sudan (Transitional Constitution), arts. 9(3), 10, 188.

<sup>4</sup> President Salva Kiir independence-day speech, July 9, 2011, available at: <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/5440/President-Kiirs-Independence-Speech-In-Full.aspx>

government has yet to deposit the instrument with the African Union. Similarly, the National Legislative Assembly voted to accede to the African Charter on the Rights and Welfare of the Child and the AU Convention Governing the Specific Aspects of Refugee Problems in Africa in 2014; however, the government has failed to finalize the accession by depositing the instruments. The failure to complete the ratification of these instruments raises concerns about South Sudan's commitment to promote and protect human rights in the country.

### **National Security Service Act**

In October 2014, South Sudan's National Legislative Assembly passed a National Security Service (NSS) Bill that granted the NSS sweeping powers to arrest, detain, conduct searches, and seize property, without adequate judicial oversight or safeguards against the abuse of such powers. The Bill also did not specify that detainees may only be held in official places of detention nor did it guarantee basic due process rights, such as the right to counsel or to be tried within a reasonable period of time. In March 2015, the Minister for Justice announced that the NSS Bill had entered into effect and become an Act, as the president had not given his assent or returned it to parliament within the prescribed thirty-day period.<sup>5</sup>

### **Crimes under international law**

Torture, enforced disappearance, genocide and crimes against humanity are not criminalized under South Sudanese law. This is inconsistent with South Sudan's obligations under customary international law. The failure to criminalize torture also breaches South Sudan's obligations as a state party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. A Penal Code Amendment Bill, currently under consideration by the National Legislative Assembly, seeks to fill some of the legislative gaps by criminalizing genocide, war crimes and crimes against humanity;<sup>6</sup> however, the definitions of these crimes do not conform to internationally agreed definitions. The Bill also does not include provisions for command responsibility, the irrelevance of official capacity, and the non-applicability of amnesties, pre-conviction pardons and immunities.

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

South Sudan's Transitional Constitution establishes a national human rights institution, the South Sudan Human Rights Commission, mandated to monitor, document and report on human rights. The Commission issued its first report on conflict-related violations in March 2014; however, this is based largely on secondary information and research undertaken in Juba, as the human rights monitors were unable to conduct field investigations in Unity, Jonglei or Upper Nile states. Since March 2014, the South Sudan Human Rights Commission has not released any reports.

### **The death penalty**

South Sudan's Transitional Constitution permits the death penalty as punishment for "extremely serious offenses".<sup>7</sup> The most common conviction resulting in the death penalty is for murder. Under the Penal Code, sentences of death can also be imposed upon conviction for other acts, including treason, acts of insurgency, banditry, sabotage or terrorism that results in the death of a person. The Geneva Conventions Act and the National Security Service Act also include the death penalty as a punishment for certain crimes. In 2015, South Sudan carried out at least five judicial executions, at least 17 people were sentenced to death, and by the end of the year there were at least 305 people on death row.

The death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment. In addition, the pervasive challenges to the justice system in South Sudan mean that the state cannot guarantee the right to a fair trial, making the imposition of the death penalty a particularly egregious violation of the right to life.

## **THE HUMAN RIGHTS SITUATION ON THE GROUND**

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<sup>5</sup> Transitional Constitution, art. 83(1) "Any bill approved by the National Legislature shall not become a law unless the President assents to it and signs it into law. If the President withholds assent for thirty days without giving reasons, the bill shall be deemed to have been so signed."

<sup>6</sup> The bill also includes a provision on war crimes, though these are already penalized under the 2012 Geneva Conventions Act.

<sup>7</sup> Transitional Constitution, art. 21(1).

## Restrictions on the right to freedom of expression and association

South Sudan's Transitional Constitution (2011) recognises the right to freedom of expression and freedom of the media. It states that "every citizen shall have the right to freedom of expression, reception and dissemination of information, publication and access to the press without pre-judice to public order, safety or morals as prescribed by the law".<sup>8</sup>

However, the space for journalists, human rights defenders and civil society to do their work freely has continuously shrunk, especially since the start of the conflict in December 2013. Government authorities, especially the National Security Services, regularly harass, intimidate, and arbitrarily detain journalists and people who publicly criticize the government. The National Security Service has also shut down newspapers and seized entire print-runs several times.

Joseph Afandi, a journalist with the *El Tabeer* daily newspaper was arrested and detained by the National Security Service on 29 December 2015 and kept in incommunicado detention without charge at the NSS headquarters in Juba until 19 February when he was released.<sup>9</sup> His arrest was linked to an article published in *El Tabeer* on 23 December 2015 in which he criticised the ruling party, the Sudan People's Liberation Movement (SPLM). Joseph Afandi reports that he was subjected to torture and ill-treatment while in detention. After his release, Joseph Afandi was abducted on 4 March 2016 by unidentified men and taken to an unknown location where he was interrogated him about his writing, beaten, and had molten plastic dripped on his legs. On 8 March, he was left in a cemetery. The government announced that there would be an investigation; however, there has been no announcement of the outcome of any investigation.

The print version of the *Nation Mirror* was closed down in January 2015 after a photo of former Vice-President Machar was placed above one of President Kiir. Reporter Peter Julius Moi was shot dead in Juba on 19 August, only days after President Kiir threatened to kill reporters "working against the country", in a statement that the government spokesperson later said was quoted out of context.<sup>10</sup> George Livio, a journalist with *Radio Miraya*, has been held in NSS detention without charge or trial since his arrest in August 2014 on accusations of collaborating with rebels.<sup>11</sup>

The government authorities have not taken steps to hold accountable state security services responsible for violations of the right to freedom of expression.

The authorities have also increasingly clamped down on members of civil society, particularly those documenting and reporting on human rights, despite constitutional guarantees of the right to freedom of association.<sup>12</sup> On 3 December 2015, 13 civil society members were arrested in Wau, Western Bar el Ghazal state, after they signed a joint petition to the Mayor of Wau municipality. The joint petition raised concerns about the conduct of the security forces towards civilians in a number of localities of Wau, in particular that they were beating and shooting civilians and looting their property. They urged the Mayor to take action. By 8 December 2015, all 13 members had been released without charge.

## Arbitrary arrest and detention

The Transitional Constitution establishes the civilian police service as the only law enforcement authority in South Sudan and explicitly prohibits the armed forces from having "any internal law and order mandate except as may be requested by the civilian authority when necessity so requires".<sup>13</sup> The National Security Service is mandated by the Transitional Constitution to "focus on information gathering, analysis and advice to the relevant authorities";<sup>14</sup> however, despite these provisions, the security agencies, particularly the National Security Service, arbitrarily detain perceived government opponents without charge or trial, sometimes for over a year. Detainees are reported to have been

<sup>8</sup> Transitional Constitution, art. 24(1).

<sup>9</sup> Amnesty International, *Journalist held in incommunicado detention* (Index: AFR 65/3319/2016); Amnesty International, *Journalist released without charge* (Index: AFR 65/3480/2016).

<sup>10</sup> Sudan Tribune, "South Sudan Journalist shot dead after President Kiir threatened killing journalists", 20 August 2015, available at: <http://www.sudantribune.com/spip.php?article56126>, accessed 26 March 2016.

<sup>11</sup> Amnesty International Report 2015/16, *The State of the world's human rights* (Index: POL 10/2552/2016) p. 322-323.

<sup>12</sup> Transitional Constitution, Article 25 (1): "Every person shall have the right to freedom of association with others including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interests."

<sup>14</sup> Transitional Constitution, arts. 159(e), 160(4).

subjected to torture and other ill-treatment and have no access to legal counsel.

For example, Professor Leonzio Angole Onok has been arbitrarily detained by the National Security Service since 7 December 2015. He was arrested by armed NSS officers on his way home from the university and taken to the NSS headquarters in Juba. He has not been charged with any offence, nor has he been presented before a competent judicial authority. The former governor of Western Equatoria state, Joseph Bangasi Bakosoro, has also been in NSS detention since 22 December 2015 and has not been charged with any offence or presented in court.

### **The internal armed conflict**

In the context of the internal armed conflict that erupted in December 2013, both government and opposition forces have committed crimes under international law that may amount to war crimes and crimes against humanity. They have attacked civilians sheltering in hospitals and places of worship, executed captured fighters, abducted and arbitrarily detained civilians, burned down homes, damaged and destroyed medical facilities, looted public and private property as well as food stores and humanitarian aid, and recruited children to serve in their armed forces. Parties to the conflict have also regularly attacked, detained, harassed and threatened humanitarian aid workers and UNMISS<sup>15</sup> staff.

Sexual and gender-based violence is widespread in the context of the conflict, including cases of sexual slavery and gang rape, including of girls as young as eight years old. There have also been cases of men and boys being castrated.

### **The criminal justice system**

A lack of capacity, inadequate training and lack of independence of police, prosecutors and judges give rise to serious human rights violations in the administration of justice, such as arbitrary arrest and detention and prolonged pre-trial detention. South Sudan does not guarantee access to legal counsel for individuals accused of criminal offences, including those facing the death penalty. The prisons are overcrowded and dirty and inmates are subject to ill-treatment and are not provided with adequate food, water, or access to health care.

### **Impunity for human rights violations**

The limited capacity of the criminal justice system coupled with a lack of political will to ensure accountability has resulted in widespread impunity for violations of human rights and humanitarian law.

The government has so far failed to hold anyone suspected of criminal responsibility to account for crimes committed in the context of the internal armed conflict, nor has it conducted thorough and impartial investigations into these crimes. While the government claims to have conducted multiple investigations into conflict-related abuses, the result of these have not been published, criminal proceedings have not been initiated, and no government officials have been suspended.

For example, in January 2014 President Salva Kiir established a committee to investigate human rights abuses allegedly committed during an attempted coup on 15 December 2013. The committee's eight members were selected by the President's office, its activities were funded by the presidency, and it was mandated to report directly to the President. The committee submitted a report to the President in December 2014, but this has yet to be made public.

### **Right to mental health services**

The human rights abuses suffered and witnessed in South Sudan have had severe repercussions on the mental health of many people. Recent studies have found extremely high levels of post-traumatic stress disorder among South Sudanese populations.<sup>16</sup> However, despite an overwhelming need, mental health services are almost non-existent in South Sudan.

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<sup>15</sup> United Nations Mission in South Sudan

<sup>16</sup> A 2015 study by the South Sudan Law Society (SSLS) and the United Nations Development Programme (UNDP) found that 41 percent of the 1,525 respondents researchers spoke to across six states and Abyei exhibited symptoms consistent with a diagnosis of post-traumatic stress disorder (PTSD). The survey used the Harvard Trauma Questionnaire (HTQ) to assess 16 types of traumatic events and PTSD symptoms. South Sudan Law Society et al., *Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan*, October 2015, p. vii, available at:

Only one public hospital in the country provides psychiatric care, with only 12 beds in its in-patient ward. People with serious mental health disabilities are routinely incarcerated in prisons. They are not provided adequate medical care, and are often held chained, naked or in solitary confinement.

## RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

**Amnesty International calls on the Government of South Sudan to:**

### *Human Rights Treaty Ratification*

- Complete ratification or accession to human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention for the Protection of all Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the African Charter on Human and Peoples' Rights, the African Charter on the Rights and Welfare of the Child, and the Protocol to the African Charter on the Rights of Women in Africa.

### *National Security Service Act*

- Review and amend the National Security Service Act to limit the powers of the National Security Service to "information gathering, analysis and advice to the relevant authorities", as provided in the Transitional Constitution; to explicitly exclude from the NSS powers to arrest, detain, conduct searches, seize property and use force; and to ensure that the Act complies with international, regional and national human rights standards.

### *Failure to Provide for Crimes under International Law*

- Enact and enforce legislation that defines and criminalizes torture, enforced disappearance, genocide and crimes against humanity, in full compliance with international law, and ensure that such legislation also provides for command responsibility, the irrelevance of official capacity, and the non-applicability of statute of limitations, amnesties, pre-conviction pardons and immunities.

### *South Sudan Human Rights Commission*

- Ensure that the South Sudan Human Rights Commission is provided with all necessary financial, logistical and technical support in order to effectively monitor, document and publicly report on the human rights situation in the country, particularly violations related to the internal armed conflict.

### *The death penalty*

- Place an immediate moratorium on use of the death penalty with a view to its abolition and commute all death sentences.

### *Restrictions on freedom of expression and association*

- Increase the space for independent human rights monitoring and reporting, including by providing full and unimpeded access for journalists, human rights organizations and other members of civil society to all areas of the country, including conflict-affected areas;
- Immediately cease activities restricting freedom of expression, including threats, harassment, torture and arbitrary detention of journalists and members of civil society;
- Conduct prompt, effective and impartial investigations into all allegations of threats and attacks against journalists and members of civil society and hold those responsible to account in accordance with international standards for fair trial.

### *Arbitrary arrest and detention*

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<http://www.ss.undp.org/content/dam/southsudan/library/Rule%20of%20Law/Perception%20Survey%20Report%20Transitional%20Justice%20Reconciliation%20and%20Healing%20-.pdf>

- Immediately release from detention all human rights defenders, activists and political detainees or charge them with recognizable offenses and present them before an ordinary and competent civilian judicial authority.

#### *Internal armed conflict*

- End all violations of international human rights and humanitarian law committed by members of the armed forces or associated personnel, including unlawful killings, acts of sexual violence, attacks on civilians, looting and destruction of civilian property, violence against humanitarian personnel and assets, and other obstructions to humanitarian assistance.

#### *Criminal justice*

- Take steps to address human rights violations related to the criminal justice system by improving the capacity and functioning of the judiciary, prosecution, police and prison service.

#### *Impunity for human rights violations*

- Immediately suspend from active duty military and civilian officials against whom there is credible evidence that they have committed crimes under international humanitarian law or human rights abuses, pending independent and impartial investigations;
- Undertake prompt, effective and impartial investigations into allegations of crimes under international law and human rights violations or abuses and bring all those suspected of criminal responsibility to justice in open, accessible ordinary civilian courts and in fair trials without recourse to the death penalty;
- Ensure the establishment of the Commission for Truth, Reconciliation and Healing, the Compensation and Reparations Authority, and the Hybrid Court for South Sudan, as provided for in the Agreement on the Resolution of Conflict in South Sudan.

#### *Right to mental health services*

- Take steps to improve the availability, accessibility and quality of mental health care services across the country.