

To Permanent Representatives of Member and Observer States of the United Nations Human Rights Council

6 February 2020

*Re: The UN Human Rights Council should extend the mandate of the Commission on Human Rights in South Sudan*

Excellencies,

**We, the undersigned national, regional, and international non-governmental organisations, write to call on your delegation to actively support the extension of the mandate of the United Nations (UN) Commission on Human Rights in South Sudan (“the CoHR”) during the upcoming 43<sup>rd</sup> session of the UN Human Rights Council (“the Council” or “the HRC”), which will take place from 24 February-20 March 2020.**

The Revitalised Peace Agreement for Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), which was signed on 12 September 2018, has offered hope to the South Sudanese people. The Agreement remains the most promising basis to improve human rights and build sustainable peace in the country as it addresses key issues (governance reform, ceasefire and security arrangements, humanitarian assistance, resource management, and transitional justice, including accountability) in a comprehensive manner.

However, in the last 17 months, fighting has continued in parts of the country, particularly in Yei River State, and significant humanitarian and human rights issues have remained unaddressed. According to the World Food Programme, more than 5.5 million South Sudanese could go hungry by early 2020.<sup>1</sup> Millions remain internally displaced. Former warring parties largely remain operational on the ground, as the process of cantonment remains limited and lags behind the deadlines set out in the R-ARCSS.

Despite repeated pledges by South Sudan’s Council of Ministers to approve the establishment of the Hybrid Court for South Sudan as per Chapter V of the R-ARCSS, the Government is yet to sign a Memorandum of Understanding (MoU) with the African Union (AU) and to enact legislation to operationalise the Court. The MoU can be signed immediately, prior to the effective establishment and operationalisation of a Revitalised Transitional Government of National Unity (RTGoNU, hereafter National Unity Government).

In its last report to the Council, in March 2019,<sup>2</sup> the CoHR concluded that despite the signing of the R-ARCSS, violations, including rape and sexual and gender-based violence (SGBV), continue to occur, which may amount to crimes under international law, including war crimes and crimes against humanity. Additionally, widespread impunity for these and other crimes, and lack of support and a full range of reproductive health services for survivors, remain prevalent. In the address it delivered to the Council during the latter’s 42<sup>nd</sup> session (September 2019), the CoHR highlighted a number of key issues that might “sabotage progress towards implementation of the Agreement,” elements that might “destabilise the peace process,” and a complex reality marked by inter-communal violence and risk factors of further violence. The Commission reported ongoing high levels of SGBV and enforced disappearances and lamented the continued impunity enjoyed by perpetrators of grave violations of international humanitarian law and violations and abuses of human rights.

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<sup>1</sup> Jenny Lei Ravelo, “South Sudan government strategizes to stave off potential famine,” Devex, 3 January 2020, <https://www.devex.com/news/south-sudan-government-strategizes-to-stave-off-potential-famine-96258> (accessed on 6 January 2020).

<sup>2</sup> Report of the Commission on Human Rights in South Sudan, Doc. A/HRC/40/69, [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/40/69](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/40/69) (accessed on 14 January 2020).

The latter is supported by findings in a report published by Amnesty International in October 2019.<sup>3</sup> The report documents the failure of the South Sudanese Government to investigate and prosecute suspects of such crimes since the start of the conflict in December 2013.

Indeed, the parties have done very little to address these and other systemic human rights issues identified by the CoHR and other actors, including the UN Mission in South Sudan (UNMISS), the Office of the UN High Commissioner for Human Rights (OHCHR), and human rights NGOs. In March 2019, during the Council's 40<sup>th</sup> session, the South Sudanese Government dismissed findings of ongoing rape, including gang rape, committed in Bentiu and other areas of the country.

In November 2019, after weeks of uncertainty and a first six-month extension of the deadline, President Salva Kiir and Dr. Riek Machar agreed to a 100-day extension of the deadline to form a National Unity Government. The extended deadline has been set for 22 February 2020, i.e., two days prior to the opening of the Council's 43<sup>rd</sup> session in Geneva. Yet, uncertainty remains over whether a National Unity Government will be formed and, beyond, over implementation of other milestones set out in the R-ARCSS.

Observations and investigations by some of the present letter's signatories point to a volatile security situation, ongoing human rights abuses, and a rapidly shrinking civic space in the country. The National Security Service and military intelligence continue to carry out unlawful arrests, detentions and torture or other ill-treatment of critics and perceived dissidents. Authorities have applied mounting pressure over human rights defenders and other independent actors, including journalists who report on the situation. Fear and self-censorship have increased as the country approaches the February 2020 deadline. In September 2019, the CoHR indicated that "surveillance and securitization have created a climate of fear and heightened paranoia among civil society."

On 10 November 2019, the African Commission on Human and Peoples' Rights (ACHPR) adopted a resolution on the human rights situation in South Sudan, in which it "strongly condemn[ed] all acts of violations of human rights and international humanitarian law in South Sudan, including attacks against journalists, human rights defenders, members of civil society organizations and humanitarian workers."<sup>4</sup>

There have been significant delays in the implementation of transitional security arrangements.<sup>5</sup> The overall implementation of Chapter II of the R-ARCSS remains limited. Risk factors and warning signs of mass atrocities, including inter-communal violence, internal displacement, conflict over land and livelihoods, and disputes over state boundaries, exist. Funds also appear to be missing for the full implementation of the R-ARCSS,<sup>6</sup> and a range of actors, including African human rights bodies such as the ACHPR, have reiterated their calls on parties to the R-ARCSS to implement Chapter V of the Agreement, including provisions on the establishment of the Hybrid Court for South Sudan and a Commission for Truth, Reconciliation and Healing.<sup>7</sup> These elements point to the fragility of peace in the country.

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<sup>3</sup> Amnesty International, "South Sudan: 'Do you think we will prosecute ourselves?' No prospects for accountability in South Sudan," 7 October 2019, Index number: AFR 65/1105/2019, <https://www.amnesty.org/en/documents/afr65/1105/2019/en/> (accessed on 24 January 2020).

<sup>4</sup> African Commission on Human and Peoples' Rights, Resolution on the human rights situation in the Republic of South Sudan – ACHPR/Res.428 (LXV) 2019, 10 November 2019, <https://www.achpr.org/sessions/resolutions?id=459> (accessed on 13 January 2020).

<sup>5</sup> Disengagement and separation of forces; assembly and cantonment and registration of personnel and equipment; demilitarisation of civilian centers and collection of weapons; and commencement of joint training of unified forces (Chapter II of the R-ARCSS).

<sup>6</sup> International Crisis Group, "A short window to resuscitate South Sudan's ailing peace deal," ReliefWeb, 2 December 2019, <https://reliefweb.int/report/south-sudan/short-window-resuscitate-south-sudan-s-ailing-peace-deal>; United Nations Meetings Coverage and Press Releases, Security Council 8689th Meeting (PM), "Top United Nations Official in South Sudan Urges Leaders to Form Transitional Government, Unify National Forces, as Delegates Applaud Respect for Ceasefire," 17 December 2019, <https://www.un.org/press/en/2019/sc14055.doc.htm> (both accessed on 6 January 2020).

<sup>7</sup> African Commission on Human and Peoples' Rights, ACHPR/Res.428 (LXV) 2019, *op. cit.*

The inability of the leaders to expeditiously solve outstanding issues of the R-ARCSS puts civilians at increased risks of atrocity crimes. Numerous failed peace agreements in the past led to further violence and dire humanitarian crises.

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In the lead-up to the Council's 43<sup>rd</sup> session, three scenarios still appear to be possible. First, fighting might resume on a local or larger scale, and the violence that has not ceased in some areas of the country might increase. Throughout the country, grievances over past violence and atrocities, displacement, land grabbing, cattle, livelihoods, and state boundaries remain unaddressed and could trigger further violence. In this scenario, the unaddressed underlying causes of the violence and significant risk factors of further violations make it likely that grave human rights violations will be committed.

Second, the parties may further delay formation of a National Unity Government. On 17 December 2019, President Salva Kiir and Dr. Riek Machar announced that they had "agreed to form a transitional unity government even if they fail to resolve all their differences before a new deadline."<sup>8</sup> However, a government is yet to be formed and operationalised, and much uncertainty remains. A number of States, including members of the Troika,<sup>9</sup> have expressed concern over the urgent need for the parties to work towards meeting the extended deadline and called on all sides to further demonstrate that they possess the political will to deliver peace.<sup>10</sup> Such delays extend the *status quo* and could fuel more violence and rights abuses.

The third scenario is that a National Unity Government is formed by the extended deadline. This would be a welcome development but does not mean the R-ARCSS will have been fully implemented – far from it – and that no setbacks could occur. Many challenges would still lie ahead, including with regard to Chapter II (transitional security arrangements) and Chapter V (transitional justice and accountability) of the Agreement. Political disagreement leading to a government collapse and parties renegeing on their promises to implement the R-ARCSS will remain a possibility. The political economy of the conflict, corruption, systemic human rights violations and abuses, and impunity (especially at the command responsibility level) will remain unchanged.

**Sustained regional and international engagement is vital for the full implementation of the R-ARCSS by the parties. South Sudan deserves the priority attention of the AU, the Intergovernmental Authority on Development (IGAD) and the UN Security Council (UNSC), and we believe that UN Human Rights Council action is an integral part of this engagement. The Council should extend the mandate of the CoHR for another year.**

Whichever of the above scenarios prevails in the lead-up to the Council's 43<sup>rd</sup> session and in the upcoming months, the Council should renew the CoHR's mandate as is. Indeed:

- (i) If fighting resumes, the CoHR's investigative and reporting work will be crucial to keep the international community informed of human rights developments in the country and to further advance accountability and other components of the transitional justice agenda.
- (ii) If further delays are observed in relation to the formation of a National Unity Government, the CoHR will play an essential role in monitoring the human rights situation, including human rights-related provisions and implications of the R-ARCSS, and the Commission will be an integral part of regional and international efforts to push the parties to abide by the Agreement, including effective transitional justice mechanisms. The CoHR will also continue to fulfil a vital role in collecting and preserving evidence of crimes and human rights violations and abuses, as well as keeping the international community informed of the situation.

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<sup>8</sup> Denis Dumo, "South Sudan's Kiir and Machar say they will form government," Reuters, <https://www.reuters.com/article/us-southsudan-politics/south-sudans-kiir-and-machar-say-they-will-form-government-idUSKBN1YL170> (accessed on 17 December 2019).

<sup>9</sup> Namely, Norway, the United Kingdom, and the United States.

<sup>10</sup> UK Government, "South Sudan: Troika statement, 2 January 2020," <https://www.gov.uk/government/news/south-sudan-troika-statement-2-january-2020> (accessed on 7 January 2020).

(iii) Lastly, even if a National Unity Government is formed by the extended deadline, implementation of the R-ARCSS will remain fragmented and limited, and the security situation will remain fragile for the foreseeable future with risks of a return to violence, which necessitates an impartial and independent mechanism exercising an investigative mandate. Continuous work will be needed on all aspects of the R-ARCSS, including Chapters II and V. The CoHR's mandate will continue to fulfil a vital role in collecting and preserving evidence and in keeping the international community informed of the situation, providing technical advice to the Government and other stakeholders, and assisting in the operationalisation of effective transitional justice mechanisms, which are essential to build sustainable peace in South Sudan.

The country still needs a holistic transitional justice programme that includes the Hybrid Court, a Commission on Truth, Reconciliation and Healing (CTRH) and a Compensation and Reparation Authority (CRA). Disarmament, demobilisation and reintegration (DDR) and the establishment of a vetting system in the army and security forces will also be key for human rights improvements.

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**As the human rights and security situation in South Sudan is not consolidated, it is premature to consider a change of approach and crucial for the Council to maintain its scrutiny and engagement. The Council should continue to dedicate its utmost attention to South Sudan and allow the CoHR the time it needs to fulfil its responsibility with regard to all aspects of its mandate: investigation, monitoring, reporting, technical assistance and capacity-building, and advice on transitional justice in all its dimensions – truth-telling, reparations, the full rehabilitation of survivors, and building guarantees of non-recurrence (including through accountability, legal and judicial reform, institution-building, and ultimately reconciliation).**

**For the Council, any way forward beyond its current approach to the promotion and protection of human rights in South Sudan should rely on benchmarks and a thorough assessment not only of the situation on the ground, but of risk factors of further violations. Given the volatile situation in the country, a change of approach in Geneva would risk sending the wrong signal, and ultimately being detrimental to efforts to push the parties to fully abide by the R-ARCSS and respect and protect human rights.**

Ahead of its 43<sup>rd</sup> session, we call on the Council to follow up on its meaningful action on South Sudan to date by renewing the CoHR's mandate as currently is. Member and Observer States should support the development and adoption of a resolution that:

- Renews the mandate of the Commission in full, to allow it to continue to conduct independent investigations into alleged human rights violations and abuses and violations of international humanitarian law, and to collect and preserve evidence of, and clarify responsibility for, alleged gross violations and abuses of human rights and related crimes, with a view to ending impunity and ensuring accountability, with a particular focus on sexual and gender-based crimes (the CoHR's mandate explicitly includes documentation of evidence for SGBV), and attacks and reprisals against human rights defenders, humanitarian aid workers and other independent actors;
- Recalls that the Government of South Sudan has the responsibility to protect its population from, among other human rights violations and abuses, genocide, war crimes, ethnic cleansing, and crimes against humanity;
- Urges the Government of South Sudan and opposition groups to allow and facilitate access to all locations and persons of interest to the Commission;
- Requests that reports and updates of the Commission be transmitted to the AU Commission in order to support and inform future investigations of the Hybrid Court for South Sudan and to the UN Security Council for consideration and further action;

- Requests that reports and updates of the Commission be transmitted to the ACHPR, in conformance with the 2019 Cooperation Agreement between OHCHR and the ACHPR.<sup>11</sup> The reports should support and inform regular ACHPR briefings to the AUPSC;
- Encourages the AU Commission to: (a) take immediate steps, including the establishment of the Hybrid Court for South Sudan, to ensure justice for serious crimes committed, as recommended by the AU Commission of Inquiry on South Sudan and provided for in the 2015 Peace Agreement and the 2018 Revitalised Agreement; (b) inform the public about a timeline for the establishment and operationalisation of the Court, making clear that failure by the Government to sign the MoU and adopt the Statute for the Court will result in the AU unilaterally establishing an *ad hoc* tribunal; and (c) guarantee the transparency of the process for establishment of the Court or an *ad hoc* tribunal, and ensure that South Sudanese civil society actors will be consulted throughout;
- Urges the Government of South Sudan to adopt the Statute of the Hybrid Court for South Sudan and sign the Memorandum of Understanding to formally establish and operationalise the Hybrid Court; and
- Urges all States to encourage further concrete action to deter and address ongoing violations of international law at the UN Security Council, and to exercise their jurisdiction over crimes under international law committed in South Sudan under the principle of universal jurisdiction and where the opportunity arises.

We thank you for your attention to these pressing issues.

Sincerely,

African Centre for Democracy and Human Rights Studies (ACDHRS)  
 AfricanDefenders (Pan-African Human Rights Defenders Network)  
 Cairo Institute for Human Rights Studies (CIHRS)  
 Center for Reproductive Rights  
 Central African Network of Human Rights Defenders (REDHAC)  
 CIVICUS  
 Community Empowerment for Progress Organization (CEPO) – South Sudan  
 Crown The Woman – South Sudan  
 DefendDefenders (the East and Horn of Africa Human Rights Defenders Project)  
 Dominicans for Justice and Peace  
 Geneva for Human Rights / Genève pour les Droits de l’Homme  
 Global Centre for the Responsibility to Protect (GCR2P)  
 Human Rights Watch  
 International Commission of Jurists  
 FIDH (International Federation for Human Rights)  
 International Movement Against All Forms of Discrimination and Racism (IMADR)  
 International Service for Human Rights  
 Lawyers’ Rights Watch Canada  
 Legal Action Worldwide (LAW)  
 National Alliance for Women Lawyers – South Sudan  
 Southern Africa Human Rights Defenders Network (SAHRDN)  
 South Sudan Human Rights Defenders Network (SSHRDN)  
 World Organisation Against Torture (OMCT)

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<sup>11</sup> OHCHR, “UN Human Rights Office and African Commission on Human and Peoples’ Rights Sign Cooperation Agreement,” 17 September 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25010&LangID=E> (accessed on 24 January 2020).