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Technical assistance and capacity-building

Joint written statement* submitted by International Organization for the Elimination of All Forms of Racial Discrimination, Association Ma'onah for Human Rights and Immigration, International-Lawyers.Org, Union of Arab Jurists, United Towns Agency for North-South Cooperation, non-governmental organizations in special consultative status, International Educational Development, Inc., World Peace Council, non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2021]

* Issued as received, in the language(s) of submission only.



Judicial System in South Sudan and Related Human Rights Issues

Introduction

Failure of Justice and accountability in any society is a recipe for disorder and is a threat to peaceful coexistence. The Republic of South Sudan, a nation that hasn't had the time to know peace - having been affected by deadly armed conflict just two years after its independence, it never got the opportunity to concentrate on building its institutions, especially those critical to the administration of justice for ensure lasting peace. The war has left the country's justice system weak.

Rule of law is constantly challenged, and administration of justice continues to be a persistent challenge in South Sudan. As a direct result of the prolonged armed conflict, justice administration in the country has been entangled with a lack of fair trial and due process rights issues, arbitrary arrests and detentions, and lack of access to legal counsel and legal aid, and deplorable detention conditions. The judicial system lacks both adequate institutions and personnel, and its independence is also challenged.

Abuse by security officers has shrunken the civil scape due to constant arbitrary arrests, detentions, torture, intimidations, and the clamp down on media and political opponents are the methods used to silence citizens and ensure a culture of impunity. Killings without due process and the use of the death penalty are on the rise in South Sudan.

Justice System and Accountability in South Sudan

South Sudan's failure to maintain an impartial and fair judicial system has led to judges resigning citing lack of independence in their work. The Chief Justice, Chan Rece Madut, raised concern about the continuous threats against the independence of the judiciary. Executive interferences within the judiciary and its firm control over who gets prosecuted and who does not hinders accountability for human rights violations. The country lacks an independent and impartial investigatory mechanism to investigate and prosecute violations.

Delayed implementation of transitional justice programs in line with the revitalized agreement is a major concern. Following the signing of the revitalized agreement in 2018 and the subsequent formation of the unity government, less concrete progress has been made to ensure the full implementation of the agreement. The failure to implement chapter V and Chapter VI of the Revitalized Agreement which aimed to establish the transitional justice mechanisms is further entrenching impunity and could undermine the gains made so far. The reconstitution of the Legislative Assembly is welcome but in order to avoid the delay that characterized the implementation of the revitalized agreement, it is stressed that the new parliament should be empowered to ensure independent and timely legislative action for the full implementation of the revitalized agreement.

Impunity is flourishing in South Sudan due to the lack of political will from the government to bring perpetrators to account. The government has failed to investigate and prosecute human rights and humanitarian law violations committed by both government and opposition armed groups. The failure of the government to ensure justice for serious human rights violations is evident from its unpreparedness to establish the hybrid court, which remains to be materialized despite the commitment made by the government and African Union (AU).

The UN assistance to the judiciary of South Sudan to implement a mobile court to hear the backlog of cases is highly significant. This initiative needs to be intensified and necessary support and training be given to local judges, lawyers, and prosecutors.

Arbitrary Arrests, Detentions, and Other Human Rights Violations

The Government of South Sudan continues to restrict civil scape, suppress dissents and inclusive participation in governance and transitional justice. Various methods are deployed

to control the narrative for the government. Arbitrary arrests, detentions, surveillance, clamp down on media and restriction of the rights of citizens to freedom of expression, in addition to a host of other means are used by the South Sudan National Security Service (NSS) to constrain dissents and debate on accountability and the implementation of the revitalized agreement.

Numerous cases of arbitrary arrests and detentions have been documented and there seems to be no end in sight. This is a flagrant disregard for the due process of law, and a propagation of inappropriate, and unjust practices. NSS has been reported to have engaged in numerous arbitrary arrests, detention and torture of civilians, journalists, and political leaders. The NSS is using the National Security Service Law, which came into force in 2015 to arrogate to itself unfettered powers to arrest and detain suspects, monitor communications, conduct searches, and seize property without any clear judicial oversight to violate the personal liberty of people in South Sudan with impunity. None of South Sudan's detention facilities is authorized in law, yet the Internal Security Bureau (ISB) systematically and unlawfully detains individuals at the NSS headquarters, commonly known as the Blue House, and at Riverside, a site near the Nile River in downtown Juba. It also established detention facilities across the country, in each of the 10 states, some being security forces' training facilities, such as the one at Lurid not far from Juba.

The panel of experts on South Sudan documents numerous cases of arbitrary arrests, detentions, and torture of detainees. In particular, the National Security Service has been reported to have arbitrarily detained perceived government opponents without charge or trial, sometimes for over a year, and harass, intimidate, and arbitrarily detain journalists and media workers. These detainees were reported to have often been subjected to torture and other ill-treatment and have no access to legal counsel. In 2020, the NSS detained Ijoo Bosco, a journalist of Eastern Equatoria Radio for airing a story about the United States of America's sanctions on First Vice President Taban Deng Gai. Mr. Bosco was released after 6 days without any charges. In a separate case, the NSS arrested and detained journalist Isaac Van for reporting on corruption allegations against a local football association. The NSS acting outside its power closed Agamlong newspaper following its publication of an article critical of a government official.

These actions have guaranteed that national reconciliation remains an unattainable goal as these are deliberate government measures that shy away from the obligations to initiate an inclusive and participatory process of national healing and reconciliation.

In addition to arbitrary arrests and detentions, extrajudicial killings remain a major human rights issue in South Sudan. The Government of South Sudan continues to unlawfully kill people with impunity. Up to 20 persons were reported to have been extra-judicially killed in Warrap state. These and other extra judicial killings characterize the order in Warrap state.

Death Penalty

South Sudan intentionally disregards its international human rights commitments by its failure to take measures to improve the conditions of detentions and abolish the death penalty. Close to 140 people continue to be on death row and more people continue to be sentenced to death. From 2018 to 2019, 18 people have been executed, including a person who was a child at the time of the commission of the offence, in flagrant violation of International Human Rights Law and the 2011 Transitional Constitution of the Country. Being a country struggling with a crippled judicial system, and cognizance of the inevitable miscarriage of justice in every country, South Sudan should immediately establish a moratorium on the death penalty and ensure it abolishes the practice.

Recommendations

We strongly urge this Human Rights Council and relevant stakeholders to implement the following recommendations.

1. Take measures to engage the AU to unilaterally establish the Hybrid Court to bring an end to the era of impunity in South Sudan.
2. Assist the government of South Sudan in intensifying its efforts to ensure that Chapter V and VI of the Revitalized Agreement are implemented and the transitional justice institutions are established.
3. Provide technical support and assistance including training, equipment support and capacity building to the South Sudan judiciary, lawyers, Ministry of Justice, prosecutors, and Legislative Assembly – and towards ensuring proper rule of law for arrests and detentions.
4. Engage South Sudan in creating an accountability mechanism to control its armed forces for violations of human rights and arbitrary detentions.
5. Assist the government in undertaking a comprehensive security sector and judicial reforms to end human rights violations by law enforcement officers.
6. Assist South Sudanese security forces with tools to adequately investigate crimes and bring to account perpetrators in line with international standards.
7. Provide the necessary support to place a moratorium on the execution of death penalty and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

Geneva International Centre for Justice (GICJ), Just Atonement Inc., The Arab Lawyers Association-UK, Human Rights Defenders (HRD), The Brussels Tribunal, The Iraqi Commission for Human Rights (ICHR), Association of Humanitarian Lawyers (AHL), Association of Human Rights Defenders in Iraq (AHRD), General Federation of Iraqi Women (GFIW), Organization for Justice & Democracy in Iraq (OJDI), The Iraqi Centre for Human Rights, NGO(s) without consultative status, also share the views expressed in this statement.