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Rapport annuel du Haut-Commissaire des Nations Unies aux droits de l'homme et rapports du Haut-Commissariat et du Secrétaire général

Assistance technique et renforcement des capacités

Note verbale datée du 31 mai 2013, adressée au Haut-Commissariat des Nations Unies aux droits de l'homme par la Mission permanente du Soudan du Sud auprès de l'Office des Nations Unies à Genève

La Mission permanente de la République du Soudan du Sud auprès de l'Office des Nations Unies et autres organisations internationales à Genève présente ses compliments au secrétariat du Conseil des droits de l'homme, et a l'honneur de lui demander de publier les observations du Soudan du Sud au sujet du rapport de la Haut-Commissaire des Nations Unies aux droits de l'homme sur les progrès de l'assistance technique et du renforcement des capacités le domaine des droits de l'homme au Soudan du Sud (A/HRC/23/31).

La Mission permanente de la République du Soudan du Sud demande au Haut-Commissariat de bien vouloir diffuser le texte joint en annexe* en tant que document de la vingt-troisième session du Conseil des droits de l'homme.

* Distribué tel qu'il a été reçu, dans la langue de l'original uniquement.

Annexe

[Français seulement]

Comments of the Government of South Sudan on the report of the United Nations High Commissioner for Human Rights (A/HRC/23/31) submitted to the Human Rights Council at its twenty-third session

I. Introduction

1. This is the response report of the Government of the Republic of South Sudan following Universal Periodic Review on Sudan in May 2011 and the Commissioner's reports of August 2012 and May 2013 on the situation of human rights in the country and the need for technical assistance.
2. The Government sincerely appreciates the support and technical assistance being provided by the various UN agencies in South Sudan. We particularly applaud the role of the Office of United Nations High Commissioner for Human Rights (OHCHR) in seeking to strengthen national mechanisms for promotion and protection of human rights. The Government of South Sudan is also grateful to this Council for mobilizing and encouraging the international community to provide technical assistance and capacity building for South Sudan in the field of human rights. The people of South Sudan value the collective efforts that have been undertaken.
3. Furthermore, the Government would like to especially recognize the support being extended through the United Nations Mission to South Sudan (UNMISS) and other partners with respect to protection of civilians. This support is reflected through joint operations with the Sudan People's Liberation Army (SPLA), the National Security Service (NSS), National Police and Prison Services.

II. Background

4. As the members of the Council are aware, South Sudan emerged as an independent nation on July 9, 2011, after a popular referendum held in accordance with the 2005 Comprehensive Peace Agreement with the Government of the Republic of Sudan (CPA), and became the 193rd member of the United Nations and the 54th member of the African Union. The independence was preceded by five decades of conflict and neglect, which devastated the economy and inflicted massive loss of life, human suffering, destruction of property and physical infrastructure.
5. Following the independence, the Transitional Constitution of the Republic of South Sudan came into effect on 9th July 2011. The Constitution enshrines the basic human rights and fundamental freedoms in the form of a Bill of Rights which is entrenched in Part Two therein and which is proclaimed to be a covenant among the people and between them and their Government at every level. Also, the Constitution provides for an independent Human Rights Commission to promote and monitor human rights compliance by all levels of Government in accordance with international standards.
6. The Government continues to establish institutions, structures and systems for democratic governance, rule of law and protection of human rights. Democratic

participation is ensured through the establishment of a multi-party system where political parties are free to present their party programs and ideas. In this regards, important legislations have been enacted to facilitate participation in the national democratic life. The Political Parties law and the National Electoral law have been enacted by Parliament under which are established two independent bodies namely, the National Elections Commission and the Political Parties' Council to manage the various aspects. And in order to promote peace, reconciliation and national harmony, a Peace and Reconciliation Commission has been established to mediate conflicts within society so that the government can focus its efforts towards the delivery of essential services to the people.

7. The Government understands that state and nation building are ongoing processes that cannot be accomplished in just two or a few years of independence. This is a daunting task that requires a lot of time, effort and resources both human and material. The government is fully committed to fully apply all available resources in resolving the myriad of critical challenges facing the country such as inter-communal conflicts, hostile rebel militia activities and urban crimes, all of which are hallmarks of the post conflict situation. The economic crisis caused by the loss of oil revenue since January 2012, has forced the Government to undertake austerity measures and took difficult decisions on public expenditure which have impacted on provision of essential services to the people.

III. Human rights legal framework, challenges and priorities

8. The Government has put in place adequate legal framework for the protection of fundamental human rights and basic freedoms through the Bill of Rights embodied in the national Constitution and the law. The process of ratification or accession to international human rights conventions and treaties is being undertaken. This process started with the ratification of the four Geneva Conventions (1949) and additional Protocols I, II and III, which are important instruments of international humanitarian law. Also, the Government has enacted the Geneva Convention Act, 2012 as an enabling law within the domestic legal system. Recently, the following core international human rights instruments were approved by the National Council of Ministers to be adopted by the National Legislative Assembly:

- (1) International Covenant on Civil and Political Rights (ICCPR), 1966 and the 1st Optional Protocol;
- (2) The International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR) and Optional Protocol;
- (3) African Charter on Human and People's Rights, 1981;
- (4) The Convention on the Elimination of All forms of Discrimination against Women (CEDAW) 1979 and Optional Protocol;
- (5) International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD), 1979;
- (6) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 and Optional Protocol;
- (7) Convention Governing the Special Aspects of Refugee Problems in Africa, 1969;
- (8) Convention on the Rights of the Child (CRC) 1989 and Optional Protocols;

A. Protection of civilians

9. The protection of the civilians and their property is the first primary duty of any government as there cannot be a government without people. Factors affecting human security in both urban and rural areas include, the spread of small arms among the civilian population, activities of rebel armed groups in states such as Jonglei and Upper Nile states, armed youth engaged in violent cattle rustling, inadequate number of police to enforce law and order, flow of arms across international borders, limited number of judicial personnel and prosecutors, lack of roads for mobility of law enforcement agencies, widespread poverty and lack of resources for enforcement of policies.

10. The Government is undertaking action to resolve all ongoing conflicts to protect civilians. The actions include strengthening national mechanisms by establishing more police stations and or posts in the states. In area of escalating conflict, such as Jonglei, the Government has deployed SPLA forces to disarm and assist in the protection of civilians and property.

11. The Government has also initiated the national conflict early warning response system (CEWERS) that is led by the National Peace and Reconciliation Commission. CEWERS is intended to aid implementation of appropriate response to early warning triggers. For example, individuals of SPLA who committed crimes in Jonglei against civilians during disarmament were arrested, court-martialed and punished. Over 20 Court-martials have been held for indisciplined soldiers. A number of human rights workshops have been conducted to sensitize the Army on human rights and how to handle civilians in areas of conflict with rebel groups in accordance with international humanitarian law

12. Joint efforts between the UN and the Government have achieved reconciliation among various communities. These efforts which serve as a model for community ownership in promoting peace and security include inter-tribal peace conferences, ground and air surveillance, medical evacuation, conflict prevention and response to help civilian population. Meanwhile in most parts of Jonglei state, community policing has proved to be a successful model in promoting peace and security after the reconciliation, other states are also considering adopting the same model.

13. The Government has established a body of joint security organs to carry out patrol, impose registration of weapons carried by security forces and inspections of places suspected of harbouring criminal armed groups to prevent crime and maintain security. This program is currently being implemented in Juba due to the high rate of crimes involving use of firearms and is expected to expand to other areas in the country as the need arises.

14. Despite the efforts being exerted by the Government to protect civilians, poor infrastructure such as roads, communication and effective transportation as well as scarcity of financial resources continue to hinder progress.

B. Administration of justice and rule of law

15. The Chief Justice has established Special Courts¹ in Lake state and Jonglei to try persons who have been detained for several months without trial for crimes related to communal violence and cattle rustling. Also, in connection with the December/January unrest in Wau the Chief Justice deployed three Judges to Wau to support the review of pending cases. Recently, the Judiciary appointed seventy-eight new Legal Assistants (Judges under training) who will be deployed to different courts in the country after

¹ Courts usually established to decide in cases of communal violence in which it is not possible to determine who is responsible for causing the death on either side.

training. Amendment of the Local Government Act, 2009 to harmonize it with the Judiciary Act is underway to address the contradiction in the two Acts with regard to establishment of traditional courts. This will ensure that the traditional justice system does not enforce customary rules and practices that are repugnant to written law and international human rights standards.

16. Death penalty under the South Sudan legal system is not the first resort in cases of homicide where murder is reached as verdict. The first resort is for the court to give the next of kin of the deceased the option of accepting in accordance with prevailing customary principles some form of compensation which is usually in form of a number of cattle among pastoralist communities or in form of money in other communities. This in essence is a form of restorative justice for the family of the victim. If compensation is accepted, the court will not enter the death sentence. In recent development, the President of the Republic has commuted fifteen death sentences to life imprisonment. Although the death penalty is maintained in our law a discussion is already underway on whether to retain the death penalty or not.

17. To guarantee access to justice and eliminate the problem of prolonged pre-trial detention the Ministry of Justice will review the various aspects of criminal justice system relating to access to justice and application of alternative non-custodial sentences besides imprisonment. Recently the Ministry is providing legal aid for fourteen accused involved in homicide cases currently facing trial in Wau.

18. There is a legal aid program administered by the Ministry of Justice to provide legal aid assistance to persons accused of serious crimes. With assistance from UNDP, the Government has also developed a Legal Aid Strategy of which the funding scheme will be by various stakeholders, including the Government.

19. The Judiciary, Ministries of Justice, Interior, Defence and National Security have established a high-level policy body to address concerns of prolonged detention and arbitrary arrest. Programs under this policy include joint inspection of detentions which have been decided to be at police stations or prison facilities and establishment of mobile courts. Arrests can only be carried out by the police as prescribed by law. Other security services have been clearly cautioned that no detention facilities shall be allowed outside the normal police detention facilities or recognized prisons that are open for inspection by Judges, Public Attorneys and defence lawyers.

C. Protection of the rights to freedoms of expression, association and assembly

20. The right to freedoms of expression and association are guaranteed in the Constitution. The Constitution states that every citizen shall have the right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to public order, safety or morals as prescribed by law. All media are enjoined to abide by professional ethics. The government acknowledges the important role of the media in a democratic society. In implementation of the freedom of expression there are now in South Sudan thirty-five private FM radios, eighteen privately owned newspapers and magazines and two private TV stations licenced to operate independently. Three media bills (Right of Access to Information, Broadcasting Authority, Media Authority) are in final stages of enactment. Various international media outlets are legally and freely operating in the country. Furthermore, there is no restriction on either social networks or media. UNMISS and other partners have been working to build capacity of journalists and civil society organizations. Some of the unfortunate incidents against journalists which resulted in loss of life are under investigation and some arrests have been made.

21. The constitution guarantees the right to freedom of association and to form political parties. There are now 24 political parties in the country operating freely. Some are represented in Parliament and government. The political parties Act accords legal immunity to Political Parties premises and cannot be searched without a court warrant. All issues concerning activities of political parties are discussed by the Political Parties Council in which all parties are represented.

22. Information and Communication Technology (ICT) policy was approved by the National Council of Ministers, the National Communication Act, 2012 has been enacted. The Act contains a provision for establishment of an authority as a regulatory body. Also, the Government has procured and installed an international gateway to facilitate monitoring of incoming and outgoing traffic. In addition, the Ministry of Telecommunication has acquired bandwidth for operationalisation of the Internet facility that is connected to Very Small Aperture Terminals (V-SATs). The infrastructure to connect all states is in progress.

D. Promoting and protecting the rights of women and girls

23. Recently, the Government has approved the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) 1979, Convention on the Right of the Child (CRC) 1989, International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966. Also, South Sudan National Police Service (SSNPS) in collaboration with UNMISS has established women protection units in all ten states. The Ministry of Gender, Child and Social Welfare has constructed one Women Centre in Jonglei for protection of women and children and has worked with the national police to establish protection units in each of the ten states with additional three in Juba.

24. There are contradictions between customary practices and constitutionally guaranteed rights of women and girls under the statutory age. This is reflected in forced marriages and violence against women. The situation is more challenging in the rural areas where archaic social customs and traditional practices continue to persist and get support from traditional authorities in violation of the principles of the constitution and the law. Here the orientation of the traditional authorities on the rights of women and children is critical and must be carried out. The Ministry of gender and the Human rights Commission as well as the civil society organizations are proactive in this area. The government is fully committed to protect the rights of women and the girl child as provided for in the Constitution and the law.

E. Economic social and cultural rights

25. The Constitution provides in Article 29 that all levels of government shall promote education at all levels and shall ensure free and compulsory education at the primary level. It also provides secondary and tertiary education to be made affordable and free illiteracy eradication programmes are to be provided by the all levels of government. The Ministry of General Education Statistics, 2012, shows enrolment in pre-school is on gradual increase as thus: 47,266 in 2010; 55,857 in 2011 and 74,977 in 2012 with 47.2% female enrolment. The statistics further show progress made in the primary school enrolment at 1,401,847 in 2010; 1,391,704 in 2011 and 1,365,757 in 2012 with 29.5% female enrolment. There is therefore substantial progress towards the realization of free universal primary education which is a right guaranteed in the Constitution for all children of school age.

26. The Ministry of Agriculture, Forestry, Cooperatives and Rural Development has developed a comprehensive Food Security Policy, Agricultural Sector Marketing Policy

and Food Security Policy. Under the Food Security Policy, the problem of food deficit is being addressed through promoting enhanced farm productivity and post-harvest management of cereals to satisfy domestic demand. Government is also encouraging rural communities to improve the productivity of tubers and root crops through improved disease and pest control services, extension services and marketing. It is hoped that all these efforts will help realize the right to food for all the citizens and free the country from hunger, malnutrition and disease.

27. The Ministry of Health has adopted an integrated approach to reduce the rate of HIV/AIDs through HIV counseling, Prevention of Mother to Child Transmission and Treatment (PMTCT) and offering Anti-Retroviral Therapy (ART). State HIV/AIDS Commissions and County HIV/AIDS coordination offices have been established to coordinate efforts of all partners at State levels in close collaboration with the State Ministry of Health and county health department. Awareness raising campaigns are also being conducted through media and various community level campaigns.

F. Gaps in the legal framework for the protection of human rights

28. The political Parties Act, 2012, National Elections Act, 2012 and as previously stated, three media laws (Right of Access to Information, Media Authority and Broadcasting Corporation) are in final stages of enactment. There are two Bills (Trade Union Federation and Voluntary, Humanitarian and Non-Governmental Organizations) before the National Legislative Assembly related regulation of some civil society organizations. Also, the National Security Service Bill is being drafted. It will draw up the operational parameters for the National Security services so that it operates within the Constitution and the law.

IV. Priority areas for technical assistance

29. The Government still faces challenges due to lack of coordination with international partners including UNMISS. While there are many activities claimed to have been implemented by international partners, there is minimal impact due to lack of coordination and information sharing. This lack of coordination frustrates all stakeholders involved in human rights work. For example, the so called basket fund which was initiated in August 2012 by UNMISS and UNDP to support the NCRC process is yet to be realised. This is one of the few examples of the challenges that impede nation building.

30. Despite the national budget committed to the NCRC process, the Government is facing challenges to avail funds to the Commission to undertake its activities as scheduled due to ongoing austerity measures. There is an urgent need for more technical assistance with proper coordination so as to enable relevant human rights institutions to carry out their respective activities.

31. The Ministry of Justice has capacity needs in a number of key areas, which include the following; training in legal technical language, legislative drafting and training of prosecutors in handling complex and emerging crimes.

32. Furthermore, the Ministry of Justice needs support in human and financial resources for gazetting, printing and publication of laws, provision of legal aid and for implementation of international treaties.

33. In order for the National Constitutional Review Commission to meet the deadline for adoption of permanent constitution, funding is urgently needed to conduct civic education and collect views of the citizens on the future constitution.

34. The National Police Service urgently needs additional support for strengthening skills of its force in criminal and forensic investigation, standard policing procedures and practices and professional ethics. Literacy courses for security forces, especially the police and prison services are urgently needed to enable them implement their mandate effectively.

35. More funds are needed for construction of more prison facilities to ease congestion particularly separate juvenile detention centres and women prisons. Training is needed for improving competencies, discipline and professionalism among prison officers and wardens.

36. The current program of transforming the Sudan People's Liberation Army (SPLA) to a conventional army has to be encouraged and financially supported.

37. Funds for construction of more court buildings, logistics for mobile courts² and training of judges and prosecutors are needed.

38. Due to austerity measures, the offices of the Human Rights Commission were reduced from ten to four. In Greater Upper Nile, the offices are in Jonglei, and Malakal; in Greater Bhar El Ghazal, the office is in Wau and in Greater Equatoria, the office is in Juba. Despite reduction in number of offices, all employees of the Commission are retained to continue monitoring human rights in the country. Reinstating the offices that have been closed down requires sufficient funds to enable the Commission to continue its work throughout the country.

39. The Ministry of Gender, Child and Social Welfare urgently needs support to combat gender-based violence, for economic empowerment of women and assistance with implementation of domestic laws and international treaties such as CEDAW and CRC. Currently victims of sexual abuse or domestic violence do not find safe sanctuaries while their cases are being processed by law enforcement agencies.

V. Conclusion

40. The Government acknowledges and appreciates all the international support being provided by Nations through UNMISS and by other international partners. We do recognize that the challenges facing the country cannot be solved overnight as the task of nation building is a continuing process that can only be accomplished over a span of time. Hardly can a Nation be built in one day. Therefore, the way forward for us is to address these challenges through proper coordination, information sharing, institutional capacity building and technical assistance from all concerned international partners including the United Nations. The government on its part will commit resources for the protection of human rights as its national obligation and priority. Our relations with all our partners will be based on truth and transparency and cooperation to realize the shared goal of promoting and protecting human rights.

² In the context of South Sudan "mobile courts" involve movement of Judges and Prosecutors from one place to another to adjudicate cases in areas where the judiciary is not yet established.