

UN Country Team in South Sudan

SUBMISSION TO UNIVERSAL PERIODIC REVIEW: 2nd Cycle, 26th Session

Context and Overview

1. The conflict that began in December 2013 in South Sudan continues to affect the lives of millions of people. Violence is widespread, while human rights violations and abuses are commonplace, made worse by insecurity and continued hostilities in particular areas of the country, despite the signing of the Agreement on the Resolution of the Conflict in the Republic of South Sudan (ARCSS) in August 2015. Gross human rights abuses and serious violations of international humanitarian law have taken place, with violence against civilians being perpetrated by both Government and opposition forces and their allies. In addition to the main two belligerents in the conflict, the Sudan People's Liberation Army (SPLA) and the Sudan People's Liberation Movement/Army in Opposition (SPLM/A-IO), other armed groups often affiliated with the two main parties have also reportedly been involved.

2. Direct violations against civilians have included forced recruitment, including of children; targeted killings; conflict-related sexual violence; lack of distinction between civilian and military targets; arbitrary detention and ill-treatment; disruption of education and access to services; and the burning and destruction of homes, crops and other means of livelihood, apparently with the objective of forced displacement. Many of the attacks have revealed a shocking disregard for civilian life, especially with respect to women and children.

3. The 2016 Humanitarian Response Plan estimates that over 6.1-million people will require humanitarian assistance, of whom 4.7-million will be in need of health services, including sexual and reproductive health such as skilled birth attendants, emergency obstetric care, family planning and gender-based violence services, such as clinical management for rape survivors and psychosocial support. Currently, more than 2.3-million people are displaced, including 1.66-million internally displaced and 644,900 who fled to Uganda, Ethiopia or Kenya.

4. In this context, the UN Country Team in South Sudan has decided to focus on the most salient aspects of the human rights situation as the country tries, however tentatively, to emerge from the conflict that has plagued it for over two years.

Treaty bodies

5. During the period under review, South Sudan made progressive steps towards the recognition of its international human rights obligations by acceding to international human rights treaties. For instance, South Sudan adopted the Refugee Act, 2012, which, among other positive aspects: (a) incorporates the expanded refugee definition as established by the 1951 and 1969 Conventions, and goes a step further by expressly providing for asylum for persecution on the grounds of tribe and gender discriminating practices; (b) provides for enjoyment of the rights set out in Part Two (the 'Bill of Rights') of the 2011 Transitional

Constitution of the Republic of South Sudan (TCSS); (c) entitles refugees to seek employment; (d) provides for access to the same basic health services and primary education which nationals of South Sudan receive.

6. The Act established a Commission for Refugee Affairs (CRA), which is responsible for all administrative matters concerning refugees in South Sudan. Work remains to be done, however, on drafting implementing regulations and capacity building of key actors foreseen in the legislation such as the Eligibility Committee. Registration and formal individual status determination continue to be undertaken by UNHCR under its Mandate, albeit with gradually increasing participation of CRA. Detailed mechanisms for prima facie recognition of refugee status and the provision of temporary protection in South Sudan using a group approach are established in Section 30 of the Refugee Act 2012.

7. The National Legislative Assembly (NLA) has also passed a bill for the accession to the International Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment and its Protocol on 3 December 2013 and the President signed the instrument of accession on 4 December 2013.

8. South Sudan acceded to the UN Convention on the Rights of the Child (CRC) on 22 February 2015, while the country's ratification of the Convention on the Elimination of Discrimination against Women (CEDAW) came into force on 30 May 2015. As of December 2015, the Ministry of Gender, Child and Social Welfare, in collaboration with UNICEF and other stakeholders, is preparing for the first country report, which is due by 2017, including developing a mechanism to monitor children's rights across South Sudan.

9. The NLA passed a bill for ratification of the African Charter on Human and Peoples' Rights in 2013 and the President signed the international instrument for accession on 4 December 2013. The instruments of accession, however, have not been deposited. On 1 October 2014, the NLA passed a bill to ratify the African Charter on the Rights and Welfare of the Child (without reservation), which awaits the assent of the President and deposit of the instrument of accession with the African Union (AU).

10. In fact, very few measures have been undertaken toward the realisation of the objectives and principles espoused by these treaties at the national level. An exception is the CRC, which has been domesticated through legislation. In addition, South Sudan has not yet acceded to the 1951 Convention relating to the Status of Refugees nor its 1967 Protocol (hereinafter jointly referred to as the '1951 Convention'), nor the 1954 Convention relating to the Status of Stateless Persons ('1954 Convention'), nor the 1961 Convention on the Reduction of Statelessness ('1961 Convention') nor the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa ('1969 Convention').

Child Rights

11. The conflict has led to at least 11,000 children being separated from their families and it is believed that the actual number may be much higher because many areas remain difficult for family tracing partners to access. Displacement has also led to high rates of psychosocial

distress – and whilst reliable estimates for this child protection issue are equally difficult to ascertain in this context, it is likely that over 800,000 children are in need of psychosocial support within the country.

12. Girls and boys have been killed, maimed, raped, recruited and associated with hostilities, orphaned and separated from their families, while hundreds of thousands have been made homeless. Before the outbreak of conflict in December 2013, children in South Sudan were faced with some of the worst development indicators in the world, with alarmingly high under five mortality rates and maternal mortality rates, with extremely low levels of access to education especially for girls. In addition, children are faced with immense protection risks, such as violence, including sexual and gender based violence, abduction, child marriage, recruitment into armed groups, separation from families, child labour, psychological impacts from the previous years of conflict, and the threat of landmines and explosive remnants of war.

13. Reports of child recruitment by both Government and opposition forces have continued, despite repeated commitments by both parties to end the practice. According to the Report of the Secretary-General on Children and Armed Conflict in South Sudan (2014), reports of child recruitment have shown a marked increase since the outbreak of the conflict, as compared to the immediate post-independence period. The report indicates that several thousand children have been associated with State and non-State armed actors. For example in the year 2015, the military offensives, particularly in Jonglei, Unity and Upper Nile States, were accompanied by a spike in reports of killing, sexual violence, and abduction of children. A total of 876 incidents, affecting 27,483 children, were documented in South Sudan; of the 876 incidents, 523 were documented in Unity alone.

14. Government signed a recommitment agreement in June 2014 toward child-soldier-free security forces and took several steps in this regard, including the issuance of punitive orders for child recruitment. On 29 October 2014, the global ‘Children, Not Soldiers’ campaign against child recruitment was launched by Government in partnership with the United Nations. Last year the Government worked very closely with the United Nations in clearing 36 schools which were occupied by Government troops. However, as of December 2015, 29 schools continue to be used by parties to the conflict for military purposes in different parts of the country.

15. Several important pieces of legislation were passed during the period before independence, including the Child Act of 2008. The enactment and dissemination of the Child Act was a major achievement for the Government of South Sudan in protecting and promoting child rights. The CRC entered in to force for South Sudan on 22 February 2015. Following South Sudan’s independence and accession of the CRC, there is now a need to domesticate it and review the current Child Act. Given the prevailing conflict, the ministry responsible for this has not yet commenced this process. The Ministry of Justice and the Ministry of Gender, Child and Social Welfare (MGCSW) played a key role in the formulation and the drafting of the South Sudan Act of 2008. While the Child Act is a landmark piece of legislation in that it significantly promotes and protects the rights of children, progress regarding its implementation has been slow. For instance, the

establishment of the Independent Child, which should investigate violations of children's rights and monitor implementation of the Act, is still pending.

16. In addition, South Sudan has also adopted the Nationality Act, 2011, which represents a step forward in as much as it confers equal rights to women and men in conferring citizenship to their children. Implementation of the Nationality Act, however, faces many challenges in practice.

Sexual and Gender-Based Violence

17. In South Sudan, gender-inequality, which is one of the root causes of all forms of GBV, including sexual violence, is manifest in all aspects of life. For example, female-headed households are significantly poorer than male-headed households, while 72% of females between 15 and 24 years of age are illiterate, compared with 45% of males in the same age group. Forced/early marriage of young girls – often linked to the family's economic vulnerability – is common. 'Booking' (or negotiating a bride price) can begin when a girl is as young as five-years-old, with the marriage potentially consummated immediately following a girls' first menstrual cycle.

18. The quality and coverage of GBV services, like other key social services, was limited before the crisis due to low capacities within the health, legal and psychosocial sectors; it has now been further weakened and or even become non-existent in some locations. There are limited psychosocial care services for women, men and children who have shown visible signs of trauma and stress. Awareness of the benefits of early reporting of rape cases is still low among community members and often leads to reporting well after the 72 hours when lifesaving treatments such as antiretroviral and emergency contraception could have been administered. Although a Special Protection and Investigating Unit existed within the national police force, it has not been functioning in the wake of conflict. A lack of awareness of human rights, existing tolerance of GBV, hostile community environment and fear of reprisal by known perpetrators will need to be systematically addressed in the long term to prevent GBV and give survivors confidence to report and seek services.

Health

19. While the Government of the Republic of South Sudan underscored its commitment to equitable expansion of access to quality basic health services in the entire country, resource allocation to the health sector has been dismal. Government expenditure on health as a percentage of general government expenditure of 4% at independence continued to decline dramatically to 1% following austerity measures in 2012, with anecdotal evidence indicating that it had fallen below 1% after the outbreak of conflict in December 2013. NGOs continue to be responsible for close to 80% of health service delivery, providing a varying range of services across the country that compromises equitable access.

20. Furthermore, insufficient investment in the production of health workers has resulted in a critical shortage of the health workers required to deliver the basic package of health services.

Over the last two years the country has continued to rely heavily on donors for the procurement and distribution of essential medicines, which are a critical input for quality health service delivery. Stewardship of the health sector has also been compromised by delays in adopting the National Public Health Bill, 2013 and the draft National Health Policy, 2015-2024 all of which are pending cabinet approval.

21. Issues of maternal mortality and access to reproductive health services, especially for young people, continue to pose challenges, with some minimal progress in Government efforts to address these issues. The reproductive health situation for women and girls has also worsened due to diminishing access to basic reproductive health services, compounding the limited capacity to manage health threats, such as Clinical Management of Rape, HIV and AIDS and complications of pregnancy, as well as provision of information and mass education on reproductive rights and access. Early marriage is common, putting many young women at increased risk of maternal death. A significant number of women are in polygamous marriages, increasing their risk of contracting sexually transmitted infections. Access to family planning services also remains limited, with one in five women of reproductive age (15-49 years) having an unmet need for spacing or limiting childbirth.

22. The Comprehensive Reproductive Health Policy and Strategy, developed by the Ministry of Health in 2013, aims to reduce maternal and neonatal morbidity and mortality and improve reproductive health status through the provision of a universally accessible, quality, integrated, equitable, sustainable and comprehensive reproductive health-care package. This policy is designed under the guiding principle of universal access to reproductive health services for all South Sudanese, however implementation remains weak with limited capacity and resources.

23. South Sudan has an exceptionally high teenage-pregnancy rate (300/1,000 for girls aged 15-19), attributable to high rate of child and forced marriage (45 per cent of girls enter into union before the age of 18) and the limited access of young people to youth-friendly sexual reproductive health information and services. While the mean HIV prevalence rate was 2.7 per cent in 2012, adolescents and youth are the most affected age group, with 56.9 per cent of new infections occurring among persons aged 10-34 years.

24. The National Youth Policy and Strategy, developed by the Ministry of Culture, Youth and Sport in 2013, calls for a multi-sectoral approach to addressing adolescent and youth issues, including adolescent sexual and reproductive health. In 2014 the Ministry of Education integrated comprehensive sexuality education into the national curriculum. This has allowed for young people to have more access to information on sexual and reproductive health, gender and gender-based violence and HIV, but implementation remains incomplete.

People Living with HIV and Key Populations at Higher Risk of HIV

25. The draft HIV Policy, updated in 2013, provides a framework for non-discriminatory access to HIV services by all groups in South Sudan. However, stigma and discrimination against people living with HIV (PLHIV) and key population groups at higher risk of HIV infection, i.e., female sex workers (FSW) and men who have sex with men (MSM) remain a

challenge to access and utilization of services. The 2013 Stigma Index Study highlights the common manifestation of stigma and discrimination.

26. Of concern for legislative and policy action are: loss of job or source of income based on HIV status, as noted by 18% of respondents and prevention from attending education institutions, as noted by 14% of respondents. Institutional discrimination, including coercion into medical procedures (22%), denial of health/life insurance (16%), detaining or quarantining because of HIV status (12%) and arrest or taken to court on charge related to HIV status (9%) needs urgent attention. Lack of confidentiality has been repeatedly mentioned as a particular problem in the health care setting, with people living with HIV not getting the choice of how, when and to whom they disclose their HIV status. Health services also fail to account for the needs of vulnerable groups, such as LGBTI persons and men who have sex with men.

27. Discrimination toward key population groups is manifested in more abusive behaviours, especially by authority figures. Sex work and same-sex relationships are criminalized in South Sudan and periodic and/or regular arrests and abuse of sex workers are common. Condoms are used as evidence of ‘prostitution’ and often female sex workers are arrested if found with condoms. Discrimination against MSM is such that MSM live in hiding within communities and are not able to access health services.

Freedom of Expression and Access to Information

28. The conflict that erupted in December 2013 did not spare the media sector and has greatly affected the enabling environment for media freedom and safety of journalists, in spite of the constitutional guarantees contained in Articles 24 and 32 of the Transitional Constitution of South Sudan (TCSS). The conflict has also made it increasingly difficult for journalists to perform their duties freely and eliminated key pillars for sustaining a vibrant media sector in the country. To the contrary, press freedom, access to information and the safety of journalists in South Sudan has deteriorated since the outbreak of the conflict.

29. Repeated incidents of the beating, harassment, threats, intimidation and detention of journalists without trial have been compounded with the confiscation of newspapers, closure of media houses and the killing of seven journalists in 2015, leading to unprecedented levels of self-censorship by journalists and media houses. The country has also been ranked fifth on the Global Impunity Index that spotlights countries where journalists are slain and the killers go free, as well 125th among 180 countries in regard to media freedom in 2015, representing a drop from its previous ranking.

30. While in Article 24 the TCSS guarantees every citizen the right to freedom of expression, reception and dissemination of information, publication and access to the press, without prejudice to public order, safety or morals, in practice restrictions can be imposed through several laws, such as the Media Authority Act, which provides for an independent, autonomous and self-regulated authority. The complementary Broadcasting Corporation Act aims to promote the development of a public broadcasting service to ensure the flow of information flow in the public interest in South Sudan.

31. The right of access to information is guaranteed in Article 32 of the TCSS, except where the release of such information is likely to prejudice public security or the right to privacy of any other person. In addition, the Right of Access to Information Act was adopted in 2013, though some provisions enable Government to make exceptions on the disclosure of information. While the purpose of this legislation is to give meaning to the right of access to information as provided in the TCSS and promote maximum disclosure of information in the public interest, the public is generally unaware of its existence and Government institutions remain averse to disclosing information in their possession. Finally, the Penal Code Act 2008 establishes a penalty for defamation, varying from imprisonment for a term not exceeding twenty years to a fine or both.

Freedom of association and assembly

32. On 10 February 2015, the National Security Service operatives of the Government of South Sudan interrupted the elections of the Interim South Sudan Bar Association in Juba and Wau. The security operatives seized and confiscated the ballot boxes and other properties of the Interim Bar Association and detained its president for four and a half hours. The election was significant in that it was meant to transform the Interim Bar Association to a permanent and functional professional body. The National Security Service alleged that the Interim Bar Association did not obtain the required permission from them to conduct the elections. The Interim Bar Association, however, contends that the relevant security organs were informed of the elections.

33. The right to self-organization protects the rights of employees, workers and persons of the same profession or same class of profession to form organizations or confederations of organizations for the purposes of protecting and furthering their interests. The right to organize stems from freedom of association, a classic fundamental right, and finds expression in the TCSS. Government subsequently re-appointed a previous president, known to be sympathetic to its interests, to run the Bar Association's affairs.

Right to Personal Liberty

34. Government made progress towards addressing prolonged and arbitrary detention, by establishing a case management system in the Directorate of Public Prosecution and inmates' statistics for the National Prison Service of South Sudan. Both institutions published their initial case management reports and inmates statistics in 2015 with support from UNDP. These reports will enable the justice system to track individuals, especially those in detention, and the progress of their cases.

Administration of Justice, Impunity and the Rule of Law

35. Following technical advice from UNDP, Government drafted a bill to domesticate international crimes. A bill is before the national Legislative Assembly (NLA) to amend the Penal Code to incorporate war crimes, crimes against humanity, genocide and sexual and gender-based crimes. This bill, which seeks to integrate these crimes into the South Sudanese

legal system, is currently before the NLA for discussion. OHCHR has made comments on the bill and shared them with the NLA which, if accepted, would bring the proposed legislation in line with international human rights, humanitarian and criminal law.

36. In March 2016, the President dismissed the Deputy Chief Justice by way of presidential decree. This was done in violation of the TCSS, which provides that judges may only be removed for misconduct, incompetence or incapacity and upon recommendation of the Judicial Service Commission (JSC). No such recommendation has emerged from the JSC nor are any disciplinary proceedings pending before the JSC regarding the Deputy Chief Justice. The Deputy Chief Justice was sitting on a constitutional panel of the Supreme Court of South Sudan, which was determining the constitutionality of a presidential decree to increase the number of states in South Sudan from ten to twenty-eight at the time of his dismissal. The unexplained dismissal of the Deputy Chief Justice raises questions as to the ability of the judiciary to operate as an independent institution.

RECOMMENDATIONS

General

37. The United Nations Country Team recommends that the Government of the Republic of South Sudan should:

- Put an end to gross abuses and violations of human rights and serious violations of international humanitarian law, including those amounting to international crimes, including those involving extrajudicial killings, ethnically targeted violence, sexual violence, recruitment and use of children, enforced disappearances and arbitrary arrest and detention;
- Undertake comprehensive and credible investigations to establish the scope of violations and the responsibility of perpetrators;
- Establish credible accountability mechanisms, consistent with international standards and in accordance with those outlined in the ARCSS, to hold the perpetrators of violations individually accountable;
- Continue to ratify or accede to core international and regional human rights treaties, ensuring that the instruments of ratification and accession (including that related to the African Charter on Human and Peoples Rights), are deposited with the relevant treaty bodies;
- Take measures to ensure the realization of all treaty obligations, including those related to freedom of association, freedom of assembly, access to information and the rights of women and children, as well as their respect by all organs of the State and enforcement by judicial means.

Refugees, Asylum-Seekers and Stateless Persons

38. The United Nations Country Team recommends that the Government of the Republic of South Sudan follow through with its stated aspirations to ratify and accede to:

- The 1951 Refugee Convention and its 1967 Protocol without reservations, in particular with respect to the right to seek employment, the right to freedom of movement, and the right to have access to primary education and health care;
- The 1969 OAU Refugee Convention;
- The 1954 and 1961 Conventions on Statelessness.

39. The United Nations Country Team recommends that the Government of the Republic of South Sudan should:

- Commit at the highest levels of national leadership to pursue the withdrawal of military and irregular armed actors from the refugee sites, as well as enforce the disarmament of armed elements.
- Carry out sustained advocacy and messaging to local authorities, refugees, refugee leadership and local citizens about negative consequences of voluntary and forced recruitment in refugee camps, particularly child recruitment;
- Offer local integration as a durable solution for protracted refugee situations, in particular where refugees are self-reliant and actively contribute to the local economy and development;
- Provide access to arable land so that refugees can cultivate, thereby lessening the need for humanitarian food assistance and contributing to the local and national food basket;
- Ensure that refugees have the right to seek employment as foreseen by article 33 (f) of the 2012 Refugee Act.
- Assess the risk of statelessness in South Sudan comprehensively, including through mapping the risks and surveying statelessness populations in the country;
- Include questions related to nationality in the planned census to establish the number of persons whose nationality is undetermined;
- Embark on the establishment of Civil Registration and Vital Statistics (CRVS) systems;
- Allocate a budget for the implementation of nationality documentation throughout the country and ensure specialized training on the Nationality Act for the key departments of the Department of Nationality, Passports and Immigration (DNPI).

Child Rights

40. The United Nations Country Team recommends that the Government of the Republic of South Sudan should:

- Complete the ratification process of the two Optional Protocols to the CRC on the involvement of children in armed conflict and on the Sale of Children, Child Prostitution and Child Pornography and submit the required declaration expressing consent to be bound by those protocols;
- Ensure that the optional protocol on involvement of children in armed conflict includes a binding declaration that sets the minimum age at which the country will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced;

- Monitor, report, investigate and bring to justice crimes committed against children and abuses of children.

Gender Equality, Social Services and Health

41. The United Nations Country Team recommends that the Government of the Republic of South Sudan should:

- Ratify the Maputo Protocol to the African Charter on Human and People’s Rights on the Rights of Women in Africa;
- Ratify the HIV Policy to protect people living with HIV from discrimination and abuse, and provide an enabling environment for access to HIV services by all groups in a non-discriminatory manner.

42. The United Nations Country Team recommends that the Ministry of Health and partners should:

- Release the National Health Policy and start working on the Health Sector Strategic Plan;
- Release the National Public Health bill 2013;
- Start implementing the Abuja Declaration by allocating 15% of its annual budget to the health sector;
- Develop and implement clear policy and guidance on universal access to health in a non-discriminatory manner;
- Advocate for full implementation of the family-planning policy and guidelines across all states in the country.

43. The United Nations Country Team recommends that the Ministry of Youth, Culture and Sports, with other line Ministries such as Health and Education, should:

- Operationalize the National Youth Policy and Strategic Plan;
- Promote increased community and youth engagement in the implementation of National Adolescent and Youth Policy and Strategy.

44. The United Nations Country Team recommends that the Ministry of Education and partners should:

- Train teachers and other service-providers in comprehensive sexuality education;
- Develop pedagogic materials in comprehensive sexuality education.

45. The United Nations Country Team recommends that the Ministry of Labour, South Sudan HIV/AIDS Commission and partners should:

- Update and operationalize a workplace policy for HIV and AIDS to safeguard the rights of people living with HIV and provide for workplace programmes on HIV and AIDS.

Freedom of Expression

46. The United Nations Country Team recommends that the Government of the Republic of South Sudan should:

- Cease actions impeding the rights to freedom of opinion and expression, including the harassment and censorship of the media and civil society, summoning and detention of journalists and the issuing of orders to suspend publications or seize newspapers;
- Decriminalize defamation and place it within the civil code, in accordance with international standards, eliminating the harsh penalties contained in the Penal Code Act;
- Investigate cases of the killing and torture of journalists and report publicly on the status of judicial follow-up;
- Take full advantage of the UN Plan of Action on the Safety of Journalists and the Issue of Impunity as a means to strengthen the protection of journalists and citizens' right to freedom of expression.