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Human Rights Council

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Agenda item 4

Human rights situations that require the Council's attention

Resolution adopted by the Human Rights Council on 24 March 2021

46/23. Situation of human rights in South Sudan

The Human Rights Council,

Guided by the purposes and principles of the Charter of the United Nations,

Guided also by the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and relevant human rights treaties,

Reaffirming that all human beings are born free and equal in dignity and rights, and that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights,

Recalling Human Rights Council resolutions 34/25 of 24 March 2017, 37/31 of 23 March 2018, 40/19 of 22 March 2019 and 43/27 of 22 June 2020, the twenty-sixth special session of the Council, including its resolution S-26/1 of 14 December 2016, and its resolution 31/20 of 23 March 2016, in which the Council established the Commission on Human Rights in South Sudan, and all other previous Human Rights Council and Security Council resolutions and President's statements on South Sudan,

Noting all relevant decisions and communiqués of the African Union and the Intergovernmental Authority on Development, and the communiqués of the Peace and Security Council of the African Union of 14 November 2019 and 27 January 2020, in which the Peace and Security Council, inter alia, re-emphasized its request to the Government of South Sudan and the African Union Commission to accelerate the establishment of all transitional justice mechanisms as provided for in the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan, including the hybrid court for South Sudan, the commission for truth, reconciliation and healing and the compensation and reparation authority,

Emphasizing that States have the primary responsibility for the promotion and protection of human rights, and recalling that the Government of South Sudan has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity,

Emphasizing also the importance of good governance and the rule of law as key elements of conflict prevention, peacekeeping, conflict resolution and peacebuilding, and stressing that the Government of South Sudan should respect and protect freedom of expression, of peaceful assembly and of association, and take measures to prevent attacks on and the harassment of journalists, media workers, civil society groups and human rights



defenders, in the interest of fostering an open and inclusive political environment that supports sustainable peace,

Recognizing that transitional justice mechanisms are important elements in a national reconciliation process, as they, inter alia, address accountability, reparations, truth-seeking and guarantees of non-recurrence, emphasizing the importance of the agreed principles for transitional justice and the establishment of the hybrid court for South Sudan, the commission for truth, reconciliation and healing and the compensation and reparation authority, as outlined in chapter V of the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan, and underlining the role that domestic, regional and international accountability mechanisms can play in assisting South Sudan to ensure accountability,

Recalling the signing of the Rome Declaration on the peace process in South Sudan on 12 January 2020, in which the Government of South Sudan and non-signatories to the Revitalized Agreement recommitted to the Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access of 21 December 2017, and calling upon all parties to the Rome process to resume fully inclusive talks mediated by the Community of Sant'Egidio, while expressing concern at ongoing violations of the permanent ceasefire and the Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access, and urging all parties to the conflict to fully honour their commitments in this regard,

Recalling also the formation of the Government of South Sudan, and recognizing that this represented a significant step forward in the implementation of the Revitalized Agreement and an opportunity for peace, stability and sustainable improvement in the situation in South Sudan through, inter alia, the implementation of the commitments and obligations of South Sudan with respect to international human rights law and its obligations under international humanitarian law,

Recognizing that the provision of technical assistance and capacity-building by the international community to South Sudan, including in response to requests from the Government of South Sudan, remains vital to efforts by all actors to realize peace, stability and a sustainable improvement in the situation in South Sudan,

Recognizing also the continued need to step up the scale, coordination, coherence and quality of all capacity development in and technical assistance to South Sudan in the field of human rights,

Recognizing further existing technical assistance and capacity-building efforts, such as the work undertaken by the United Nations Mission in South Sudan, the United Nations Development Programme, the United Nations police and the Office of the United Nations High Commissioner for Human Rights to provide technical assistance and capacity-building to the armed forces, State institutions and the justice system of South Sudan,

Welcoming the appointment of governors and deputy governors in all States, and the ongoing consultations to implement the reconstitution of the Transitional National Legislative Assembly,

Noting the additional challenges posed by the coronavirus disease (COVID-19) pandemic to local, regional, national and international efforts to advance the situation of human rights in South Sudan,

Observing that, as the situation of human rights improves in South Sudan, it would be appropriate to consider this matter under agenda item 10 at future sessions of the Human Rights Council,

1. *Welcomes* the recent steps taken by the Government of South Sudan towards finalizing governance structures in South Sudan, and calls upon the Government to continue to make progress in finalizing all layers of State and local government and reconstituting the Transitional National Legislative Assembly, in accordance with the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan;

2. *Stresses* that States have the primary responsibility for the promotion and protection of human rights, and should take measures to prevent human rights violations and abuses and to provide an effective remedy for victims of such violations and abuses, and

recalls that the Government of South Sudan has the responsibility to protect its population from genocide, war crimes, ethnic cleansing and crimes against humanity;

3. *Urges* the Government of South Sudan to address the previous and current findings of the Commission on Human Rights in South Sudan, which include corruption and economic crimes, such as tax evasion, money laundering and bribery; the recruitment and use of children in armed conflict; localized conflict characterized by killings with the support of militias affiliated with the South Sudan People's Defence Forces and the Sudan People's Liberation Army (in Opposition), the abduction, torture and displacement of people and the looting and destruction of property; the use of starvation as a method of warfare; the denial of humanitarian access and attacks on civilian infrastructure, and violence against and intimidation of civil society, human rights defenders, humanitarian personnel and journalists; and sexual and gender-based violence, including rape, gang rape, sexual mutilation, forced marriage, abduction and sexualized and gender-based torture;

4. *Recognizes* the political will of the Government of South Sudan to promote and protect human rights and its desire for tangible progress and the prevention of further human rights violations and abuses;

5. *Stresses* that those responsible for violations and abuses of human rights and violations of international humanitarian law, including any that amount to war crimes or crimes against humanity, should be held accountable while affording fair trial protections to the accused, supporting victims and protecting potential witnesses before, during and after legal proceedings;

6. *Welcomes* the recent announcement by the Government of South Sudan on commencing the establishment of the hybrid court for South Sudan and other transitional justice mechanisms set out in chapter V of the Revitalized Agreement, and urges the Government to work with the African Union to take all steps necessary to formally establish and operationalize the hybrid court, including by adopting the statute of the hybrid court and by signing the relevant memorandum of understanding as an urgent priority, and to take all steps necessary to establish the commission for truth, reconciliation and healing and the compensation and reparation authority;

7. *Also welcomes* ongoing efforts under the national action plan on sexual and gender-based violence signed in 2019, and the formation and operationalization of a court addressing gender-based violence in January 2021; the action plans of the Sudan People's Liberation Army (in Opposition) and the South Sudan People's Defence Forces to tackle conflict-related sexual and gender-based violence, initiated in 2019; and recent efforts to address sexual and gender-based violence by the use of mobile military courts in Central Equatoria; and encourages efforts to address conflict-related sexual violence and to strengthen accountability for crimes involving sexual and gender-based violence, to be replicated to scale to address impunity, which remains widespread;

8. *Acknowledges* that demonstrable progress in key human rights issues of concern is critical to any future change to the mandate of the Commission on Human Rights in South Sudan, and in this regard requests the Office of the United Nations High Commissioner for Human Rights, in cooperation with the Government of South Sudan and the Commission on Human Rights in South Sudan, the Intergovernmental Authority on Development, the African Union and relevant States to propose a clear transition plan, with benchmarks and milestones to inform future consideration by the Human Rights Council of the situation of South Sudan under agenda item 10;

9. *Requests* the Office of the High Commissioner to facilitate ongoing consultations among the Government of South Sudan, the Commission on Human Rights in South Sudan, the Intergovernmental Authority on Development and the African Union on progress made concerning the implementation of the above transition plan, once developed;

10. *Recognizes* the continued importance of an inclusive process for national dialogue and constitutional reform to help to ensure that the Revitalized Agreement delivers long-term stable governance, and urges all parties and international partners to engage constructively with the African Union Commission, the African Union High Representative for South Sudan and the institutions created pursuant to the Revitalized Agreement;

11. *Stresses* the continuing need for the effective and meaningful participation of women during all stages and in all structures envisaged in the Revitalized Agreement, and for all parties to the Agreement to meet their commitments regarding women's representation, including adherence to the gender quota of 35 per cent for executive appointments as set out in the Agreement, and to have regard to the need to ensure balance in the representation of youth, gender and national and regional diversity in their appointments;

12. *Calls upon* the Government of South Sudan to allow and facilitate, in accordance with relevant provisions of international law, including international humanitarian law and humanitarian principles, the full, safe, rapid and unhindered access of relief personnel, equipment and supplies, free of unnecessary duties and taxes and without intimidation or harassment, to the millions of people in need of humanitarian assistance in South Sudan, including internally displaced persons and refugees, and to enable affected persons to have access to assistance and protection in accordance with the provisions of the Revitalized Agreement and the Agreement on the Cessation of Hostilities;

13. *Recognizes* the continued important role and efforts of the Intergovernmental Authority on Development in bringing parties together to advance the implementation of the Revitalized Agreement, and to support the inclusion of civil society, women and youth in all negotiations, including those relating to constitutional reform;

14. *Also recognizes* the vital role played by human rights defenders, women peacebuilders, the media and civil society organizations in promoting human rights, highlights the critical importance of freedom of expression in South Sudan, and urges the Government of South Sudan to promote and protect political and civic space and to respect these freedoms;

15. *Further recognizes* the continued important role of the reconstituted Joint Monitoring and Evaluation Commission and the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism in supporting the implementation of the Revitalized Agreement and its ceasefire provisions, and urges all parties and international partners to engage constructively with all the bodies created pursuant to the Revitalized Agreement;

16. *Urges* all parties to the comprehensive action plan to end and prevent all six grave violations against children, to take immediate and effective steps towards its implementation, including by releasing all children that have been recruited and abducted, and to take measures to ensure that all survivors have access to justice as well as to gender- and age-responsive medical, psychological and other support services, including for survivors of sexual and gender-based violence;

17. *Welcomes* the third report of the Secretary-General on children and armed conflict in South Sudan,¹ expresses its serious concern at the finding that children continue to be victims of human rights violations and abuses, and of the six grave violations identified in the report, which are committed against children by all parties to the conflict, urges all parties to ensure that the recommendations made in the report are implemented fully, and recalls that the best interests of the child should be a primary consideration in all actions concerning children taken by the Government of South Sudan;

18. *Stresses* its continued and serious concern at the findings of the Panel of Experts on South Sudan submitted pursuant to Security Council resolution 2428 (2018),² and encourages constructive engagement with the Panel of Experts;

19. *Also stresses* its concern at the findings made in the joint report of the Office of the High Commissioner and the United Nations Mission in South Sudan entitled "Access to health for survivors of conflict-related sexual violence in South Sudan", published in May 2020, which builds on previous reports, including "Conflict-related violations and abuses in Central Equatoria: September 2018–April 2019", regarding the persistence of localized

¹ S/2020/1205.

² S/2019/301.

conflict-related sexual and gender-based violence against women and men, boys and girls, the lack of accountability for perpetrators, and the lack of health support for survivors;

20. *Takes note with appreciation* of the report of the Commission on Human Rights in South Sudan³ and the recommendations contained therein;

21. *Expresses concern* at the findings of the Commission in its report regarding widespread and pervasive violence at the subnational level, localized conflicts, often with the participation of organized armed militias affiliated with the South Sudan People's Defence Forces or the Sudan People's Liberation Army (in Opposition), including violations against civilians, such as abductions, including of children, murder, rape and other forms of sexual violence, and also expresses concern at the arbitrary arrest and detention or enforced disappearance of persons exercising their freedoms of expression or of peaceful assembly;

22. *Welcomes* the continued cooperation of the Government of South Sudan with the Office of the High Commissioner, the special procedures of the Human Rights Council and the Commission on Human Rights in South Sudan in the fulfilment of its mandate, including by authorizing travel to and within the country and providing meetings and relevant information, and calls upon the Government to continue to cooperate fully and constructively with and to give unhindered access to them, as well as to the United Nations Mission in South Sudan, and regional, subregional and international mechanisms on the ground;

23. *Reaffirms* the importance of the mandate of the Commission on Human Rights in South Sudan, with continued emphasis on the need to establish the facts and circumstances of alleged violations and abuses of human rights with a view to ensuring that those responsible are held to account, and welcomes the recommendations made by the Commission on ending impunity and ensuring accountability;

24. *Urges* States, the United Nations High Commissioner for Human Rights, the Commission on Human Rights in South Sudan, relevant United Nations agencies and other stakeholders to continue to support the efforts of the Government of South Sudan to further improve the situation of human rights in the country, including by responding to the Government's requests for further technical assistance and capacity-building;

25. *Decides* to extend the mandate of the Commission on Human Rights in South Sudan, composed of three members, for a period of one year, renewable as authorized by the Human Rights Council, with the following mandate:

(a) To monitor and report on the situation of human rights in South Sudan, and to make recommendations to prevent a deterioration in the situation with a view to its improvement;

(b) To determine and report the facts and circumstances of, to collect and preserve evidence of, and to clarify responsibility for alleged violations and abuses of human rights and related crimes, including sexual and gender-based violence and ethnic violence, with a view to ending impunity and providing accountability, and to make such information available also to all transitional justice mechanisms, including those to be established pursuant to chapter V of the Revitalized Agreement, including the hybrid court for South Sudan, once established in cooperation with the African Union;

(c) To provide guidance on transitional justice, including accountability, reconciliation and healing, as appropriate, and to make recommendations on technical assistance to the Government of South Sudan to support accountability, reconciliation and healing;

(d) To engage with the Government of South Sudan, international and regional mechanisms, including the United Nations, the United Nations Mission in South Sudan and the African Union, including by building upon the work of the African Union Commission of Inquiry on South Sudan and the African Commission on Human and Peoples' Rights, the Intergovernmental Authority on Development, including the Partners Forum, the Chair of the reconstituted Joint Monitoring and Evaluation Commission and civil society, with a view to promoting accountability for human rights violations and abuses committed by all parties;

³ A/HRC/46/53.

(e) To make recommendations on technical assistance and capacity-building, including to law enforcement institutions, on the promotion and protection of human rights and fundamental freedoms, including on addressing sexual and gender-based violence;

(f) To make recommendations on technical assistance and capacity-building for the implementation of chapter V of the Revitalized Agreement;

(g) To make recommendations on a follow-up process for the provision of technical assistance and capacity-building to South Sudan;

26. *Requests* the Commission on Human Rights in South Sudan to convene two workshops on transitional justice, with the participation of relevant stakeholders;

27. *Also requests* the Commission on Human Rights in South Sudan to work collaboratively with the African Commission on Human and Peoples' Rights, including with the Country Rapporteur for South Sudan;

28. *Requests* the Office of the High Commissioner to provide all the administrative, technical and logistical support necessary to enable the Commission on Human Rights in South Sudan to carry out its mandate, including computer software to support the Commission's evidence-collection function;

29. *Also requests* the Office of the High Commissioner to provide the Government of South Sudan with technical assistance in order to support the realization of the indicators contained in the present resolution;

30. *Requests* the Secretary-General to provide the Office of the High Commissioner with all the resources necessary to enable it to provide such administrative, technical and logistical support as necessary to the Commission on Human Rights in South Sudan;

31. *Requests* the Commission on Human Rights in South Sudan to present an oral update to the Human Rights Council at its forty-eighth session, including on progress made on the provisions of the present resolution, during an enhanced interactive dialogue, with the participation of representatives of the African Union, and to present a comprehensive written report to the Council at its forty-ninth session during an interactive dialogue;

32. *Also requests* the Commission on Human Rights in South Sudan to submit its report and recommendations to the Human Rights Council and then to share them with the African Union and all relevant organs of the United Nations, including the United Nations Mission in South Sudan;

33. *Decides* to remain seized of the matter.

*51st meeting
24 March 2021*

[Adopted by a recorded vote of 20 to 16, with 11 abstentions. The voting was as follows:

In favour:

Argentina, Armenia, Austria, Bahamas, Bulgaria, Czechia, Denmark, Fiji, France, Germany, Italy, Japan, Marshall Islands, Mexico, Netherlands, Poland, Republic of Korea, Ukraine, United Kingdom of Great Britain and Northern Ireland and Uruguay

Against:

Bahrain, Bolivia (Plurinational State of), Cameroon, China, Côte d'Ivoire, Cuba, Eritrea, Gabon, Libya, Mauritania, Pakistan, Philippines, Russian Federation, Somalia, Sudan and Venezuela (Bolivarian Republic of)

Abstaining:

Bangladesh, Brazil, Burkina Faso, India, Indonesia, Malawi, Namibia, Nepal, Senegal, Togo and Uzbekistan]