



## South Sudan: A Human Rights Agenda June 30, 2011

On July 9, 2011, South Sudan will become Africa's 54th state, following the referendum in January. The people of South Sudan deserve congratulations for the peaceful conduct of the referendum, provided under the 2005 Comprehensive Peace Agreement to end Sudan's long-running civil war.

The new Republic of South Sudan (RoSS) faces enormous challenges, with its legacy of prolonged civil war and severe underdevelopment. Sustained, long-term international assistance, donor cooperation, and investment will be needed to fulfil many basic rights. But the RoSS can and should take many immediate steps that do not depend on long-term assistance to respect, promote and protect its people's rights.

Amnesty International and Human Rights Watch urge the Republic of South Sudan to demonstrate its commitment to human rights by taking action in the following areas as a matter of priority:

1. Ensure accountability for abuses by soldiers, police, and other security forces
2. Uphold the right to freedom of expression and association
3. Review the legality of all detentions, particularly of juveniles
4. Immediately place a moratorium on the death penalty
5. Promote and protect the rights of women and girls
6. Ratify international human rights treaties

### **1. Hold Security Services to Account**

Fighting between the Sudan People's Liberation Army (SPLA) and armed opposition groups since January has killed hundreds of civilians, including women and children, and displaced more than 10,000 people in Upper Nile, Unity, and Jonglei states, according to the United Nations. SPLA soldiers have been responsible for serious human rights and international humanitarian law violations in the course of this fighting, including unlawful killing of civilians and the destruction of homes and other civilian properties.

Soldiers also are committing serious human rights violations during law enforcement operations. The Southern Sudan Police Service (SSPS) remains under-equipped, ill-trained, largely illiterate, and insufficiently deployed. The SPLA is often called in to fill

the policing void, but instead of upholding the rule of law the soldiers commit further violations against civilians, including unlawful killings, beatings, and looting, particularly when conducting forcible community disarmament operations.

The RoSS should meet its obligation to protect civilians with concrete measures, including the following, to address the widespread impunity for security forces:

- Ensure that rank-and-file soldiers and their officers know and understand their obligations to respect and uphold human rights and humanitarian law; hold military personnel accountable for violations, with prosecutions before an independent tribunal that provides the full guarantees set out in article 14 of the International Covenant on Civil and Political Rights (ICCPR).
- Refrain from using the SPLA to carry out policing functions, and ensure civilian oversight of all security and law enforcement forces.
- Accelerate efforts to train, equip, and deploy the police service sufficiently to carry out their policing mandate; and ensure that police officers are aware of, and apply international standards on policing and are held accountable for human rights violations with prosecutions before an independent tribunal that provides the full guarantees set out in article 14 of the ICCPR.

## **2. Protect Free Expression and Association and Peaceful Assembly**

During Sudan's April 2010 elections, southern Sudanese security forces harassed, arrested, and detained people thought to be opposed to the ruling Sudan People's Liberation Movement (SPLM), including journalists and opposition party members. In 2011, Human Rights Watch and Amnesty International continued to document cases in which security personnel harassed and arbitrarily arrested and detained journalists for criticizing the government.

A new pattern has emerged, with security personnel arbitrarily arresting people suspected of links to armed opposition groups. Further contributing to the atmosphere of political intolerance, the government limited participation of opposition political parties in drafting the new constitution.

Amnesty International and Human Rights Watch call on the Republic of South Sudan to demonstrate its commitment to civil and political rights and freedoms with the following concrete actions:

- Publicly affirm the government's commitment to freedom of expression, association and peaceful assembly, including membership in any political party.
- End the arbitrary arrests and detention of journalists, activists, and political opponents to the ruling SPLM. Release detainees or charge them with a recognizable criminal offense.
- Enact media laws that guarantee freedom of expression and media freedom in accordance with internationally accepted standards. Enact a law that

establishes the state controlled media as an independent public broadcast authority.

### **3. Review Detentions, Reduce Case Backlog**

Weaknesses in law enforcement capacity and the justice system as a whole resulting from the shortage of qualified staff and reliance on customary law have fuelled impunity for crimes and given rise to serious human rights violations in the administration of justice. These violations documented by Amnesty International and Human Rights Watch include arbitrary arrests and detentions, lack of legal assistance and aid, prolonged periods of pre-trial detention, and poor conditions of detention characterized by overcrowding, dilapidated structures, and insufficient food and medicine in police cells, county jails, and prisons.

Children are often tried as adults and in most detention centers are detained together with adults, exposing these children to a heightened risk of sexual abuse. Very few educational opportunities are available to detained children, making their imprisonment punitive rather than rehabilitative. Although the Child Act of 2008 guarantees juveniles a full range of rights and protections, including protections for children in conflict with the law, most of the necessary steps to provide these protections have not been carried out.

Many mentally ill people are in prison, although imprisoning them on the grounds of their illness is unlawful, whether for their “protection” or for the “protection of others.” The prisons lack sufficient medical services to treat them, there is no system of voluntary commitment, and confining them to prisons contributes to overcrowding.

In view of the actual and potential human rights violations within the criminal justice system, Amnesty International and Human Rights Watch call on to the Republic of South Sudan to take the following immediate steps to review all detentions and reduce case backlog and prison overcrowding:

- The judiciary should, in accordance with its constitutional powers, review the legality and necessity of all detentions, on a periodic basis not exceeding every three months. The panel should order detainees released – particularly juveniles – if there are no grounds for holding them.
- Ensure that the Justice and of Gender, Child and Social Welfare Ministries and other relevant government organs urgently develop a plan to create the juvenile justice system envisioned in the Child Act, including alternatives to imprisonment.
- The Ministries of Health and Justice and any other relevant government bodies should as a matter of urgency develop a plan for the treatment of mentally ill persons and ensure their transfer out of prison custody, as there is no lawful basis to hold them.

#### **4. Immediately Place a Moratorium on Executions**

The (draft) Transitional Constitution of the Republic of South Sudan provides that the death penalty should remain in force “for extremely serious cases in accordance with the law.” Since January 2007, authorities in Southern Sudan have executed at least 12 people, and scores remain on death row, including some juveniles.

The International Covenant on Civil and Political Rights provides that capital punishment can only be imposed for the most serious crimes and only after the most rigorous due process of law. States are increasingly abolishing the death penalty in accordance with the second Optional Protocol to the ICCPR and consistent with the right to life. African countries that have abolished capital punishment include Angola, Burundi, Cape Verde, Côte d’Ivoire, Djibouti, Gabon, Guinea-Bissau, Mauritius, Mozambique, Namibia, Rwanda, Sao Tome and Principe, Senegal, Seychelles, South Africa, and Togo.

In all countries where the highest standards of due process safeguards cannot be fully guaranteed, implementing a moratorium on executions is an immediate human rights priority. Actual and potential weaknesses in South Sudan’s criminal justice system can and do lead to breaches in international human rights law, including the right to a fair trial, the right not to be subjected to cruel, inhuman and degrading punishment and the right to life.

By declaring a formal moratorium on executions, with a view toward abolition, the new government would demonstrate leadership on the death penalty issue consistent with the global trend toward abolition. A moratorium would eliminate the risk of executing the innocent, including those who have not yet exhausted appeal options.

Amnesty International and Human Rights Watch call on the Republic of South Sudan to:

- Declare an official moratorium on executions with an ultimate view to abolishing the death penalty;
- Commute all death sentences;
- Take the necessary steps to ensure the prompt ratification, without reservations, of the second Optional Protocol to the ICCPR, on the abolition of the death penalty.

#### **5. Protect the Rights of Women and Girls**

Although many of South Sudan’s statutory laws contain protections for women and girls – such as prohibiting rape and sexual assault and allowing land ownership by women – the government is rarely able to enforce them. Women and girls are routinely deprived of the right to choose a spouse or to own and inherit property, and they are subjected to practices such as forced and early marriage, wife-inheritance, and the use of girls to pay debts, and various forms of domestic violence.

Across the South, women and girls have little knowledge of their rights under the law; more than 80 percent are illiterate. They have limited access to justice, with most domestic disputes resolved by traditional courts applying discriminatory customs and traditions based on discriminatory policies. Community leaders and traditional authorities applying these customs also lack awareness of women's rights and how to uphold them.

Amnesty International and Human Rights Watch call on the Republic of South Sudan to demonstrate commitment to promoting and protecting the rights of women and girls with the following immediate actions:

- Publicly declare zero tolerance for early and forced marriage and develop a national strategy to address the problem.
- Publicly declare zero tolerance for sexual and gender based violence and develop a national strategy to address the problem.
- Ratify the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol), and use them as guidance in drafting the new Constitution and other laws to promote gender equality.
- Accelerate programs to educate men, women and children as well as traditional authorities about the legal rights of women and girls under Sudanese and international laws applicable in South Sudan. Ensure that the Ministry of Gender and Social Affairs has adequate resources for such promotion and protection activities.

## **6. Ratify Key International Human Rights Treaties**

Sudan is currently party to several human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC), including the Optional Protocol to the CRC on the involvement of children in armed conflict, and the CRC Optional Protocol on the Sale of Children; and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Sudan is also party to the African Charter on Human and Peoples' Rights (African Charter).

South Sudan should establish a robust human rights framework by ensuring succession to these instruments, and by ratifying additional regional and international human rights treaties. These include:

- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) as well as the Optional Protocol to the CAT;
- The African Charter on the Rights and Welfare of the Child (ACRWC);
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW);

- The Convention on the Rights of Persons with Disabilities (CRPD);
- The International Convention for the Protection of All Persons from Enforced Disappearances (CPED);
- The Rome Statute of the International Criminal Court, and the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights.

Amnesty International and Human Rights Watch also call on the Republic of South Sudan to:

- Make a formal declaration upon its independence that it succeeds to the human rights treaties to which Sudan is a party; ensure that the Transitional Constitution and the future permanent Constitution contain a full bill of rights in line with these international human rights obligations.
- Take the necessary steps to ensure the prompt ratification, without reservations, of the treaties listed above including CAT and the Optional Protocol; ACRWC, ICRMW, CRPD, CPED, the Rome Statute of the International Criminal Court, and the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights.
- Strengthen South Sudan's international human rights framework by explicitly stating that the rights and freedoms described in the Transitional Constitution may be enforced in a court of law.