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## Human Rights Council

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### Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

#### Technical assistance and capacity-building

## Progress of technical assistance and capacity-building for South Sudan in the field of human rights

### Report of the United Nations High Commissioner for Human Rights\*

#### *Summary*

The present report is submitted pursuant to Human Rights Council resolution 21/28. In the report, the United Nations High Commissioner for Human Rights outlines the human rights challenges faced by South Sudan as a new State emerging from decades of war. She identifies current engagement in technical assistance and capacity-building, and priority areas for future assistance to the Government of South Sudan in its efforts to promote and protect human rights.

The High Commissioner stresses the importance of supporting the efforts of the Government to build the capacity of rule of law and human rights institutions, and recommends courses of action to address outstanding capacity shortfalls.

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\* Late submission.

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## I. Introduction

1. In its resolution 21/28, the Human Rights Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to provide all necessary technical support and training to assist the Government of South Sudan in promoting and protecting human rights, and to present a report on the progress of technical assistance and capacity-building to the Council at its twenty-third session. The Council also requested the international community and relevant United Nations Agencies and stakeholders to support the efforts of the Government on technical assistance and capacity-building.

2. In resolution 21/28, the Human Rights Council acknowledged the commitments made by the Government of South Sudan to strengthen national mechanisms for the promotion and protection of human rights, called upon it to strengthen its cooperation with the United Nations Mission in South Sudan (UNMISS) on issues pertaining to the promotion and protection of human rights. The Council encouraged the Government to ratify the main international and regional human rights instruments, and also the continuing commitment of the Government to resolve all outstanding issues in the Comprehensive Peace Agreement of 2005 with the Government of the Sudan.

3. OHCHR wishes to thank the Government of South Sudan, UNMISS, the United Nations agencies operating in South Sudan and civil society organizations for their cooperation and their contribution to the present report.

## II. Background

4. A number of significant factors have had a serious impact on the situation of human rights in South Sudan, notable among them being the continuing political tensions between South Sudan and the Sudan and the internal conflicts and ethnic tensions, as well inter-communal conflicts and violence, both of which severely undermined efforts at nation- and institution-building. In March 2013, following more than 12 months of strained relations, the Governments of South Sudan and the Sudan signed the Implementation Matrix on Security, Economic and Cross-border Cooperation. Oil shipments to the Sudan from South Sudan, suspended since January 2012, subsequently recommenced in April 2013, although it will take several more months for full production to resume and oil revenues to filter through.

5. The suspension of oil exports between January 2012 and April 2013, which accounted for 98 per cent of the country's revenue, combined with the accompanying austerity measures significantly affected development, particularly with regard to the delivery of basic services such as health, education and infrastructure, as well as efforts to tackle widespread poverty and marginalization. It is hoped that, if the recent agreements are implemented, they will contribute to an environment conducive to improving the lives of the people in South Sudan and increase the fulfilment of their human rights.

6. The many challenges still facing the country, including those relating to human rights, remain significant. It will take considerable effort not only to tackle problems relating to the legacy of the civil war and the ongoing communal violence, but also to counter the impact that the austerity measures have had on the population.

7. The above-mentioned challenges include developing governance and security institutions with the necessary resources, capacity and accountability structures, addressing corruption to ensure the equitable and transparent management of public resources, developing a new Constitution and tackling the thorny question of ethnicity. Inter-ethnic tensions underpin many facets of life in South Sudan and are manifested in multiple ways,

from violent inter-ethnic clashes over the distribution of resources, political posts and employment opportunities. Mediation or peace processes have sometimes succeeded in mitigating these conflicts, but fundamental schisms need to be overcome if a sense of national identity that also respects ethnic diversity is to be forged.

8. Inter-communal violence, including that related to cattle raiding, is claiming a large numbers of lives, and remains common during the dry season, particularly in Jonglei State and the tri-State area (borders of Lakes, Warrap and Unity). Such attacks often involve not only killings but also the abduction of women and children. The theft of large numbers of cattle deprives the affected communities of their principal or indeed sole livelihood. Efforts by the State to exercise its authority, in particular through the deployment of security forces, appear to have had some impact in containing the phenomenon, with inter-ethnic violence declining from the levels recorded in 2011-2012. Nevertheless, an UNMISS investigation documented more than 100 killings resulting from an ambush by cattle raiders on migrating pastoralists on 8 February 2013; furthermore, between January and April 2013, more than 100 people were reportedly killed in the tri-State area as a result of cattle raids.

9. Humanitarian needs remain substantial, especially in areas such as Jonglei, where insecurity has continued to produce waves of displacement, and in Upper Nile and Unity, where the influx of refugees from fighting in neighbouring Sudanese States increased towards the end of 2012. South Sudanese returnees, primarily from the Sudan, have also increased the demand for support, with more than 150,000 registered by the International Organization for Migration, and a further 125,000 still expected. Throughout the country, the World Food Programme estimates that 4.1 million people are at risk of food insecurity.

10. More than 90 per cent of the population is estimated to live below the poverty level. At least 50 per cent of all children do not attend school, and only 39 per cent of those who do are girls. Child and early marriage continues to present an obstacle to girls' education, and raises health concerns and serious protection issues relating to sexual exploitation. High levels of illiteracy have also had an impact on the capacity to improve respect for human rights.

11. Over the past 12 months, some headway has been made on key transitional processes that will lead to elections in 2015. Government approval was given for a national census to be conducted in 2014. The National Elections Commission was inaugurated in January 2013, with a request for technical, logistical and operational support presented to the United Nations on 12 February for the scheduled elections. Members of a political parties council have been named.

12. Progress on developing a new Constitution has been extremely slow; this is a major concern, given that it is a core element of the transition process. There are also serious constraints on the right to freedom of expression and assembly, with threats and attacks against journalists and civil society actors when perceived to be critical of or in opposition to the Government. Media laws have been under development for some time, but are still under parliamentary review, where amendments have been proposed to improve protection for the right to freedom of expression.

13. Numerous hurdles therefore remain, including the need to ensure that space for political pluralism is protected, allowing civil society to play an open and critical role and, equally important, expediting the transition from a principally military and militarized environment to a peaceful, multiparty and civilian-led process of democratization.

### **III. Human rights challenges and priorities**

14. Against the background described above, South Sudan has continued to face daunting challenges to improving respect for human rights two years after its declaration of independence. While the historical legacy of conflict and underdevelopment, combined with the current difficulties (austerity measures have stifled efforts to improve the climate for advancing economic, social and cultural rights), have constrained the Government's ability to make significant progress in protecting and promoting human rights, some positive developments have been registered in the creation of policies and laws to protect human rights and fundamental freedoms.

15. For instance, human rights norms and standards from key international human rights conventions have been enshrined in the transitional Constitution of South Sudan. Another significant achievement was marked when the Council of Ministers, in November 2012, adopted a national agenda for human rights, which was drafted by the Human Rights Commission with the support of OHCHR.

16. The ability of South Sudan to guarantee human rights remains limited, with some signs of deterioration. Civilians living in conflict-prone areas continue to suffer from violence and intimidation, while in the capital of Juba violations of human rights attributed to members of the security forces have been reported. With a shortage of qualified personnel and an overreliance on customary and traditional justice systems outside the main population centres, the rule of law remains frail and the fight against impunity weakened. Arbitrary arrest, and acts of intimidation and harassment, of journalists, human rights defenders, foreign nationals or members of the political opposition still take place, with little accountability. These manifestations of a lack of respect for freedom of expression run counter to the Government's publicly stated commitment to a democratic system based on the rule of law, pluralism and tolerance of diverse opinions. This commitment needs to be translated into action and reinforced at all levels.

17. In addition to the expulsion of a United Nations senior Human Rights Officer in October 2012 and the temporary detention of two others in January 2013, United Nations Human Rights Officers have faced a number of obstacles in carrying out monitoring and investigation work, including a frequent lack of access to detainees held in military or national security facilities. Denial of access has hampered the information-gathering process in some areas, hindering the ready identification of possible areas for technical assistance.

18. The Human Rights Commission has not been able to carry out its mandated functions effectively. Although the process to ratify the main international human rights treaties has been cumbersome, some progress was noted.

19. The capacity of the Government to protect civilians, particularly those who suffer the brunt of criminality and armed conflict, needs to be strengthened.

#### **A. Protection of civilians**

20. The Government is responsible for ensuring the protection of the civilian population. The civilian population is, however, still subject to harm as a consequence of the violence, especially in Jonglei and the tri-State area, which shows the authorities are not fulfilling this responsibility. According to data collected by the Office for the Coordination of Humanitarian Affairs, inter-communal violence poses the greatest threat to civilians in South Sudan, particularly when linked with cattle raiding, which accounts for 73 per cent of all conflict-related deaths since independence. The perpetrators of violent acts largely

comprise armed young men conducting cattle raids, criminal groups carrying out opportunistic cattle-raiding attacks or heavily armed rebel militia groups.

21. Although the civilian disarmament process in Jonglei in March 2012 and the peace mobilization accompanying the All Jonglei Peace Conference in May 2012 led to a relative reduction in violence and greater stability, they were soon jeopardized by the re-emergence of the David Yau Yau militia during the second half of 2012, the return to the State of armed Murle youth from Ethiopia and the lack of resources and capacity to implement the decisions of the above-mentioned peace conference. An increase in alleged human rights violations by the security forces during the disarmament process in Pibor County between March and August 2012 were brought to the attention of the relevant authorities by UNMISS for investigation and prosecution of perpetrators.

22. As a result of armed group activities and the response of the Sudan People's Liberation Army (SPLA), many communities in Jonglei abandoned their homes and moved to safer rural areas. In an effort to tackle the threat posed by the David Yau Yau militia, the national authorities prioritized political efforts by engaging with Murle chiefs, politicians and youth groups, even extending an offer of amnesty to Yau Yau. Reports indicated, however, low civilian confidence in the reconciliation process as well as fear of reprisal from the security forces. The result has been that civilians in Jonglei have continued to face the most significant protection threats, particularly in Pibor, Akobo and Pochalla counties.

## **B. Administration of justice and the rule of law**

23. Despite progress in certain areas, the justice system in South Sudan remains weak and ineffective. There is a shortage of qualified judges and lawyers, poor infrastructure, underdeveloped management systems, poor coordination across the criminal justice system and lack of adequate communication and transport. At the local level, many criminal cases continue to be adjudicated through customary justice mechanisms that do not meet international human rights standards and, in many cases, also violate the transitional Constitution of South Sudan and other national laws. The South Sudan National Police Service (SSNPS) and other security agencies charged with enforcing the law still need significant further training and capacity-strengthening.

24. Even though South Sudan voted in favour of a global moratorium of the death penalty in November 2012 at the General Assembly,<sup>1</sup> subsequent reports indicate that individuals continue to be sentenced to death. More than 233 individuals remain on death row throughout the country. Very few convicted individuals, including those sentenced to death, enjoyed legal representation during their trials. Bureaucratic and unclear procedural requirements also hinder the exercise of the right of appeal.

25. Prolonged and arbitrary detention remains a significant concern. Lack of means or understanding of the applicable procedural provisions and case backlogs in prosecutors' offices are among the most significant factors contributing to detention that regularly exceeds legally authorized limits. The Government has acknowledged the seriousness of the issue and established a high-level policy panel to take action, in particular by launching a mobile courts initiative to accelerate legal proceedings and to compensate for the shortage of judges, despite efforts made by the judiciary to recruit more judges for assignment to the various States. Cases of arbitrary arrest and detention by the police without a proper legal basis or without following proper procedural requirements, and arrest and detention by

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<sup>1</sup> General Assembly resolution 67/176.

entities without a clear legal mandate for law enforcement, including the detention of civilians by the SPLA and national security forces, remain a major concern.

26. Cases of detention of civilians by the military have been observed, even though it does not appear that the military has a general legal mandate to detain civilians. Detention by national security forces, in particular, has been used in some cases to interfere with the full exercise of other rights, such as the right to freedom of expression. In this connection, interference by military and political figures in the justice system was also noted.

27. The excessive use of force by the security forces poses a persistent problem. The shooting of unarmed demonstrators by members of the security forces in the Western Bahr el Ghazal capital of Wau in December 2012, resulting in the death of nine and the wounding of at least 17 others is an example. In other serious incidents, the shooting of civilians by SPLA members in Jonglei on 1 April 2013 resulted in the death of at least two people, while allegations were received of extrajudicial execution of 13 civilians by the SPLA in the village of Lotho in Jonglei on 4 December 2012. An investigation by the Human Rights Division of UNMISS into the incident is under way.

28. In the majority of these cases, the relevant authorities are yet to hold the perpetrators accountable for such violations. In Wau, for example, no action has yet been taken to hold those responsible for killing the demonstrators.

29. Exceptions with regard to prevailing impunity have nonetheless been noted, such as in the case of three police officers accused of raping three women in Central Equatoria, who were arrested and are to undergo trial.

30. Following a human rights investigation by the United Nations Mission in the Sudan in 2010, the Government of South Sudan took measures for accountability for past violations, including allegations of rape and killings, committed at the National Police Training Centre, as well as for the prevention of violations. Some of the individuals found responsible were removed from duty, although it remains unclear whether any further measures have been taken against them. The Human Rights Division of UNMISS engaged in a capacity-building role at the centre, where it has conducted human rights training as part of a comprehensive curriculum. The provision of technical assistance for strengthening internal accountability mechanisms is also under consideration.

### **C. Protection of the rights to freedom of expression, association and assembly**

31. UNMISS has documented a number of cases of interference with the right to freedom of expression by State authorities, including the arbitrary arrest and detention and harassment of journalists and other individuals critical of the Government. At least 18 such incidents were registered following the killing in December 2012 of the nationally renowned columnist Isaiah Abraham. In several cases, UNMISS intervened to facilitate the protection of journalists, civil society activists or human rights defenders who were believed to be under imminent threat, some of whom have been obliged to leave the country.

32. UNMISS and other partners have been working to build the capacity of journalists, civil society and other actors. At present, however, a lack of training and resources, in addition to security concerns, have limited the ability of civil society to serve as an effective watchdog for monitoring violations of the rule of law and freedom of expression.

#### **D. Promoting and protecting the rights of women and girls**

33. Progress in eliminating discrimination and abuses against women and girls in South Sudan, including domestic violence, forced marriages and sexual violence, has been slow. Even though the transitional Constitution provides for the equality of men and women before the law, women continue to face discrimination regularly, including in relation to such fundamental matters as marriage, land and property ownership, inheritance and education. Harmful traditional practices also play a role in perpetuating women's unequal position within communities, particularly in rural areas.

34. Women and girls also continue to face significant discrimination in the administration of justice. Women are regularly detained based on non-criminal, customary "offences", such as adultery, for which women tend to be charged disproportionately. In addition, the extensive role of the customary legal system in resolving disputes and even adjudicating criminal cases leads to further violations of women's rights, since the customary principles employed are often not in keeping with international human rights norm of non-discrimination.

#### **E. Economic, social and cultural rights**

35. The poverty and underdevelopment in which the majority of the population of South Sudan still lives have not been conducive to the enjoyment of economic, social and cultural rights. In this context, the recent implementation of the cooperation agreement of September 2012 between the Sudan and South Sudan is a significant development insofar as it has allowed the gradual resumption of oil exports. Benefits from increased national budget revenues cannot, however, be expected in the immediate term. Continuation of the prevailing austerity regime that has prevented more investment in human services could therefore be reasonably expected to prevail for some time. Once national revenue has been normalized, revision of the country's budget should focus on social investment by allocating additional resources on historically neglected areas to improve the delivery of public services.

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

36. Numerous laws were enacted with implications for human rights during the parliamentary session of 2012-2013. Further action is still awaited on three important media bills are under review, one of which was scheduled for its second reading in Parliament in May 2013. Necessary legislation covering national civil society and the national intelligence services has not yet been enacted. In addition, legislative action is still needed to address the significant gaps arising from the unclear relationship between statutory and customary laws in many areas, which lead to violations of human rights.

37. Enacted legislation includes the General Education Act (2012) and the Higher Education Act (2012). The General Education Act provides for free basic instruction for all in South Sudan, with the aim of improving education standards. Given the extremely low levels of literacy and the poor access to basic education, the implementation of this act is crucial not only with regard to the population's enjoyment of the right to education, but also with a view to enhancing the understanding and application of human rights and obligations.

38. Despite these developments and the adoption of legislation on elections and political parties, which are key elements of the transition process, significant legal gaps still need to



be addressed. Most critical is the review of the transitional Constitution. In the year since the decree issued by the President of the Republic effectively forming the Constitutional Review Commission, progress in this process has been slow. Many civil society organizations and members of the public have voiced concerns about the lack of transparency and inclusiveness of the process. On 26 February 2013, the mandate of the Commission was extended to 31 December 2014.

39. Existing laws also need to be reviewed and harmonized with the human rights clauses of the transitional Constitution and international human rights standards. Some existing laws contradict each other on human rights-related issues; for example, traditional practices, such as early and forced marriage, wife inheritance and the denial of property inheritance by women, contravene provisions of the transitional Constitution. The criminal law system requires overall harmonization with the constitutional human rights standards. A number of bills with an impact on human rights, the most important of which include three bills on the media and on access to information, are pending before Parliament. Other bills pending include the Petroleum Revenue Management Bill, the Advocacy Bill and the National Security Service Bill. The latter will be particularly important in defining the security service's powers of arrest. Civil society organizations and other individuals have raised a number of concerns about the Voluntary and Humanitarian Organizations Bill currently before Parliament for its first reading, which will regulate the operations of non-governmental organizations. Those working on human rights and governance issues were particularly concerned that provisions of the bill would impede their work, for example through restrictions on receiving funding from international bodies.

40. The Government has committed to the ratification of all major international human rights treaties with a view to constructing a national legal framework to protect human rights. Preliminary steps in the ratification process have been taken for three of the priority instruments identified by the Government, namely the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Legal opinions for accession to these and the Convention relating to the Status of Refugees have been prepared in collaboration with the Human Rights Division of UNMISS and partner United Nations agencies. These opinions were submitted to the Council of Ministers on 17 May 2013, where they were approved and referred to Parliament. Discussions are also under way to launch the process for ratification of the Convention on the Elimination of All Forms of Discrimination against Women. With regard to regional human rights instruments, in January 2013, South Sudan signed (though is yet to ratify) the African Charter on Human and Peoples' Rights. This was also included in the package of instruments approved by the Council of Ministers on 17 May 2013.

41. The adoption of the Refugee Act and the Geneva Conventions Act in 2012 marked important developments in strengthening the legal protection framework. South Sudan acceded to the Geneva Conventions of 1949 and the Additional Protocols thereto after a bill was passed by Parliament on 16 July 2012. In addition, the Government informed the International Labour Organization in 2013 that it had accepted seven conventions, including those relating to forced labour, discrimination and the worst forms of child labour.

42. The Human Rights Division of UNMISS continues to provide technical assistance and support to build the capacity and expertise of the national and State assemblies through their relevant committees. At the request of Parliament, the Division will, at the end of May 2013, implement training activities for members of Parliament on the processes for the ratification of and accession to international human rights treaties, and subsequently for the harmonization of national legislation with international standards. The National Assembly, in accordance with its work plan for 2013, is seeking further technical and logistical

support, including short, specialized training sessions and an exchange programme with other national legislative bodies.

43. Continued support for the Government and the legislative assemblies at both the national and State levels will be crucial to ensuring that legislative processes are prompt, inclusive and transparent, and strengthen the legal human rights protection framework.

#### **IV. Priority areas for technical assistance**

44. Significant efforts have been made and funds committed to the development of a legal and policy framework that prioritizes the protection of human rights in South Sudan. The South Sudan Development Plan for the period 2011-2013 and the United Nations Development Assistance Framework have identified human rights and gender equality as cross-cutting issues to be integrated into all development and State-building priorities. Because implementation of these plans has been severely constrained by the austerity budget imposed after the suspension of oil production, a proposal has been made to extend the validity of these parallel planning programmes until 2016.

45. Pursuant to Security Council resolutions 1996 (2011) and 2057 (2012), UNMISS was given a robust human rights mandate to strengthen the capacity of national stakeholders through enhancement of their skills and knowledge. A technical cooperation programme under the auspices of OHCHR has been embedded into the work of the UNMISS Human Rights Division as an important component of the Mission's mandate. The programme has been implemented in the form of activities aimed at building the human rights capacity of specific stakeholders, in close collaboration with the Human Rights Commission and United Nations specialized agencies, funds and programmes.

46. Since the inception of UNMISS on 9 July 2011, under the Technical Cooperation Programme, 140 human rights capacity-building activities have been conducted in accordance with the UNMISS human rights mandate. These activities have focused on government ministries, the National Assembly, the South Sudan National Police Service, the SPLA (including Military Justice), corrections officers, traditional leaders, the Human Rights Commission, civil society organizations, human rights defenders and media groups. The activities, at the national, State and sometimes county levels, range from advice and recommendations on the human rights aspects of legislation to capacity-building workshops.

47. The work of the Human Rights Division of UNMISS is carried out in close collaboration with the Mission's specialized components, namely United Nations police, the Rule of Law and Security Institutions Support Office, and the Child Protection, Civil Affairs and Gender units, to ensure the integration of human rights into all their institution- and capacity-building activities, including for civil society. As previously reported, the national Human Rights Commission remains a principle partner, though its work during the past year has been deeply affected by budget cuts.

##### **A. South Sudan National Police Service**

48. The South Sudan National Police Service needs to build its capacity to fulfil its mandate to prevent, combat and investigate crime, maintain law and public order, protect people and property, and to uphold and enforce the Constitution and the law. On 23 January 2013, the President issued a decree for the appointment of a new head of the Service.

49. As reported by the High Commissioner in her previous report, the United Nations police developed the Strategic Training Plan for 2012-2015, in collaboration with

stakeholders.<sup>2</sup> The plan, which lays the foundation for long-term institutional development, has been drawn upon the approved Strategic Plan for 2010-2013 and the National Police Service Framework for Action Plan for 2011-2015.

50. In accordance with the Strategic Training Plan for 2012–2015, 300 United Nations police officers are currently co-located with the South Sudan National Police Service with the aim of transferring knowledge and skills. The Human Rights Division of UNMISS works closely with United Nations police to provide human rights training modules for cadets in the national police training academy in Rajaf. A number of human rights training programmes have also been presented to various police units throughout South Sudan. As part of their monitoring of police detention, human rights officers provide advice on improving respect for human rights, particularly with regard to resolving cases of arbitrary detention.

## **B. Sudan People's Liberation Army**

51. The transitional Constitution of South Sudan envisages that the armed forces operate as a professional and disciplined body that respects human rights. The Human Rights Division of UNMISS provides training workshops with the SPLA on the application of human rights standards, with the main focus on strengthening military justice and accountability. During the period under review, training for the SPLA was held nationwide. Many of these activities have been undertaken in collaboration with the UNMISS Military Justice Advisory Section that engages with the SPLA to ensure respect for the rule of law and human rights.

52. The SPLA has established a training academy, the Rumbek Staff College, where ongoing training sessions are delivered by UNMISS military and bilateral partners. Accordingly, UNMISS has developed a strategy for strengthening engagement with the SPLA in which the Human Rights Division provides capacity-building and raises awareness on the human rights due diligence policy. Discussions are continuing with the SPLA on the inclusion of thematic human rights sessions in the college curriculum.

## **C. Judiciary**

53. In its human rights agenda and plan of action, the Government identified reform of the justice, law and order sector as an urgent priority and indicated that it would seek international assistance to strengthen its capacity. The weaknesses of the justice system – including lack of human, financial and material resources, the need for long-term training and specialist expertise – have been described extensively in United Nations and other reports and have had a deep impact on compliance with human rights principles.

54. According to the Legal Aid Strategy for 2012–2014 of the Ministry of Justice, the overwhelming majority (an estimated 95 per cent) of individuals in prison have not had the benefit of legal representation or the right to free legal aid in serious criminal, civil, land and family matters. Legal aid has emerged as a vital area for technical assistance, because the lack of legal representation jeopardizes the right to a fair trial and is most pressing in the case of those detained on death row.

55. The customary legal system, which operates alongside the statutory system and is run by traditional leaders pursuant to the Local Government Act of 2009, is another challenge facing the administration of justice and human rights. While traditional courts are

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<sup>2</sup> A/HRC/21/34, para. 54.

more accessible than statutory courts, the line between customary and statutory courts is often blurred in both law and in practice. The task of reconciling customary law with human rights standards is a challenge. To address this problem, the Human Rights Division of UNMISS has developed and delivered a series of training programmes in three States that will be followed by an additional 10 training activities for traditional courts in all States.

56. The judiciary, prosecutors and law enforcement officials need to strengthen their capacity to deal with vulnerable persons and to develop a comprehensive policy framework for vulnerable groups, including juvenile justice provisions. A juvenile remand review was established in July 2011 with the aim of reducing the amount of time that children spend in pretrial detention and providing advocacy with the judiciary and relevant stakeholders to promote and protect the rights of children in detention. Similar initiatives are under way in several States. The need for continuous capacity-building for the actors in the penal chain on juvenile justice is clear, as is the need to establish juvenile courts presided over by specialized judges.

57. Women detainees are among the most vulnerable and are often held for reasons that do not amount to criminal offences (such as adultery). Women are disproportionately arrested, detained and sanctioned under the adultery law, with harsh consequences for them and their children.

#### **D. National Prison Service of South Sudan**

58. The National Prison Service of South Sudan continues to fall short in fulfilling its mandate to be correctional, reformatory and rehabilitative. International actors working with the prison system have commended the leadership of the Service, which is aware of applicable international standards, but faces severe resource challenges and a lack of capacity among prison personnel, particularly at the State level. In November 2012, the Government formed a high-level delegation to oversee the prison service, but the panel has not made any follow-up visits since its establishment.

59. The Corrections Advisory Section of the UNMISS Office of Rule of Law and Security Institutions provides the National Prison Service with advice and technical assistance, in addition to corrections advisers assigned to facilities throughout South Sudan. The Human Rights Division of UNMISS has developed and delivered extensive training programmes for correctional officers in all 10 States, besides monitoring prison conditions and assisting prison authorities in resolving human rights concerns. New facilities are needed, as is a greater financial and human capacity to maintain prison facilities and to enforce respect for international standards.

60. Special attention needs to be paid to vulnerable detainees, including women, juveniles and people with disabilities, who may spend weeks and months in detention awaiting trial as a result of delays in criminal investigations and trial processes, gaps in knowledge of applicable criminal laws and procedures, lack of coordination among criminal justice organs, the unavailability of victims and witnesses, lack of adequate transport, infrastructure, record-keeping and case-management, and lack of rights awareness and legal aid services.

#### **E. Human Rights Commission**

61. The Human Rights Commission of South Sudan was established prior to independence under the transitional Constitution and the Human Rights Commission Act 2009. By 2011, the Commission had established a presence in all 10 states, with UNMISS

Human Rights Officers providing technical advice and assistance across the country. This progress has been reversed in the past year because of drastic budget cuts under the national austerity measures: all State offices have been closed, and all 92 staff members of the Commission are currently located in Juba.

62. The above situation has been compounded by the fact that the Commission lacks any funds for implementing its operational activities, even in the capital. As a result, it has not been able to conduct investigations into gross human rights violations, issue public reports or receive and process individual complaints for many months. The limited number of activities that the Commission has been able to conduct, including investigations or capacity-building, has been implemented with the financial, technical and organizational support of the Human Rights Division of UNMISS through OHCHR, and of other United Nations agencies, such as the United Nations Development Programme and the Office of the United Nations High Commissioner for Refugees.

63. Such support enabled the Commission to issue its annual report for 2011 in 2012 (still pending approval by Parliament) and its second Strategic Plan for 2012-2015, which is being implemented with the technical support of OHCHR and other United Nations agencies, funds and programmes. The Commission was also able to develop its complaints and investigations procedure and its public investigation procedure with technical support from OHCHR.

64. A dynamic, robust and independent national human rights body is essential to work with government institutions in developing and implementing policies, practices and legislation that are in compliance with human rights norms and to advocate on behalf of individual victims of human rights violations. The Commission should also play a key role in supporting the development of an implementation plan for the human rights agenda, as well as ensuring that the Human Rights Forum, which it co-chairs, plays an important role in fostering dialogue among the various stakeholders. International support in terms of both funding and expertise will be essential to rebuild the Commission and to help it to become a leading voice in the protection and promotion of human rights in South Sudan.

65. In her previous report, the High Commissioner stressed that an institutional development grant, with clear benchmarks and implemented in an incremental and phased manner, could improve the capacity of the Commission. She added that the grant would gradually promote the emergence of an independent commission by linking disbursement to transparent appointments, security of tenure of commissioners and the issuance of public reports on key human rights issues.<sup>3</sup>

## **F. National human rights agenda**

66. In November 2012, the Council of Ministers adopted a national human rights agenda, which sets out a plan of action based on five core priorities: the establishment of an effective legal framework for the promotion and protection of human rights; education, training and public awareness on human rights; strengthening implementation mechanisms, including measures to ensure that government policies, programmes and administrative practices are rights-based; strengthening monitoring, investigative and protective mechanisms, namely the Human Rights Commission, Parliament and civil society; and conflict resolution and management.

67. Although the agenda has yet to be tabled before Parliament, it could provide a useful framework for the development of an integrated national and State-level plan for

<sup>3</sup> Ibid., para. 60.

developing human rights-compliant legislation and the capacity of government, state and civil society entities to promote and protect human rights. The incorporation of benchmarks within such a plan would allow stakeholders to assess progress and to identify any obstacles to be overcome. The plan could also identify support that might be needed from the international community.

68. The agenda also emphasizes government support for the Human Rights Forum, which brings together human rights stakeholders, including government representatives, civil society and development partners to regularly dialogue on developing issues of human rights concern. The agenda was presented to the Forum in December 2012. The Forum itself could become an excellent vehicle for consultations on the development of the plan for the agenda.

## G. Gender-awareness programmes

69. Since independence, significant potential for gender equality and respect for women's rights has emerged in South Sudan. Women have taken an increasingly active role in society, although gender disparities remain evident in key poverty indicators, including a female illiteracy rate as high as 86 per cent. Lack of education and access to health services, combined with early marriage, have resulted in extremely high rates of infant mortality and one of the highest maternal mortality rates in the world. Sexual and gender-based violence persists, with perpetrators enjoying a high degree of impunity.

70. As a mechanism to increase gender awareness, peace forums were held nationwide on Security Council resolution 1325 (2000) on women and peace and security, to engage citizens in discussions on sexual and gender-based violence. In August 2012, the SPLA leadership agreed for the first time to undergo training on gender mainstreaming, which UNMISS facilitated for 26 officers, after which commanders pledged to undertake gender mainstreaming within the SPLA.

71. With regard to the promotion of girl-child education, the United Nations Children's Fund and the Ministry of General Education and Instruction are finalizing a national strategic plan on girl-child education that is expected to be launched and disseminated by July 2013. Through media and public events, advocacy efforts by the Government and other stakeholders are ongoing to support the enrolment and retention of the girl-child in school.

72. The Government has taken some steps towards ratification of the Convention on the Elimination of All Forms of Discrimination against Women by establishing a working group that brings together the relevant directorate in the Ministry of Justice, UNMISS and United Nations agencies. The working group is undertaking preparatory work on Convention accession documents and conducting awareness-raising for stakeholders to improve their understanding of its provisions and to promote further harmonization with national legislation. Continued advocacy efforts are needed not only to create greater public awareness of the importance of ratifying the Convention but also to build parliamentary support for its ratification.

## V. Conclusion and recommendations

**73. In the two years since independence, South Sudan has taken important strides in its efforts to lay down the foundations of a new country and to establish the institutions necessary to respond to the needs of its population. In the area of human rights, some progress has been made at the institutional and legislative levels, but actual implementation of measures remains extremely weak.**

74. The United Nations High Commissioner for Human Rights recommends that the Government of South Sudan, with the support of the international community:

(a) Implement the human rights strategy contained in the national human rights agenda developed by the Human Rights Commission upon endorsement by the National Assembly;

(b) In accordance with the adoption of the national human rights agenda, develop and roll out a national plan of action on human rights with clear targets, strategies and responsibilities;

(c) Strengthen the presence of State institutions throughout the national territory, including the justice and security sectors, to uphold the rule of law and protect the population from violence;

(d) Adopt and implement a human rights-based approach to development by ensuring that human rights are integrated into policies, programmes and budgeting processes;

(e) Take all measures necessary to develop a robust legal framework for the promotion and protection of human rights by:

(i) Ratifying the main international and regional human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the African Charter on Human and Peoples' Rights;

(ii) Ensuring that national legislation, including the permanent Constitution, is fully in line with relevant international human rights standards;

(iii) Improving the application of customary law to ensure compliance with international human rights standards;

(iv) Continuing to work in favour of vulnerable groups, in particular children, women and persons with disabilities;

(v) Supporting relevant institutions, such as the Constitutional Review Commission, the Law Review Commission, the Ministry of Justice and the Human Rights Committee of the National Assembly, in implementing recommendations of human rights mechanisms, including those made in the context of the universal periodic review;

(f) Ensure that the fight against impunity is addressed as a matter of priority, by:

(i) Undertaking a comprehensive reform of the security sector with a view to putting an end to violations committed by law enforcement officers, while empowering the South Sudan National Police Service with the tools to investigate crime and hold perpetrators to account;

(ii) Supporting capacity-building of the judiciary and, in particular, the training of judges, prosecutors and lawyers while establishing legal aid mechanisms and ensuring the right of victims to an effective remedy, including reparations;

(iii) Assisting the Human Rights Commission in the fulfilment of its mandate by providing adequate funding and technical assistance;

- (iv) Supporting the National Prison Service of South Sudan by ensuring that it has adequate resources and capacity to provide a correctional service respectful of international standards;**
  - (v) Ensuring a conducive environment for civil society, human rights defenders, journalists and media groups to operate freely to promote human rights and the rule of law, without fear of intimidation, harassment, arrest, detention or other human rights violations;**
  - (vi) Increasing efforts to prevent, punish and eradicate all forms of violence against women;**
  - (g) Prohibit the detention of women and children for acts of adultery;**
  - (h) Strengthen advocacy efforts to increase representation and participation of women in decision-making at all levels through capacity-building and the involvement of women in peace and reconciliation processes;**
  - (i) Impose a moratorium on the death penalty, particularly in the light of the current inability of the judiciary to guarantee fair trials and due process.**
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