

Measures to Reduce Government Perpetrated Extrajudicial Killings in South Sudan

Forum: Human Rights Council

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Introduction

South Sudan is the world's newest country that gained independence in 2011 after decades of civil wars. However, the peace did not last long and ended when an internal political dispute between South Sudanese President Salva Kiir and vice president Riek Machar exploded into a lengthy ethnic conflict. As the conflict continued, the two camps splintered into various armed rebel groups.



South Sudanese military force in Warrap State

In 2021, coinciding with the appointment of a new governor in Warrap, a state in South Sudan, at least 42 individuals, including young boys, were extrajudicially killed. In almost all reported cases, the Commission found that members of the South Sudan People's Defense Forces, the National Police Service, or the National Security Service either carried out or were present within the vicinity of the executions. Across South Sudan, weak institutional capacity, including the judiciary, leads to prolonged delays in the delivery of formal justice and has contributed to an absence of the rule of law. Authorities are deliberately exploiting these weaknesses by resorting to extrajudicial executions to gain public support in communities.

Background

The First Sudanese Civil War began in 1955, with the Sudanese government standing in for the north and a unified separatist movement attempting to establish a separate state for the south. The conflict lasted for 17 years until an agreement in Ethiopia established the Southern Sudan Autonomous Region (SSAR). Sudanese president, Gaafar Nimeiry, declared the country an Islamic state and revoked the autonomy of the majority-Christian SSAR. In response, the Second Sudanese Civil War started. Local infighting resulted in more South Sudanese deaths than the actions of northern forces. Notably, the terrible Bor Massacre of 1991 and the ensuing famine combined killed an estimated 27,000 people. The civil war was the longest in African history, lasting 22 years.

A Comprehensive Peace Agreement was signed between the Sudanese government and Southern Sudan in 2005 after more than two decades of conflict and more than 2.5 million deaths, guaranteeing a referendum on the independence of Southern Sudan within six years. Kiir was re-elected as the leader of Southern Sudan in April 2010. The following year, Southern Sudanese people voted on secession from Sudan, with nationals casting votes around the world.

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Finally, South Sudanese nationals voted to secede from Sudan. South Sudan was first recognized as an independent nation on July 9, 2011, making it the 54th country in Africa and the 193rd country to join the United Nations.



Violence-affected communities in South Sudan

Despite being widely perceived as peaceful, most states of South Sudan reported conflict as a result of the country's independence. Two years after South Sudan's statehood, the civil war was officially declared as tensions remained high. Insecurity peaked in July 2013 when President Kiir dismissed his entire cabinet, including Vice President Riek Machar, amid accusations of a coup d'état. After a few months of comparatively calm, violence between government forces and soldiers loyal to Machar

started in December 2013. By 2015, 2.2 million South Sudanese were forced to leave their homes due to violence, including 800,000 people who were internally displaced within their fragile country. The forced migration also resulted in food shortages and rising civilian disease rates. Following the threats of sanctions, President Kiir signed a new peace deal with Machar.

President Kiir reinstated Riek Machar as Vice President as part of an agreement to end the civil war in South Sudan. However, due to conflicts between Machar's supporters and government forces raging once more in less than six weeks, Machar fled the nation again. By the end of 2016, the United Nations urged an arms embargo against South Sudan, seeing the country at risk of outright ethnic war. The embargo was defeated, and the conflict continued. In 2018, a second agreement was signed between the South Sudanese government and its main political opposition, which provided some degree of peace. Nonetheless, conflicts continue as no specific solutions progress to resolve the tension.

In 2021, The UN Mission in South Sudan (UNMISS) rights investigators documented the extrajudicial killing of 29 accused criminals in Warrap. 13 additional people have been executed without the formal judicial process since mid-June at the instruction of local officials in Lakes States.

International Actions

Hybrid Court for South Sudan

Chapter V of the Peace Agreement of 2018 sets out three transitional justice mechanisms: a Commission on Truth, Reconciliation and Healing (CTRH), a Hybrid Court for South Sudan (HCSS), and the Compensation and Reparations Authority (CRA). However, CTRH is the most proceeding mechanism, while HCSS and CRA are delayed due to various factors. Civil society and survivor groups submitted a paper on victims' rights to the Ministry of Justice and Constitutional Affairs of South Sudan that sets out internationally



Technical Committee training in CTRH

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recognized standards on the rights of victims of mass atrocity crimes in the context of establishing a CTRH.

Key Players

Sudan

Sudan is one of the bordering countries of South Sudan and plays a pivotal role in the conflict in South Sudan. Sudan provided limited support to Riek Machar and his faction, the Sudan People's Liberation Movement in Opposition. However, Sudan, facing a deep economic crisis that ousted longtime ruler Omar al-Bashir, has incentives to support peace in the needs of the transit fees it charges South Sudan for the use of its oil export pipeline. In his December 2019 visit to South Sudan, newly appointed Sudanese Prime Minister Abdalla Hamdok stated that Sudan is seeking a "very strategic" relationship with its southern neighbor.



Sudan and Uganda bordering South Sudan

Uganda

Uganda is another bordering nation with South Sudan that has long supported Sudanese rebel groups, especially the Sudan People's Liberation Army, during the Second Sudanese Civil War. In 2014, Uganda supplied troops to support Salva Kiir and the government of South Sudan. Ugandan military support has been indispensable to the South Sudanese government, as the bolstering of the remained national army after defections to the rebels and the air capacity and support in combat operations to retake towns captured by the rebels. Alike Sudan, Uganda also seeks peace in South Sudan for a stable trade partner.

The Commission on Human Rights in South Sudan

The Commission on Human Rights (CoHR) in South Sudan is an independent body mandated by the UN Human Rights Council, established in 2016. The CoHR focuses on reducing alleged gross violations and abuses of human rights and related crimes in South Sudan. The Commission expressed grave concern at the swell of extrajudicial executions carried out by Government forces across Warrap State in July 2021. The CoHR notes that reprehensible practice evinces a complete disregard for the rule of law and the rights of the accused persons. Through the absolute prohibition of extrajudicial executions, the Commission claims the accused of criminal activity must be guaranteed due process of law, including access to a fair trial.

United Nations Mission in South Sudan

The United Nations Mission in South Sudan (UNMISS) is a United Nations peacekeeping mission for South Sudan established under United Nations Security Council Resolution 1996 (2011) that provides stability to ensure the active peace process. Specifically, UNMISS empathizes to support the new government, protect civilians, monitor and investigate human rights

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violations, support humanitarian assistance, and promote peace agreement implementation.

African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights (ACHPR) is a quasi-judicial body of the African Charter composed of eleven Commissionaires elected by the Assembly of Heads of State and the Government of the African Union. The ACHPR focuses on promoting and protecting human rights by interpreting the African Charter and considering individual complaints. Two annual sessions are held, which periodically review States' reports on their implementation of the Charter and issue concluding observations. ACHPR also works with other bodies of the United Nations, most notably the subsidiary bodies of the Human Rights Council, to address situations of extra-judicial killings and violations of the right to life.



African Commission on Human and Peoples' Rights

Problem Raised

Weak judicial system

Currently, South Sudan has a weak and ineffective judicial system while a strong judiciary system is critical for a nation to achieve peace. The institutional judicial capacity in South Sudan leads to prolonged delays in the delivery of formal justice and has contributed to a near-total absence of the rule of law. South Sudan's justice system is plagued by being understaffed, for instance, a shortage of qualified lawyers and judges, as well as professional police. Furthermore, the insufficient scope of territorial coverage of the formal justice system makes it difficult or even impossible for rural litigants to file complaints of appeals. Hence, support in the justice system is crucial for South Sudan to reduce government-perpetrated unjust killings.

Mistaken beliefs

Criminality appears to support extrajudicial and unlawful executions and killings simply due to the lost faith in the South Sudan justice system. People mistakenly believe that such public executions will discourage other criminals from offending and help restore law and order at the community level. Extrajudicial executions are carried out in a bid to prevent crime and cycles of retaliatory violence between local communities. However, they instead promote impunity and seriously undermine the rule of law. Moreover, the brazen and cruel manner of these executions illustrates and reinforces disturbing governmental and social dysfunctionality that is in complete disregard for the human rights of alleged suspects.

Stalled progress in the agreed mechanisms

South Sudan's Peace Agreement of 2018 includes a chapter on transitional justice, which sets out three transitional justice mechanisms, including the Hybrid Court, the Commission for Truth, Reconciliation, and Healing, and the Compensation and Reparation Authority. [SL1] While there has been some movement on the establishment of a Commission

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for Truth, Reconciliation, and Healing in 2022, stalled progress and lack of leadership resulted in a very few establishments of the agreed transitional justice mechanisms.

Possible Solutions

Enhancing general awareness

In order to empower people with the tools to share information and opinions, raised awareness among civilians is needed to reduce injustice as such initiatives have not taken place so far after the country became independent from the rest of Sudan. Campaigns, for example, can inform people about the human rights protected by law and enable South Sudanese to proactively assert their individual rights, and encourage people to raise their voices in the process.

Providing support in developing legal system capacity

Support should be provided to develop the capacities of the South Sudanese legal system. Providing technical assistance to the Judiciary and the Supreme Court of South Sudan, which acts as a Constitutional Court, is critical to reducing the extrajudicial actions perpetrated by the government.

The Justices of the South Sudanese Supreme Court have to be provided with in-depth training on constitutional adjudication. In addition to that, it will be important to pursue the integration and harmonization of the different organizational structures of the judicial system, in particular with respect to customary law and traditional justice. The question that needs to be addressed is how the

different organizational structures of the South Sudanese judicial system can be integrated and how cooperation can be improved among the various judicial actors in South Sudan.

Therefore, the Government of South Sudan must reduce extrajudicial killings and implement investigations that are prompt, impartial, and independent of all such executions in Warrap State to establish just circumstances in which the people are committed and executed. Reducing government-perpetrated extrajudicial killings is vital in ensuring human rights for South Sudanese women, men, and children. Of course, more solutions have to be proposed to expand upon the 1967 protocol and to ensure the humanitarian rights of these people.

Glossary

Extrajudicial Killing: the deliberate killing of an individual carried by a state official, militias, or death squads without a previous judgment affording all judicial guarantees. These cases often target political opponents, activists, or marginalized groups to protect National Integrity and thus solely are used to justify illegitimate or illegitimate acts by the legal authorities.

Sudan People's Liberation Army (SPLA): the army of the Republic of South Sudan was founded as



Judiciary of South Sudan

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a guerrilla movement in 1983 and acted as the primary southern rebel group fighting against the northern-based government.

Coup D'état: the sudden, violent overthrow of an existing government by a small group.

Arms Embargo: prevention of the direct or indirect supply, sale or transfer to individuals, groups, undertakings, and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel.

Timeline

1962 – The First Sudanese Civil War is declared, with the Sudanese government representing the north and a unified separatist movement pushing to make the south an independent state. The conflict lasted until an agreement signed in Ethiopia led to the creation of the Southern Sudan Autonomous Region (SSAR).

1983 – The Second Sudanese Civil War is declared in response to the declaration of the Islamic state and revocatory of the Christianity SSAR.

2005 – A Comprehensive Peace Agreement is signed in Nairobi between the Sudanese government and Southern Sudan guaranteeing a referendum on independence within six years.

2009 – Leaders of North and South Sudan reach a deal on terms of a referendum on independence due in South by 2011.

2011 – The people of South Sudan vote for independence from Sudan on July 9, 2011, however, the security forces and rebels in southern Sudan creates conflict. North and south governments sign an accord to demilitarize the disputed Abyei region and let in an Ethiopian peacekeeping force.

2013 – President Kiir accuses the vice-president, Riek Machar, of accusations of a coup d'état. Rebel factions seize control of several regional towns, thousands are killed and many more flee. Uganda troops intervene on the government's side.

2015 – President Kiir signs a new peace deal with Machar.

2016 – Riek Machar is reinstated as Vice President on April 26, 2016. In less than six weeks, a conflict between the South Sudanese government and forces loyal to Machar resulted in the sack of Machar.

2017 – A famine caused by civil war and economic collapse is declared in parts of South Sudan. President Kiir declares a unilateral ceasefire and launches a national dialogue. However, more than one million refugees flee violence in South Sudan to Uganda.

2018 – A second peace agreement is signed in a bid to end the civil war. Despite the agreement, armed conflict continues through 2020. The United Nations secured an arms embargo while maintaining a peacekeeping mission in the country.

2021 – The UN Mission in South Sudan (UNMISS) rights investigators documented the extrajudicial killing of 29 accused criminals in Warrap. 13 additional people are executed without the formal judicial process since mid-June at the instruction of local officials in Lakes States.

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