

SOUTH SUDAN

First anniversary of Independence Time to Act for Peace and Human Rights Protection

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



Introduction	4
A. The Comprehensive Peace Agreement and its political aftermath	4
B. Background to the FIDH mission	6
Part I – Situation of Human Rights	7
A. Civilian victims of the “ Heglig War “ and the conflict in South Kordofan and Blue Nile ---	7
1. The Heglig war	7
2. Humanitarian consequences of the conflict in South Kordofan and Blue Nile	11
B. Inter-ethnic clashes in Jonglei	12
1. Massacres, abductions, rape and looting	12
2. A weak reconciliation process in the absence of justice	13
3. The issue of disarmament	14
C. Violations of fundamental rights	14
1. Violations of women’s rights	14
2. Infringements to freedom of expression.....	15
3. Illegal arrest and detention	17
Part II – Legal and Institutional Human Rights Framework	18
A. The 2011 Transitional Constitution	18
B. International Instruments	20
C. 2006 – 2012 legislation	21
D. Human Rights Departments in the Executive and Legislative Branches	22
E. The Judiciary and Legal Profession	23
F. The National Human Rights Commission	24
Conclusion – The Transitional Period: Time to Learn from the Past	26
Recommendations	28
Acronyms	35

Introduction

A. The Comprehensive Peace Agreement and its political aftermath

The Comprehensive Peace Agreement

The civil war in Sudan that has been fought since 1983, arose out of opposition to the Central Government of Khartoum and its Sudanese armed forces by the Sudan People's Liberation Movement and Army (SPLM/A) regarding issues around sharing of resources, political participation and religious matters. This civil war finally came to an end with the signing of the Comprehensive Peace Agreement (CPA)¹ on 9 January 2005.

After more than 20 years of war, which caused the death of 2.5 million people, the CPA, mediated by the Inter-Governmental Authority on Development (IGAD) with the assistance of the International Community, was a set of agreements concerning ceasefire and security arrangements, power and wealth sharing. It also established a timetable by which Southern Sudan would have a referendum on its independence and conflict resolutions in the "Three Areas": Abyei, South Kordofan and Blue Nile.

The Republic of South Sudan

Under the CPA, the two parties agreed on a unified Sudan which recognises the right to self-determination for the people of Southern Sudan. They decided to set up a six-and-a-half-year interim period during which interim institutions would govern the country and Southern Sudan would become autonomous. At the end of this period, there was to be an "internationally monitored referendum, organised jointly by the Government of Sudan and the SPLM/A for the people of South Sudan to: confirm the unity of the Sudan by voting to adopt the system of government established under the Peace Agreement; or the vote for secession²."

According to the CPA, the Interim period was governed by some important principles: the establishment of a national unity government with the head of the SPLM as Vice-President; the maintaining of separate North and South armed forces; the withdrawal from the South by governmental troops, and the one from the North of the SPLA; the deployment of integrated units in the Three Areas; the sharing of the oil wealth between the Khartoum Government and the SPLM on a 50-50 basis.

While central issues of border demarcation and citizenship were still unresolved, the referendum took place from 9 to 15 January 2011 and 98.8% of Southern Sudanese voters opted for secession. The Transitional Constitution of the Republic of South Sudan³ was ratified on 7 July 2011 by the South Sudan Legislative Assembly and came into force on 9 July 2011 after being signed by the President Salva Kiir.

The Three Outstanding Issues

The South Kordofan and Blue Nile status – During the civil war, residents of South Kordofan and Blue Nile States identified with the South. In fact, many of them fought on the side of southern rebels during the long civil war. The CPA did not make provisions for any right to self-determination to be granted to these two areas. Instead, the CPA tackled this issue by providing a framework for conflict resolution meant to serve as a "model for solving problems throughout the country".

1. Read the full text of the six Protocols of the CPA <http://unmis.unmissions.org/Default.aspx?tabid=515>

2. See the Machakos Protocol Part B 2.5, *ibid*.

3. See the text of the Transitional Constitution of South Sudan http://www.google.fr/#hl=fr&gs_nf=1&cp=30&gs_id=ql&xhr=t&q=transitional+constitution+of+south+sudan&pf=p&output=search&scient=psy-ab&oq=Transitionnal+constitution+of+&aq=OL&aqi=g-L1&aql=&gs_l=&pbx=1&bav=on.2.or.r_gc.r_pw.r_qf.cf.osb&fp=a7d462990e0f3dec&biw=1354&bih=569



The agreement signed by both parties was based on several principles : human rights and fundamental freedoms; equal rights and duties for all Sudanese citizens regardless of their ethnicity or religion; the recognition of the cultural and social diversity of the Sudan ; and, equality, fairness, economic development, social welfare and stability.

The CPA set up the structure of local institutions and security arrangements which were supposed to be assessed by the people of South Kordofan and Blue Nile to eventually correct any deficiencies in the framework of the CPA. The CPA defined the process as “a democratic right and mechanism to ascertain the views of the people” on the CPA “through their respective democratically elected legislatures”. The legislature of any of the two states had two options, either to endorse the CPA protocol, which would then become the final settlement of the conflict, or “decide to rectify, within the framework of the agreement, any shortcoming in the constitutional, political and administrative arrangements of the agreement” . In the latter case, the legislature could “engage in negotiations with the National Government with the view of rectifying these shortcomings “.

The popular consultations were due to take place in 2009-2012, but the process was delayed for a year in Blue Nile State due to delay in the elections. The consultations finally began in January 2011 with reports of public dissatisfaction and calls to give the area autonomous rule. The process has again suspended due to growing conflicts between Sudan Army Forces (SAF) and SPLA-N, who have been joined by rebels of Justice and Equality Movement (JEM) in both States. In South Kordofan, the consultations never began, also due to delay in elections and fights between Khartoum and rebel groups. These situations revived in both States strong hostilities against Khartoum accused of breaching the CPA.

The Abyei Issue - The Abyei Protocol within the CPA stipulates that the parties commit to determine the precise boundaries of Abyei through an expert body, the Abyei Boundaries Commission (ABC); describes security and local government arrangements; provides a wealth-sharing formula for the region; and specifies that a second vote for the people of Abyei should be conducted at the

same time as the Southern Sudanese independence referendum, allowing Abyei to decide either to remain part of the Sudanese South Kordofan region or to become part of the Bahr el Ghazal region of South Sudan.

In June 2008 the Sudanese President, Omar al-Bashir, and the President of the autonomous Government of South Sudan (GoSS), Salva Kiir Mayardit, agreed to refer the disputes concerning the ABC's determination of the Abyei area's boundaries to international arbitration at the Permanent Court of Arbitration (PCA) in The Hague.

The PCA ordered the redrawing of the northern, eastern and western boundaries, thus decreasing the size of Abyei. Talks on resolving the status of and the eligibility criteria for voters in the disputed region broke down in October 2010 and parties unofficially agreed that the referendum might be postponed.

B. Background to the FIDH mission

The International Federation for Human Rights (FIDH) sent a fact-finding mission to Juba, South Sudan from 1 to 7 April 2012. The FIDH delegation was composed of Arnold Tsunga, FIDH Vice-President, Africa Programme Director of International Commission of Jurists and member of Zimbabwe Human Rights Association (ZimRights), Mohammed Badawi, expert of the African Centre for Justice and Peace Studies (ACJPS), and Marceau Sivieude, FIDH Director of Africa Programme and Deputy Director of Operations.

The mandate of the mission was to:

- Examine the human rights situation at the border between Sudan and South Sudan where serious military tensions have revived in the context of post-secession negotiations led by the African Union
- Assess the situation in Jonglei State where human rights violations were committed in the context of inter-ethnic clashes
- Analyse the building of the legal and institutional framework from a human rights perspective.

The FIDH delegation met with:

- Hon. Paulino Wanawilla Unango, Deputy Minister, Ministry of Justice
- Mr. Stephen Kang, Head of Human Rights Unit, Ministry of Justice
- Hon. Jeremiah Swaka Moses Wani, Undersecretary, Ministry of Justice
- Mr. Atem Yaak Atem, Deputy Minister, Ministry of Information and Broadcasting
- Hon. Justice Edward Modesto, Director for Legal Affairs, National Legislative Assembly
- Hon. Gabriel Guot Guot, Deputy Chairperson, Human Rights and Humanitarian Affairs Committee, National Legislative Assembly
- His Excellency Christian Bader, French Ambassador
- Mr. Victor Lado Ceasar, Executive Director, South Sudan Human Rights Commission
- Mr. Richard Bennett, Director, Human Rights Division, United Mission in South Sudan, (UNMISS)
- Ms. Irena Angelona, Capacity Building unit, UNMISS
- Mr. David K. Deng, Research Director, South Sudan Law Society
- Mr. Kur Lual Kur, advocate
- Mr. Leek J. Panchol, advocate
- Mr. Atem Simon, Chief Editor, Al Masier Newspaper
- General Women Association
- Mr. Edmond Makani, Programme Coordinator, Committee Empowerment for Progress Organisation (CEPO)
- Biel Boutros Biel, Executive Director, South Sudan Human Rights Society for Advocacy

Part I – Situation of Human Rights

A. Civilian victims of the “ Heglig War “ and the conflict in South Kordofan and Blue Nile

1. The Heglig War

i) Issues

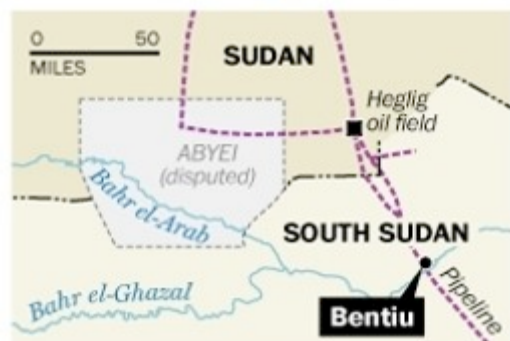
The war that broke out on 10 April 2012, between SAF and SPLA around the Heglig oilfield region originated from multiple unresolved conflicts between the two countries since the independence of South Sudan.

Contested Border Territories

The CPA had made provisions to negotiate a number of issues, first among which is the demarcation of the North-South border, which would be important post-referendum issue because it was likely the Southern Sudan population would vote for independence. Both sides were meant to agree on the basis of the Border Demarcation Agreement made in 1956, the year the British-Egyptian colonial rule ended. Despite international pressure, this issue was not addressed before the popular consultation in January 2011, which led to immediate tensions between the two countries.

One area of particular contention along the border is the oil-rich Abyei region. Both Sudan and South Sudan claim the area to be part of their respective territory. A separate referendum was meant to take place in Abyei in which the region would decide to become part of the Sudanese South Kordofan region or of the Bahr el Ghazal region of South Sudan. The referendum has been indefinitely delayed.

But to determine the territories which will be involved in the future referendum, on July, 22, 2009, the Permanent Court of Arbitration (PCA) in The Hague ordered the redrawing of the northern, eastern and western boundaries, thus decreasing the size of Abyei. As a result, North Sudan considered the Heglig oilfield (outside the Abyei region boundaries) to be part of South Kordofan, while some leaders in South Sudan contest what they consider to be a misinterpretation of the PCA ruling. At the time the FIDH mission was in Juba, an opinion entitled “Heglig has not and will never be part of South Kordofan⁴” was published in the Citizen Newspaper.



Laris Karklis/The Washington Post

4. The Citizen, Thursday April 5, 2012, Vol 7. Issue 86.

In May 2011, the SAF had seized control of Abyei with a force of approximately 5,000 soldiers after three days of clashes with the South. The “Temporary Arrangements for the Administration and Security of the Abyei Area between the Government of the Sudan and the Sudan People’s Liberation Movement” agreement was signed on 20 June 2011. Resolution 2032 (2011), created the United Nations Interim Security Force in Abyei (UNISFA) to contribute to and monitor the implementation of the Arrangements.

According to the March 23, 2012 Report of the Secretary General on the situation of Abyei , “[T]he final status of the Abyei Area remains to be resolved and very little progress was made on the implementation of the 20 June 2011 agreement. The parties remain deadlocked over the nomination of the Abyei Area Administration, despite efforts by the African Union High-level Implementation Panel to find a compromise”.

The situation of Abyei focused tensions between both countries, but the presence of the UN in the area diverted conflicts in other contested regions. Although the grabbing by both parties of oilfields was certainly grounded in territorial claims, the issue of pride is also a predominant factor in the attitude of both sides, as they have been fighting against each other for more than 20 years.

Accusations of Proxy War

Growing tensions between both countries, which exploded in military operations around Heglig and in the Unity State in South Sudan, has been fuelled in the last months by each party accusing the other of providing support to rebel groups operating in their respective territories.

South Sudan accuses the North of backing rebels - After failing to win the governorship of Jonglei State, former general George Athor, formed the South Sudan Democratic Movement (SSDM). Experts said the revolt has been a significant security threat to the newly independent State. According to the last UN report on South Sudan, “despite negotiations with President Kiir in Nairobi on 20 November, which reportedly yielded an agreement, General Athor intensified attacks on SPLA forces and claimed credit for raids in southern Jonglei State early in December”. On 20 December 2011, the Government announced that the militia leader was killed by SPLA forces.

SPLM leaders accused George Athor of being used by the Sudanese to stir up; an accusation denied by Khartoum. The April 2012 Small Arms Survey report⁵ lists Sudan and Eritrea as the “likely source” of arms to militia groups in South Sudan. Some of the weapons have been acquired from the South Sudanese state as many militia members are ex-SPLA who took their weapons with them when they defected. Others have been captured from the SPLA in battle. Evidence from interviews conducted and rifles seized from rebels of SSDM and South Sudan Liberation Army (SSLA) in Jonglei, Upper Nile and Unity states matched those in the hands of SAF, the survey claims.

On 30 January 2012, Jonglei State authorities informed UN Mission in South Sudan (UNMISS) that Kuol Chol, the second-in-command of the late George Athor, had approached local authorities to surrender himself and a number of his forces. According to a UN report, “on 9 February, SPLA reported that some 900 of his forces have accepted the offer of amnesty. South Sudan Liberation Army (SSLA) activity in Unity State also remained limited. Increased SPLA deployments following the fighting in the White Lake/Jaw area may have deterred militia attacks. However, SSLA militia appear to retain a significant presence in Mayom County and landmines laid by the group remain a serious threat. On 16 January 2012, a group of 50 to 70 SSLA militia forces reportedly approached national military officials to enter the amnesty process. Two militia leaders, Johnson Olonyi and Ayok Ogat, remain active in Upper Nile State, and reportedly engaged with SPLA forces in Manyo County from 9 to 11 November 2011, leaving 19 SPLA soldiers wounded. On 7 January 2012, 34 fighters associated with the two leaders surrendered to Manyo County authorities.”

5. Sudan issue brief – Human security baseline assessment, Reaching for the gun, N°19, April 2012, « Arms flows and holdings in South Sudan » <http://www.smallarmssurvey.org/focus-projects/sudan-human-security-baseline-assessment.html>

Sudan accuses South Sudan of backing rebels - On 30 March 2012, Sudan's army accused South Sudan of backing a rebel attack on the strategic town of Talodi. "They came supported by tanks and cannons from South Sudan", SAF spokesman Sawarmi Khaled Saad said in a statement issued by the official SUNA news agency. South Sudan has constantly denied supporting the rebels.

The Small Arms Survey report gathered evidence suggesting close ties between South Sudan's army and the Sudanese rebel Sudan People's Liberation Army-North (SPLA-N), that is fighting the Khartoum government in South Kordofan and Blue Nile. According to the report, "[A]lthough the SPLA and the SPLA-N officially separated in July 2011, military and logistical cooperation and collaboration between the two forces continues". This assumption can be corroborated by the presence in Juba of one of SPLA-N leaders during the FIDH mission.

Even though there is no clear evidence of direct and full support to rebels by both States, logistical and political support to destabilise the other camp is obvious. What looks like a proxy war and the fierce accusations from both sides has definitely raised military tensions between the two States.

The Oil Issue

Land-locked South Sudan acquired about three-quarters of Sudan's oil output when it broke away, but still needs use of the pipeline that run through its northern neighbour in order to export crude oil. Oil constitutes about 98% of South Sudan's revenue. In the north, transit fees are crucial since Sudan lost the oil fields to South Sudan last year.

Thus, since the independence of South Sudan, the rate of transit fees became a bone of contention between both countries.

On 20 January 2012, the South Sudanese government shut down all of the country's oil production after Sudan took some of the crude to make up for what Khartoum called "unpaid fees". South Sudan said it has already lost hundreds of millions of dollars as Khartoum took over 3 million barrels of oil that passed through the pipeline to Port Sudan. Some comparative analyses shows that while Sudan charged South Sudan more than 30USD per barrel to use its pipeline, Cameroon charges Chad less than 10USD per barrel for the same privileges. The South Sudanese government said it will look for alternative pipelines (such as through Kenya) and refineries unless they can agree on terms.

The shut-down of oil production (still in force at the time of the release of this report) has already had a heavy negative impact on the economy of both States. South Sudan passed an austerity budget in April and prices in the Sudanese market rose dramatically.

ii) Temporary breakdown of the African Union negotiations

All the aforementioned issues have been on the negotiation table led by the African Union High-level Implementation Panel (AUHIP) since June 2010. It even reached significant progress with the signing of two agreements on 10 and 12 February 2012. One agreement addressed non-aggression and cooperation, and included a commitment by the two States to respect each other's sovereignty and territorial integrity. It also established a Joint Political and Security Mechanism in charge of monitoring the agreement. The other agreement concerned facilitating the return of South Sudanese living in Sudan.

On 13 March 2012, both States even signed agreements on demarcation of their boundaries and on issues of nationalities.

The parties agreed to set up a committee to demarcate the boundary in accordance with the physical description, delimitation and corresponding recommendations of the Technical Committee for Border Line Demarcation between North and South Sudan of January 1956. A Joint Boundary Commission was to be established within two weeks to handle the demarcation process, and a Joint Technical Committee consisting of equal numbers of surveyors, cartographers and other appropriate experts was created to develop a detailed plan to accomplish the demarcation process.

The framework agreement on nationality grants the nationals of each country the right to enjoy four freedoms: freedoms of residence, freedom of movement, freedom to undertake economic activity, and freedom to acquire and dispose property. Citizens of either state can live, work and own property on either side of the border and they can freely travel between the two nations. In order to follow up implementation of this agreement, the two parties have agreed to establish a standing Joint High Level Committee on the Status of Nationals of the Other State, which will comprise representatives of the ministries of internal affairs and other interested bodies. The parties also agreed to cooperate to provide the nationals of each state with appropriate identification and other documents relating to their status, work and residence permits.

These agreements on some of the most contentious issues between Sudan and South Sudan were signed by the chief negotiators, Idris Abdelkadir of Sudan and Pagun Amum of South Sudan in the presence of the co-chairs of AUHIP, Thabo Mbeki and Pierre Buyoya and of Ambassador Ramtane Lamamra, AU Commissioner for Peace and Security. They were to be signed by President Kiir and President Omar al-Bashir at a summit that was to be held in the South Sudan capital of Juba at the end of March/beginning of April. However, negotiations stopped when the Heglig war erupted.

iii) The military operations and the international community's response

On 26 March 2012, Sudan claimed that South Sudan attacked the Heglig oilfield, which is located in the Sudanese state of South Kordofan, but this allegation is contested (see above). South Sudan claims it was acting in self-defence after an attack in Unity state in South Sudan.

On 28 March 2012, South Sudanese troops were ordered by their government to disengage and withdraw from the disputed area.

On 10 April 2012, South Sudanese forces captured Heglig. In a letter addressed to the UNSC, the GoSS wrote that it “only occupied this disputed area to prevent Sudan from continuing to use it as a launching ground for attacks on civilian areas within South Sudan territory”.

On 16 April 2012, the Sudanese National Assembly adopted a resolution designating South Sudan as an enemy state. According to the text read by Kamal Obeid who chairs the Defence and Security Committee in Parliament, the resolution stated “[W]e consider the government of South Sudan an enemy and Sudanese state institutions must treat it as such”.

The Assembly's speaker, Ahmed Ibrahim al-Taher, also declared ; “We will confront the SPLM until we end its rule of the South, and will work to gather our resources to realise this aim”. “We are in a battle that does not finish with the recovery of Heglig, but with an end to the danger that comes from South Sudan” he added.

On 19 April 2012, President Bashir said that “our main objective from now is to free South Sudanese people from SPLM”. UN Secretary-General Ban Ki-Moon qualified the taking of Heglig by South Sudanese forces as “illegal and a violation of the territorial integrity of Sudan” and urged both sides to negotiate to avoid war. He added that Sudan must immediately stop the bombings in South Sudan and withdraw its forces from contested regions like Abyei.

On 20 April 2012, South Sudanese President Kiir announced that his army will withdraw from Heglig in the next three days. The official press release said this decision was taken to satisfy the international community and to resume talks under the AU aegis, but that it still considered as Heglig as being part of South Sudan.

On 22 April 2012, the National Council of Ministers of South Sudan adopted the Resolution of the National Security Council to pull troops from Heglig. The same day the GoSS sent a letter to the United Nations Security Council (UNSC) requesting it “to immediately convene, invoke its UN Charter Chapter VII powers, and agree to take all the necessary measures available to ensure an

unconditional and immediate cessation of all Sudan's aerial bombardments and acts of aggression within South Sudan's territory".

On 23 April 2012, Bashir said of the South Sudanese regime "[No] negotiation with those people," which he had earlier described as an "insect" that must be eliminated. "Our talks with them were with guns and bullets," he told soldiers in the main oil region of Heglig. The same day, according to French News Agency AFP, the Sudanese army launched an air strike on Bentiu, capital city of the oil rich-state of Unity. The European Union (EU) called on the Governments of Sudan and South Sudan to immediately cease attacks on each other's territory (whether directly or through proxies), to cease hostilities, to withdraw all security personnel from Abyei, and to avoid further provocative actions, including inflammatory rhetoric. It urged both sides to establish the Joint Border Verification and Monitoring Mechanism (JBVMM) without further delay.

On 24 April 2012, following the air raids, President Kiir said that Sudan had "declared war" on his country. That day, the Peace and Security Council of the African Union, in addition to denouncing the actions of both countries, urged both governments to unconditionally resume negotiations within two weeks, under the auspices of the AUHIP and with the support of the Chairman of IGAD. The Peace and Security Council also stated that these negotiations must be concluded within three months. It further stated that failure by either party to implement the provisions of the AU Roadmap, or to cooperate in good faith with the Panel, will result in the Council taking appropriate measures as provided for in the Peace and Security Council Protocol and the Constitutive Act of the AU, and to seek the support of the UN Security Council and all AU partners on any actions it may need to take. On 2 May 2012, the UN Security Council endorsed the AU Roadmap requesting Sudan and South Sudan to unconditionally resume negotiations to reach agreement on the following critical issues:

- Arrangements concerning oil and associated payments;
- The status of nationals of one country residing in the other, consistent with the Framework Agreement on the Status of Nationals of the Other State and Related Matters initialed in March 2012;
- Resolution of the status of the disputed and claimed border areas and the demarcation of the border; and
- The final status of the Abyei Area.

The UN Security Council also requested the governments of Sudan and South Sudan to fully cooperate with the AUHIP and the Chair of IGAD to reach a negotiated settlement on the basis of the 28 June 2011 Framework Agreement on Political Partnership between NCP and SPLM-N and Political and Security Arrangements in Blue Nile and Southern Kordofan States.

2. Humanitarian consequences of the conflict in South Kordofan and Blue Nile

Since the "Abyei crisis" fighting has been raging in South Kordofan and Blue Nile Sudan provinces between SAF and SPLA-N rebels, as well as the Justice and Equality Movement (JEM) operating under the umbrella of the Sudan Revolutionary Forces (SRF). The end of February and first days of March saw heavy fighting in both provinces. Indiscriminate air strikes and the use of long range missiles by SAF have continued. The Heglig area was also the theatre of heavy fighting, including both land combat and air strikes.

Numerous international and local civil societies report serious human rights violations committed by SAF, which may amount to international crimes, war crimes and crimes against humanity. Indiscriminate bombings are killing civilians and destroying villages and land, leading to a dire humanitarian crisis. Extrajudicial killings, enforced disappearances, rape and looting are also committed during military attacks.

The 26 April 2012 issue of the weekly Humanitarian Bulletin of the South Sudanese Office for the Coordination of Humanitarian Affairs (OCHA) stated "[W]hile Sudan and South Sudan have edged dangerously close to all-out war, humanitarian consequences have so far been seen mainly in border

areas and Bentiu, the capital of Unity State. Partners estimate the total number of people displaced in recent incidents at 20,000". The number of refugees in the three camps in Unity state has grown in the recent weeks. "In Yida, the population is currently 24,400, with some 8,400 people reported to have arrived since detailed Level 2 registration was completed on 20 March. On average, 287 people have been reported to have arrived each day in April, compared to 83 daily new arrivals in February and March. In Pariang, there are currently 2,105 refugees, and in Nyeel, over 700 refugees now."

The Upper Nile state in South Sudan has the largest concentration of refugees fleeing the conflict in Sudan. They are from Blue Nile state and number more than 90,000. The refugee population in Doro and Jammam also continues to increase steadily.

While the Government of Sudan (GoS) – after having repeatedly denied humanitarian assistance to the population in SPLM-N held areas – finally decided, on June 27, 2012, to accept the tripartite proposal of the African Union, the United Nations and League of Arab States on humanitarian assistance to war-affected civilians in South Kordofan and Blue Nile, the terms of this agreement are still to be clarified and implemented.

B. Inter-ethnic clashes in Jonglei

1. Massacres, abductions, rape and looting

Ethnic clashes for territorial control, local political leadership and economic subsistence are a common phenomenon in all of South Sudan. But the recurrence of heavy fighting in Jonglei state opposing different ethnic groups, with its high death toll and massive human rights violations, is of serious concern and need to be urgently addressed by local and national authorities.

A number of factors have fuelled the violence between the majority ethnic group Dinka and the minority ethnic groups Lou Nuer and Murle. These include: competition due to dire poverty, the absence of a national development policy, the significant rise in the cost of dowries⁶, the vicious cycle of attacks and retaliation and the absence of political reaction at the national and local levels.

Political alliances also come in to play. In 1991, The Lou Nuer supported the splitting faction of SPLA, which had fought against the Garang's Dinka tribe in Bor, and caused the death of hundreds of people. The SAF and SPLA had supplied arms to the Lou Nuer's "white army" during the civil war. Today, Lou Nuer are under-represented within the SPLM. The Murle are politically marginalised and are accused of having been instruments of Sudan during the civil war.

In the past, clashes were fought with spears and arrows. The easy accessibility of modern weapons, either furnished by local rebels or bought cheaply in Ethiopia, has resulted in a higher number of deaths, an increase in abductions and cattle theft, as well as the massive destruction of villages and property. There have also been widespread reports of rape during raids.

Thus, following Murle attacks in January 2009, a massive Lou Nuer retaliation caused around 450 Murle and 300 Nuer deaths. A Murle reprisal in April killed another 250 and displaced some 15,000. Further clashes in August and September killed hundreds more, with SPLA, local police, and state officials also targeted.

On 18 August 2011, thousands of young men from the Murle tribe, armed with assault rifles, launched an attack on Lou Nuer communities located in the remote northern part of the state. More than 640 people were killed, with 750 wounded. Hundreds of children were abducted, thousands of homes were torched, and tens of thousands of cattle were stolen.

6. The fee, usually paid in cattle, that a man is required to pay in order to conclude a marriage contract. As the price of dowries becomes more expensive, incidents of cattle raiding have increased.

In December 2011, about 6,000 Nuer Youths Army attacked the remote town of Pibor in Jonglei state, home to the rival Murle, and burned homes and looted facilities after overtaking a small segment of the South Sudan Army. Hundreds of people were killed, mainly children, women and the elderly. The Lou-Nuer blame the Murle for cattle-raiding and vowed to wipe the entire Murle Tribe off the face of the earth.

However, the Lou-Nuer withdrew from the Murle territory after the SPLA and UN sent more troops to the area.

On 17 January 2012, Jonglei state governor, Kuol Manyang Juuk, said at least 46 people were killed and seven wounded in Duk county following an attack by Murle from Pibor county. The Murle had reportedly captured and burnt down the county's main town, Duk Padiet, home of the Dinka Bor ethnic group, before they were forced out of the area. It was not clear why the Murle decided to also attack the Dinka community of Duk County; however, reports have suggested that hundreds of armed men from the Dinka community joined the 6,000 Lou Nuer fighters assault on Pibor, perhaps prompting the retaliatory attacks on the Dinka.

On 4 May 2012, at the time of the peace conference held in Bor (see below) at least 30 people are confirmed dead and more than 15 injured in clashes between youth of Lou Nuer and Murle ethnic groups in Nyirol county. Nyirol county commissioner, Kuach Duoth confirmed that the attackers were "cattle-rustling members" of the Murle ethnic group.

In total, according to the UN, the recent violence has affected 160,000 people, many of whom are still displaced and reliant on food aid.

2. A weak reconciliation process in the absence of justice

On 18 March 2012, South Sudanese President Kiir stated "[W]e will help to investigate and see who is responsible for killing of people. We cannot see people dying and no one is held responsible".

When the FIDH delegation met with the South Sudanese Deputy Minister of Justice two weeks after the President's declaration, the discourse was already totally different. He stated "*We are a traditional society. We have to settle our problems through traditional means. Justice in that case is not wise we've been told.*"

At the time of publication of this report, no investigation had been officially opened.

The Presidential Committee for Peace, Reconciliation and Tolerance in Jonglei, chaired by Daniel Deng Bul, held its first workshop in April 2012 for dialogue on the way forward with Members of Parliament of Jonglei State, representatives of the Sudan Council of Churches, the Jonglei State Peace Commission, civil society groups and UN agencies. At this occasion, South Sudan's Vice President, Riek Machar, reaffirmed his apology for his 1991 defection from SPLA/M, which led to the killing of hundreds of people from Dinka Bor ethnic group.

Another peace conference was held in Bor from 1 May 2012 to 5 May 2012. Under the auspices of the Presidential Committee, traditional chiefs in Jonglei State signed a peace deal in a ceremony witnessed by President Kiir. The deal recommended the return of abducted children and women, implementation of development projects, such as road construction and the opening of police stations between the communities. Although the chiefs expressed reservations over the lack of punishment for those accused of child abduction and cattle raiding, President Kiir blessed the deal as "historical" and asked traditional leaders to respect the accord.

While FIDH is satisfied that a peace agreement has been signed, they are disappointed that it does not address the issue of the fight against impunity of the most serious human rights violations. Such

a deal is therefore unstable as it does not impose sanctions, violates the right of victims to justice, fuels impunity for criminals, and may lead to future retaliative acts.

3. The issue of disarmament

Internal instability and insecurity of the population is largely due to the mass circulation of weapons. According to Small Arms Survey, “an increasing number of non-state actors in South Sudan, including tribal groups and rebel militia groups, are acquiring weapons illicitly at what appear to be increasingly rapid rates”.

The GoSS on 12 March 2012 launched a disarmament campaign — first by asking civilians to turn over weapons voluntarily and, as of 1 May 2012, enforcing the order.

A coalition of civil society groups has released a report documenting alleged abuses during the voluntary phase of this campaign, which it says received logistical support from the UNMISS. UNMISS denounced these violations⁷ which include alleged beatings, mistreatment and harassment of civilians when security forces conducted house-to-house searches. There have also been cases of the arbitrarily detention of civilians, abuse in detention, and a few reported cases of sexual violence and individuals being shot. The coalition warned that violence could escalate now that the government has moved into the enforcement phase.

As the Deputy Minister of Justice told the FIDH delegation, disarmament is a difficult process and raises many issues. He stated “*each ethnic group would like to be the last one to be disarmed to ensure its security, and some fear that other ethnic tribes in foreign territory will take advantage of this moment to cross borders and lead some attacks*”. This statement illustrates how proper conditions for disarmament must be in place before civilians will feel secure enough to voluntarily relinquish their weapons. These include strengthening the policing and justice systems, and training military and security officers on human rights protection.

C. Violations of fundamental rights

1. Violations of womens’ rights

1.1. Violations of rights and harmful traditional practices

According to the South Sudan Transitional Constitution, “[W]omen shall be accorded full and equal dignity of the person with men”. The Constitution further states that “all levels of government shall enact laws to combat harmful customs and traditions which undermine the dignity and status of women.”

Several laws adopted by Parliament contain provisions criminalising various forms of gender-based and sexual violence. The Criminal Code adopted in 2008 defines rape and other forms of sexual violence as criminal offences and prohibits female genital mutilation.

However, discrimination and violence against women remain highly prevalent. Early and forced marriages, trafficking and forced prostitution are widespread. There are reports of women being forced to undergo abortions and/or sterilisation. Women and girls commonly experience sexual harassment at school and in the workplace. Laws protecting women’s rights are rarely enforced. As a result of a general lack of awareness of their rights, stigmatisation of victims, pressure exerted by families, and inadequate training of police and other representatives of the justice system, violence against women and girls goes largely unreported.

7. <http://www.un.org/apps/news/story.asp?NewsID=41726&Cr=Jonglei&Cr1=>

The majority of those met by the FIDH mission considered that women's rights were not adequately addressed within the executive, legislative and judicial branches and that combating discrimination and violence against women must be made a priority. Women's rights associations in South Sudan have called for an urgent reform of all customary laws in accordance with the Transitional Constitution of South Sudan.

1.2. Women's participation in public and political life

The Transitional Constitution of the Republic of South Sudan stipulates that at least 25% of seats and positions in the legislative and executive branches of the state must be allocated to women. This requirement also applies to the judiciary, the Council of Ministers, and independent institutions and commissions.

However, this requirement has not been implemented. In March 2012, women's rights associations held a press conference in Juba to denounce the under-representation of women. They provided the following statistics:

- 1 of 6 Presidential Advisors is a woman, representing 6%.
- 4 of 29 Cabinet Ministers are women, representing 15%.
- 2 of 20 heads of independent commissions are women, representing 10%.
- 4 of 27 Under-secretaries are women, representing 14%.
- 9 of 90 Ambassadors are women, representing 10%.
- There are no women in the 15 members of the Austerity Measures Committee established by the President.

Women's rights associations called upon the government to effectively implement the 25% affirmative action plan and to increase access to education for women and girls.

2. Infringements to freedom of expression

2.1. The media cases

The media in South Sudan is at various stages of development. Some news agencies and journalists pursue the "correct" public interest stories; however, in some instances, use questionable methods and poor quality reporting which does not differentiate between fact and allegation. This observation was confirmed by journalists themselves, as well as the Deputy Minister of Information, also a journalist. In some instances, the media have focused on the theme of corruption and leadership policy vis-à-vis national values. Both news agencies and reporters have suffered direct backlash from authorities, including from the government and police forces for reporting on issues that may have put political leadership under public scrutiny.

In November 2011, *Destiny* newspaper reported that the President's daughter was marrying a foreigner. Thereafter soldiers stormed *Destiny's* offices, detained the writer and the editor-in-charge for two days without a court order or oversight. The newspaper was "forced" to offer guarantees to the Minister of Interior that such reporting would not be repeated.

In another case, the newspaper *Almasier* reported on a case of alleged corruption involving 30 million SSD pounds. Its report implicated South Sudan's SPLM Secretary-General, Pagan Amuma, who is also the chief negotiator with Sudan. Although there were conflicting views regarding the quality of the reporting on this case, the FIDH mission found a general agreement that the focus on the corruption and the pursuit of that case itself was correct. The mission also determined that there is need for capacity building in regard to basic journalism skills, in particular in investigative journalism. The *Almasier* was sued for defamation by Pagan Amuma and was ordered by the court to pay 3 million SSD pounds in damages. The matter was on appeal at the time of the mission, but the newspaper said that it would face closure if it lost the appeal.

These cases show that journalists and news media will likely face problems if they pursue public interest causes. A culture of tolerance to a free media needs to be established in the early life of South Sudan as a nation in order to protect the freedom of speech and to ensure accurate and factual reporting.

2.2. Operating environment for human rights defenders⁸

One of the main overarching issues around the situation of human rights defenders is that the legacy of repression and systematic violation of human rights inherited from Sudan still pervades Southern Sudan. The legacy of war and serious conflict is still strong as well, which encourages a culture of intolerance to criticism by those in authority, or those with a track record of fighting for independence. The situation is made worse by the absence of laws that define the power of the intelligence services to arrest civilians, and the detention of civilians by the military and quasi-military institutions.

As a result, there have been some attacks and threats to human rights defenders that send a strong message that authorities need to reaffirm South Sudan's commitment towards protecting human rights defenders against unwarranted attacks and threats.

The Case of Biel Boutros Biel

Biel Boutros Biel is the coordinator of the South Sudan Human Rights Society for Advocacy (SSHRSA) based in Juba. The SSHRSA is an organisation with members from all over the country and has great patriotic concern for their country. Members are involved in monitoring the human rights situation in South Sudan, training communities on human rights, and monitoring and contributing towards legal reform, including the current constitutional reform process. Its work has taken it into direct and indirect contact with the authorities in South Sudan.

Some of SSHRSA's activities include protesting the marginalisation of civil society in the constitutional making process, and putting direct pressure on the President to appoint representatives of civil society to the constitutional review committee. It has protested the effectiveness of the current Transitional Constitution insofar as it centralises power in the office of the President and erodes the separation of powers and the rule of law.

SSHRSA has also put pressure to end prolonged detentions of suspects and political and military/security prisoners without proper judicial oversight. It has also called for the end of arbitrary detention of Peter Abdul Rahaman Sule the head of the opposition United democratic front, rebel leader Gabriel Tanginye, and Telephone Koukou of SPLA, who has been accused of links to Khatourm. SSHRSA has publicly and closely monitored the high profile case of the April 2012 enforced disappearance of engineer John Luis from Juba. His case remains unresolved even though a high profile suspect has been identified. The suspect, from the intelligence services, remains free, while relatives of Mr. Luis have been threatened, and his house attacked by unknown assailants.

In the interview, Biel expressed grave concern about the attitude of some people in authority to the work of the SSHRSA, especially people from the security sector and the law enforcement agencies. In his view, it is dangerous to do human rights work. He says that he and other human rights defenders are often given labels in order to foster ill feelings, disaffection and hatred against them. Human rights defenders are often referred to as "Khartoum agents". "members of the opposition", or "rebel sympathisers".

Biel has also faced indirect threats, such as the malicious rumour that he had been killed for "false statements" against the government or its officials, and unsolicited and menacing visits to his

8. FIDH's activities for the protection of human rights defenders are carried out in the framework of the Observatory for the Protection of Human Rights Defenders, its joint programme with the World Organisation Against Torture (OMCT). For more information on the situation of human rights defenders: <http://www.fidh.org/-Human-Rights-Defenders,180->.

offices by unidentified men. Biel was forced to relocate the SSHRSA offices after they were put on surveillance for hours by the intelligence agencies. Despite reporting this surveillance and stalking to the police and authorities including the South Sudan Human Rights Commission, the authorities took no action and for safety, the SSHRSA was left with no alternative but to move offices. Biel advised that the SSHRSA was now contemplating dropping certain cases, such as those involving political opponents or political and security detainees. His reasoning is “if we follow up any politically, militarily or security-related cases in a systematic manner, then we will either be arrested or killed. It is dangerous. I really suspect that in future people will just be silent about abuses and violations”.

The case of Biel was of concern to the mission, as it suggests that there is opposition to fostering a nation that is tolerant and respects human rights and fundamental freedoms. It is important that the South Sudan leadership take a role in securing a safe environment for human rights defenders to avoid fostering a culture of harassment and threats that is taking root.

3. Illegal arrests and detentions

The legacy of civil war, the guerilla reflexes, the absence of legal provisions on security forces’ mandates, certain loopholes in the Code of Criminal Procedure Act (2008), and impunity, create conditions for unlawful behaviour by SPLA members, police officers and intelligence services, notably arbitrary arrests and detentions.

The relative weakness of the judiciary, which is under-staffed and under-trained, leads to a lack of effective oversight over the conduct of security forces. Even though the Criminal Procedure Act state that “[T]he Public Prosecution Attorney (...) shall inspect places of custody and detention daily, check the arrests register and verify the validity of procedures and advise on the treatment of the arrested persons, in accordance with the law “, this rarely happens. The Deputy Minister of Justice stated to the FIDH mission that the “*Judiciary regularly visits prisons*”, yet the mission established that the prisons and other detention centres are full of individuals arrested without a warrant, detained without being charged, with no prospect of trial.

Moreover, detention facilities are out-of-date, and most of them not formally recognised by law as official places of detention. They are also precarious and are generally overcrowded. Ill-treatment is commonly reported. Dozens of mentally-ill persons have been arbitrarily detained at a prison in Juba.

Part II – Legal and Institutional Human Rights Framework

The situation of human rights in South Sudan is thus of great concern. In this context, it is important to analyse the capacity of the new State to address human rights violations in terms of prevention, sanction and redress.

A. The 2011 Transitional Constitution

Adoption

The Transitional Constitution of the Republic of South Sudan, which replaced the 2005 Interim Constitution of Southern Sudan, was ratified on 7 July 2011 by the South Sudan Legislative Assembly, and came into force on the day of independence of South Sudan (9 July 2011) after being signed by President Salva Kiir. The Constitution establishes a presidential system of government headed by a president who is Head of State, Head of Government, and the Commander-in-Chief of the armed forces.

The Bill of Rights

Part II of the Transitional Constitution constitutes the Bill of Rights.

Introductory provisions - As an introduction to the list of rights protected under the Supreme Law, the Constitution provides that “the rights and freedoms of individuals and groups enshrined in this Bill shall be respected, upheld and promoted by all organs and agencies of Government and by all persons”. The Constitution further provides that “no derogation from the rights and freedoms enshrined in this Bill shall be made”.

From a reading of the introductory part of the Bill of Rights, FIDH regrets that the drafters did not include a general non-discrimination provision to emphasize that every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the Constitution without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin.

Civil and political rights and the issue of death penalty - The Supreme Law then provides a list of protected civil and political rights, such as : the right to life, dignity, and the integrity of his or her person, the right to liberty and security of the person, freedom from slavery, equality before the law, women’s and children’s rights, freedom from torture, the right to a fair trial, the right of conscience, and freedoms of expression, assembly, association and movement.

FIDH welcomes the fact that the rights listed are those provided in core international human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples’ Rights. The FIDH however deplores that the new Constitution retained the death penalty as a punishment for extremely serious offences.

According to the Constitution, no death penalty shall be imposed on a person under the age of eighteen, or a person who has attained the age of seventy, or on a pregnant woman. According

to unofficial figures, confirmed by some human rights experts working in South Sudan, death sentences are carried out by hanging or shooting. Around 200 prisoners are on death row, half of them in the Juba prison.

FIDH opposes the death penalty for any crimes and in under any circumstance. It works with its member organisations towards its global abolition. The death penalty constitutes an inhuman treatment. FIDH has documented that the death penalty is commonly given after unfair trials, and its application is often discriminatory. The so-called “preventive” or “deterrent effect” of the death penalty has never been proven.

FIDH calls on the South Sudanese authorities to fully consider the opportunity given by the review process of the Constitution to abolish the death penalty and to join the current abolitionist trend in Africa. Sixteen African States have abolished death penalty *de jure*⁹ and 18 *de facto*¹⁰. In January 2012, the Minister of Justice of Tunisia announced a moratorium on all executions. In 2009, Kenya and Tanzania commuted death sentences into life imprisonment. In November 2011, the African Commission on Human and Peoples’ Rights (ACHPR) adopted the Study of its working group on the issue of the death penalty. That study recommended that African States abolish the death penalty, and that the African Union to adopt an Additional Protocol to the African Charter on Human and Peoples’ Rights aiming at the abolition of death penalty.

Economic, social and cultural rights and third generation of rights - Economic, social and cultural rights are also protected by the Supreme law. These rights include the right to education, the promotion of public health, and the right to housing. Part of its guiding objectives are stated as follows, “[T]his Constitution shall be interpreted and applied to advance the individual dignity and address the particular needs of the people by dedicating public resources and focusing attention on the provision of gainful employment for the people, and improving their lives by building roads, schools, airports, community institutions, hospitals, providing clean water, food security, electric power and telecommunication services to every part of the country. “ The Constitution also provides a set of economic objectives and provisions to promote Education, Science, Art and Culture.

Finally, the Constitution also guarantees the “third generation”, or group rights, such as the protection of a clean and healthy environment.

The National Constitutional Review Commission

The Constitution adopted in 2011 is transitional, but is meant to be revised to become a permanent Constitution. According to the Transitional Constitution “[T]he President of the Republic shall, after consultation with the Political Parties, civil society and other stake-holders, establish a National Constitutional Review Commission to review the Transitional Constitution of South Sudan, 2011”.

On 9 January 2012, the President signed decree N° 03/2012 to appoint full-time and part-time members of the Commission. The Commission is chaired by Professor Akolda Ma’an Tier and is composed of 45 members, 25 from the ruling party SPLM and only 1 from the civil society, Dong Samuel Luak. At a press conference, Civil Society Alliance members complained that their voices were excluded from the consultation process, prior to the president’s decree, and declared that President Kiir had acted contrary to the Transitional Constitution. South Sudan women activists also complained that women’s rights associations were not consulted, and that the number of women on the Commission only constitutes 22%, instead of the 25% mandated in the affirmative action plan.

Biel Boutros Biel, SSHRSA President and Secretary General of the Alliance explained to the FIDH delegation that the Alliance had sent a letter to President Kiir on 16 January 2012 to request the

9. South Africa, Angola, Burundi, Cape-Verde, Côte d’Ivoire, Djibouti, Gabon, Guinea Bissau, Mauritius, Mozambique, Namibia, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Togo.

10. Algeria, Benin, Burkina Faso, Cameroon, Central African Republic, Democratic Republic of Congo, The Gambia, Ghana, Liberia, Madagascar, Mali, Mauritania, Niger, Sierra Leone, Swaziland, Tanzania, Tunisia, Zambia.

nomination of four other individuals, representing the civil society, and requested that M. Dong Samule Luak be appointed as a full-time member of the Commission. At the occasion of the swearing-in of the Commission's members, President Kiir advised that he will consider Alliance' proposal. At his request, the Alliance gave four names to the South Sudanese Vice-President, which took consideration gender, skills and geographical representation. The Vice-President requested the Alliance to add one more name, which it did immediately. The Alliance was surprised to see that the only individual appointed as a member of the Committee was the last individual it proposed. Appointment of the other four individuals was not even considered and no meaningful explanation has been given. The belief among civil society is that the Vice President asked for an additional name in order to avoid appointing one of the top civil society choices.

The Commission will have one year to prepare a draft Permanent Constitution text and present it to the President. The President will then appoint members of a National Constitutional Conference who will review and deliberate on the draft Constitution. Once passed by the Constitutional Conference, the draft Constitution will be submitted to the National Legislature for deliberation and adoption within three months. The adopted Constitution will then be presented to the President for signature as the new permanent constitution of South Sudan.

B. The International Human Rights Instruments

The Transitional Constitution specifies that “[A]ll rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of this Bill”. This provision is of importance as it could be interpreted as establishing a monism system where international human rights instruments ratified by South Sudan would not need to be integrated into national law to be applicable by law enforcement officials.

No ratification yet

One year after its independence, South Sudan had not yet ratified any of the core international and regional human rights instruments. Deputy Minister of Justice met with the FIDH delegation during its mission. He stated that this situation is firstly due to the absence of a law on procedures to accede/ratify international conventions. It is also due to the need for capacity building, including information dissemination and the training of the appropriate ministries on the content of these instruments.

The law on procedures for ratification of international treaties was expected to be presented at the last session of the Parliament which ended in April 2012. The Deputy Minister of Justice however told the FIDH delegation that, if for some reason this did not happen, then it would be tabled in Parliament very soon. The Human Rights Unit of UNMISS, whose mandate is notably to encourage and advise the GoSS to ratify and implement key international human rights treaties and conventions, including those related to women and children, refugees, and statelessness¹¹,

11. As spelled out in Security Council Resolution 1996 (2011) that established UNMISS, the mandate of the Human Rights Office is to :

- Monitor, investigate, verify, and report regularly on human rights situation and potential threats against civilian population as well as actual and potential violations of international humanitarian and human rights law. To this end, work as appropriate with Office of High Commissioner for Human Rights (OHCHR), bring developments to attention of authorities as necessary, and immediately report gross violations of human rights to UN Security Council.
- Encourage and advise Government of the Republic of South Sudan (GRSS) to ratify and implement key international human rights treaties and conventions, including those related to women and children, refugees, and statelessness.
- Support GRSS, in accordance with principles of national ownership and in cooperation with UN Country Team (UNCT) and other international partners, in developing its capacity to establish human rights enabling environment through enhancing capacity of security and justice sectors as well as legislature and civil society.
- Support development of strategies for rule of law, justice sector development, and human rights capacities and institutions.
- Assist government authorities in combating impunity and holding accountable all perpetrators of human rights and international humanitarian law violations, including those committed by illegal armed groups or elements of the GRSS security forces; and
- Encourage and advise GRSS to end prolonged, arbitrary detention, and establish a safe, secure and humane prison system through provision of advice and technical assistance, in cooperation with international partners.
- In conjunction with other partners, contribute to establishment of protective environment for children affected by armed conflict, through implementation of monitoring and reporting mechanisms.

has already organised trainings in on the core human rights instruments. According to UNMISS experts, participants were sensitive to the interest of ratifying major human rights instruments, even though some of them were of the opinion that such ratifications would be costly. Some participants also showed reluctance to ratify some of the conventions like the Rome Statute of the International Criminal Court (ICC) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW).

Time to ratify

FIDH considers it to be of utmost importance for the GoSS to ratify as soon as possible the international human rights instruments.

First and foremost, by doing so the GoSS will show its citizens and the international community a real political will to reinforce the protection of the rights already enshrined in the Transitional Constitution and to protect other rights.

It will also provide South Sudanese citizens with additional and more effective recourse at the national, regional and international levels to claim respect of their rights.

The ratification of such conventions will also specify the definition, scope and means of protection of the rights enshrined in the Constitution. It will guide the drafting of new laws, as well as the reviewing process of new legislation

Finally, this will lead the GoSS to interact with important international and regional mechanisms and bodies, such as the Special Procedures of the UN Human Rights Council, UN human rights treaty bodies, and the African Commission on Human and Peoples' Rights, which provide expert help to governments in developing their human rights policies.

C. The 2006 – 2012 legislation

The list of laws adopted

Around 50 laws were adopted between 2006 and 2012. Many of them have aspects related to human rights protection, such as: the Child Act (2008) ; the Penal Code Act (2008) ; the Code of Criminal Procedure Act (2008) ; the Civil Procedure Act (2007) ; the Anti-corruption Act (2009); the National Elections Act (2008) ; the SPLA Act (2009) ; the Police Service Act (2009); the Prison Service Act (2011) ; the South Sudan Human Rights Commission Act (2009).

From a reading of the list of promulgated laws and their contents, three needs can be identified from a human rights perspective, namely the need for new laws, the need for a review process of existing laws, and the need to depart from the restrictive legislation legacy of Sudan.

The need for new laws

Some important laws to protect human rights as guaranteed by the Constitution are missing, and should be drafted and adopted after a process of consultation with civil society representatives and international human rights experts, including representatives of relevant UN agencies and units. Non-Profit organisations and Media laws are also needed (see developments on Media Law in Part II) to guarantee freedoms of association, movement, and expression, including the freedom of speech and of information. It is important that the South Sudan legislation recognise the legality of human rights defending and protects the work of human rights defenders. Another piece of legislation needed is a National Security Act, as members of Intelligence Services remain active (without clear knowledge of their size) and SPLA continue to arrest and detain individuals without any legal framework to allow for effective oversight.

The need for a review process on human rights basis

Some laws already in place should be reviewed to either incorporate or amend certain provisions with a view to better protect human rights. For instance, international crimes – genocide, war crimes and crimes against humanity - should be incorporated into the Penal Code and, according

to experts, the Criminal Procedure Act is badly structured and is imprecise, which will give rise to interpretation that infringes upon the right to security, due process and a fair trial.

Even though there was still confusion at the time of the FIDH mission, it seems that the Constitutional Review Commission (see above) will also have the mandate to keep the law of South Sudan under systematic review and to undertake examinations and conduct research with a view to developing, modernising and reforming the law and formulate proposals for law reform. FIDH reaffirms the need for Commissioners to consult civil society representatives, international experts and the UN Human Rights Commission while implementing its mandate.

The need to depart from the restrictive legislation legacy of Sudan

The need to carefully base South Sudanese legislation on human rights derives from the fears that most of those drafting the laws, and most of those agents in charge of their implementation, were trained in Khartoum or used to enforce Sudanese laws. The laws and practises of Khartoum such as the NGOs Act, National Security Act and Criminal Procedure Act are well known to be very restrictive and repressive of human rights. In order to improve on judicial oversight, magistrates and security forces should follow a very precise legal framework – and be trained on human rights - to fully respect the rights of individuals.

D. Human Rights Departments in the Executive and Legislative Branches

Human rights departments in the Ministry of Justice and the Ministry of Foreign Affairs

FIDH welcomes the establishment of human rights departments in the Ministries of Justice and of Foreign Affairs. This shows a strong political will to deal with such matters in their respective areas. Both departments are involved in the drafting process of the Bill on ratification of international conventions and take part in trainings held by the UN agencies on core international and human rights instruments. They also work closely with the National Human Rights Commission.

The Deputy Minister of Justice, himself, as well as the Under-Secretary and the head of the Human Rights Department of the Ministry of Justice, all confirmed to the FIDH delegation that there is a strong need for capacity building on issues relating to the promotion and protection of human rights. They all voiced their will to participate in more training on international human rights provisions, international human rights bodies and mechanisms, and ways to report on the human rights situation.

To the question raised by the FIDH delegation on human rights awareness amid the population, the Under-Secretary answered *“if we admit our ignorance, can you imagine how ignorant is the population. But we have no time to educate our people. The NGOs should do so. But we have problems with civil society organisations. Once they receive funding, we don’t see them anymore”*. FIDH considers that the government has the primary responsibility to promote and raise awareness of human rights amongst the population. The statement by the Under-Secretary raises concerns regarding the operating environment of human rights defenders in the country (cf. Part II).

Human Rights and Humanitarian Affairs Committee of the Parliament

According to a local expert, three-fourths of the 334 members of Parliament (of which, only six are members of the opposition) are not familiar with legal issues, mainly due to their low level of education. There has been no effective debate and not a single bill has been initiated by Members of Parliament since their election. This leads the Director of Legal Affairs of the Parliament to observe that *“the Legislative Branch is ill-equipped with regard to knowledge of human rights. There is a strong need for capacity building. Members of Parliament should be trained on human rights”*.

The Human Rights and Humanitarian Affairs Committee representatives met by the FIDH delegation named only the Child Act adopted in 2008 as one of its achievements. It did, however,

mention its participation in the drafting of a Human Rights Work Plan, together with the Human Rights Departments of the Ministries of Justice and Foreign Affairs, but did not disclose much of its content. The Committee's Deputy Chairperson did raise the need for capacity building.

E. The Judiciary and Legal Profession

The mission noted that the legal framework establishing the judiciary is not consistent with the requirements for an independent, impartial and accountable judiciary. The legal framework is fundamentally faulty in that it makes the judiciary directly answerable to the President of the GoSS in the discharge its mandate. It also makes the judiciary budget subject to Presidential approval. The Judiciary Act, 2008 provides for the establishment and structures of the judiciary in South Sudan and, in Section 6 on Judicial Power and Independence, provides as follows:

- (1) *Judicial power in Southern Sudan is vested in an independent organ to be known as "The Judiciary of Southern Sudan" (hereinafter referred to as the "Judiciary").*
- (2) *The Judiciary shall be independent of the Southern Sudan Executive and the Legislature. The President of the Supreme Court, as the head of the Judiciary, shall be answerable to the President of GoSS for the proper functioning and administration of the Judiciary.*
- (3) *The Judiciary shall have an independent financial budget charge on the consolidated Fund, approved by the President of the Government of Southern Sudan, on the recommendation of the Council.*

This faulty legal framework which potentially subordinates the judiciary to the President is also aggravated by the fact that the appointment process of members of the judiciary is also dominated by the President.

Section 21 of the Judiciary Act regarding the power to appoint justices and judges provides that

- (1) *Each of the following shall be appointed by the President of GoSS, having regard to competence, integrity, credibility and impartiality as provided for in the ICSS and this Act:*
 - (a) *The President of the Supreme Court;*
 - (b) *The Deputy President of the Supreme Court;*
 - (c) *The Justices of the Supreme Court;*
 - (d) *The Presidents of the Courts of Appeal; and,*
 - (e) *The Justices of the Court of Appeal.*
- (2) *The Council shall make recommendations to the President with respect to the appointments set forth in subsection (1), above.*
- (3) *Judges of the High Courts, County and Payam Courts shall be appointed by the President, on recommendation of the President of the Supreme Court of Southern Sudan.*

In order to guarantee the independence of the judiciary in terms of both its structure and in its functionality, it is necessary to review the law and the Constitution so that the judiciary is truly independent in law and practice.

Other than the above specific observations on the legal and policy framework, the mission also noted general matters of concern about the state of the judiciary as an institution of protection of human rights. These include a lack of adequate financial and human resources for the courts to function properly. The courts do not have a sufficient number of judges and, during the mission, the President of the Supreme Court was trying to recruit over 125 judges to preside over both the current backlog and over future cases. There are not enough functioning courtrooms; the ratio of rooms to the number of cases is low, and the few courtrooms available are thus overcrowded. There are no mechanisms for ensuring judicial accountability, which results in a judiciary system that is neither efficient nor accountable. The situation is further exacerbated by the fact that the legal

profession is still weak and not entirely independent. The Minister is still the regulator of the legal profession. There are two professional bodies, the South Sudan Law Society (SSLS) and the South Sudan Bar Association (SSBA). The SSLS is organised and has offices, infrastructure and human resources. It however does not have the power to regulate the legal profession, and is not formally recognised by the GoSS. The Deputy Minister of Justice told the mission that the SSLS is a civil society and not a professional regulatory body. The Deputy Minister of Justice advised that the GoSS is inclined to recognise the SSBA as the future regulator of the legal profession. However the SSBA has no offices nor resources, financial or human. It is currently too weak to have any regulatory function. It is not possible to have a strong judiciary with a weak legal profession. It is not possible to have an independent judiciary with a legal profession that is not independent. With a weak judiciary and legal profession, South Sudan does not have an effective system of checks and balances that will provide an environment of effective protection of human rights. Given all of this, it was not surprising to the mission that there were reports of arbitrary arrests and detentions, and overcrowding in prisons and formal and informal places of detention without any judicial oversight.

F. The National Human Rights Commission

Mandate

In accordance with the provisions of the 2005 Interim Constitution of Southern Sudan, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan adopted in 2009 the Southern Sudan Human Rights Commission Act. Chapter VI of the 2011 Transitional Constitution is devoted to the establishment of the Human Rights Commission. According to the Supreme Law, the Chairperson, Deputy Chairperson and Members of the Commission shall be appointed by the President with the approval of the National Legislative Assembly by a simple majority of all members present and voting.

The functions of the Commission are to:

- monitor the application and enforcement of the rights and freedoms enshrined in this Constitution;
- investigate, on its own initiative, or on a complaint made by any person or group of persons, against any violation of human rights and fundamental freedoms
- visit police jails, prisons and related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations to the relevant authority;
- establish a continuing programme of research, education and information to enhance respect for human rights and fundamental freedoms;
- recommend to the National Legislative Assembly effective measures to promote human rights and fundamental freedoms;
- create and sustain within society awareness of the provisions of this Constitution as the fundamental law of the people of South Sudan;
- educate and encourage the public to defend their human rights and fundamental freedoms against all forms of abuse and violation;
- monitor compliance of all levels of government with international and regional human rights treaties and conventions ratified by the Republic of South Sudan.

Need for adequate resources and capacity building

From the different interviews the FIDH delegation held during its mission, it appeared clear that the members of the Human Rights Commission (HRC) are well connected with Ministries, civil society and UN agencies and are committed in the implementation of their mandate. At the time of the FIDH mission, the HRC had 10 offices in the 10 States of South Sudan all composed of two monitors. The Commission is also composed of thematic desks, such as “Education”, which is one of the priority actions of the HRC. For instance, it organised training for army and security forces and entered into a Memorandum of Understanding (MoU) with the Ministry of Education to train children on human rights. The Commission also recently established a “Gender” desk. The Executive Director, Victor Lado, told the FIDH delegation that the HRC was about to release its

annual 2011 report ; but no other paper on the human rights situation in South Sudan was available and the HRC was unable to produce data regarding the number of individual complaints received.

UNDP and UNMISS very much support the HRC in terms of equipment, transport and organisation of workshop on human rights. But according to the Executive Director there is “*a strong need to support the institutional and human capacity of the Commission* “. Especially, since the new budget of austerity approved by Parliament in April 2012 will reduce the operating costs of the Commission by 46%. This will force the HRC to close 6 out of its 10 offices in the States, and also illustrates its strong financial dependence on the Government.

Conclusion - Transitional period: Time to Learn from the Past

The mission visited South Sudan at a time when the nation was grappling with the issue of reviewing the Transitional Constitution to draft a permanent national constitution that would reflect the new nation's values and value system. The appointment of the National Constitutional Review Commission was seen as having been too much influenced by the Sudan People's Liberation Movement (SPLM) as the main political movement that fought for independence. There were concerns expressed by civil society that the Commission is not truly representative as it did not have sufficient representation from other sectors of society in particular civil society.

Almost a year after the independence of the country, the only human rights legal framework lies in the Constitutional Bill of rights. The Government has not yet ratified any single international human rights instrument and only very few laws have been adopted by the Parliament which contain human rights provisions, with the exception of the Child Act. Executive and Legislative human rights units exist, but there remain a strong need to build the capacity of their holders despite the important efforts undertaken by the international community.

The judiciary is still in its formative stages with limited or no capacity to carry out effective oversight over arrests and detentions. At the time of the mission the judiciary was trying to recruit over 125 judges and magistrates in order to get sufficient numbers to carry out its mandate effectively. The legal profession is also still weak and not self-regulating. The Minister of Justice still controls the regulation of the legal profession. The South Sudan Law Society is a mere civil society, while a new Bar Association has been set up with the aim that it becomes the regulating body for the legal profession. The law establishing such a body has not yet been promulgated. With a weak judiciary and a legal profession that is not self-regulating, the country does not have an effective legal protection mechanism for human rights.

The South Sudan Human Rights Commission, though established and showing strong willingness to implement its large mandate, seems to have limited powers of enforcement. It is also heavily dependent on the government for funding its activities. At the time of the mission, its budget had been reduced by over 40%, limiting its capacity to offer any protective role for human rights violations.

The mission did thus observe an interesting dynamic towards the establishment of a strong legal and institutional human rights framework, even though the need for capacity building and awareness on the matter is crucial and many efforts are needed show real political commitment in human rights protection. However, in the meantime, victims of human rights violations lack effective national, regional and international recourse. This is an unacceptable situation in light of the massive humanitarian and human rights violations arising from the Heglig war with Sudan, and the Jonglei inter-ethnic clashes, as well as, violations of fundamental rights and liberties, such as women's rights, the right to security of the person, freedom of information and expression, and the right to human rights defending among others.

Other nations have gone through similar challenges that the government of South Sudan can learn from. What seems to be clear is that the governments that have quickly adopted their people-driven

constitutions and established institutions for protection, have stabilised quickly and also experienced socio-economic and political growth. South Africa, which is seen as a model democracy in Africa, adopted a national constitution and established important institutions such as a constitutional court within two years of its freedom. The operating space for human rights defenders, media practitioners and other sectors of society is guided by its constitution and national laws. Namibia, which has also seen a reasonably stable democracy, did the same thing.

On the other hand, some countries, such as Kenya and Zimbabwe, took a long time before adopting people-driven national constitutions. Those countries experienced prolonged periods of instability and repression. Additionally, the judiciaries in those countries were seen as weak and executive driven. They lost the people's confidence, as there was no effective oversight over arrests and detentions. Their national institutions of protection and human rights did not inspire confidence, nor did their election management bodies. The long term result of this was that legitimate political opponents and human rights defenders ended up operating in constrained environments where the law became used as an instrument of repression and persecution. Ultimately systematic violence became accustomed to these nations and they both ended up with governments of national unity which were compromise arrangements after failure of institutions to give a democratic voice to the people. It is important for the government of Southern Sudan to learn from these experiences

Recommendations

The Situation of Human Rights

FIDH recommends

Regarding the Heglig war and the conflict in South Kordofan and Blue Nile

- The Governments of Sudan and South Sudan
 - to cease all hostilities and respect the sovereignty and territorial integrity of the other party
 - to cease all hostile propaganda and inflammatory statements
 - to fully respect humanitarian and human rights international standards and UNSC Resolution 1325
 - to abide with the decisions taken by the African Union Peace and Security Council of 24 April 2012 and notably to continue negotiations with view to reach an agreement before end of July 2012 on the following critical issues : (i) arrangements concerning oil and associated payments; (ii) the status of nationals of one country resident in the other, in accordance with the Framework Agreement initialled in March 2012; (iii) resolution of the status of the disputed and claimed border areas and the demarcation of the border; and (iv) the final status of Abyei.
 - to refrain from supporting rebel groups acting on the territory of the other State
 - to implement pending aspects of the 20 June 2011 Agreement on Temporary Security and Administrative Arrangements for the Abyei Area
 - to effectively allow humanitarian NGOs and UN agencies to access all areas affected by the conflict to facilitate assistance
 - to give assistance to all populations affected by the conflict
- The international community, notably the United Nations Security Council (UNSC)
 - to establish an international Commission of Inquiry to shed light on the humanitarian and human rights violations committed since June 2012 in South Kordofan and Blue Nile and their perpetrators
 - to support the mediation of the African Union, notably the AU High-level Implementation Panel
 - to envisage individual sanctions should the hostilities continue between South Sudan and Sudan
- The African Union, notably the AU High-level Implementation Panel
 - to increase its efforts to settle the conflict
 - to consult with civil society representatives, notably human rights NGOs and women's rights NGOs on the content of the negotiations
 - to encourage the implementation of UNSC Resolution 1325, urging Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict

- The State Parties to the Rome Statute
 - to cooperate with the ICC by transferring to the Hague individuals under warrant of arrest

Regarding the Jonglei inter-ethnic clashes

- The Government of South Sudan
 - to request an addendum to the peace deal reached between communities under the aegis of the Presidential Committee for Peace, Reconciliation and Tolerance in Jonglei, on the need to fight against impunity for the perpetrators of the most serious crimes committed during inter-ethnic clashes
 - to take all necessary measures for the opening of investigations on crimes committed during inter-ethnic clashes to sanction their perpetrators
 - to commit in an holistic development programme in Jonglei state based on infrastructures, public services and the respect for economic, social and cultural rights
 - to stop forced disarmament programme until proper conditions are in place before civilians will feel secure enough to hand over their weapons voluntarily. These include strengthening the policing and justice systems
 - to take all necessary measures to open investigations on human rights violations committed by SPLA members during the disarmament process for appropriate sanction in accordance with international human rights standards
- The United Nations Mission in South Sudan (UNMISS)
 - to stop all support to the governmental disarmament process unless the above recommendations are implemented
 - to establish an early response unit and procedures for efficient and rapid preventive action or intervention when warned of possible ethnic clashes

Regarding violations of fundamental rights

- The Government of South Sudan
 - to ratify the Convention on the Elimination of All Forms of Discrimination (CEDAW) against Women, and ensure that national laws respect its provisions
 - to ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa and the Optional Protocol to CEDAW
 - to respect the African Union Solemn Declaration on Gender Equality in Africa and commit to its reporting procedure
 - to abolish all discriminatory laws and adopt laws protecting women's rights in the private and public spheres in accordance with international human rights standards
 - to strengthen laws and policies to protect women from all forms of violence and provide support to victims, including during conflict, by: adopting a specific law to prohibit all forms of violence against women, including domestic violence and marital rape; ensuring access to justice for victims and the investigation and prosecution of offences; allocating financial resources to combating violence against women; and ensuring access to shelters for victims
 - to adopt all necessary measures to reform and eliminate discriminatory cultural practices and stereotypes, by disseminating simplified versions of legal texts to the general public and adopting awareness-raising programmes aimed at men and women, including government officials and religious, traditional and community leaders
 - to eliminate obstacles to the education of girls and women, in particular by: ensuring

equal access to all levels of education; adopting measures to retain girls within the education system, including pregnant pupils; increasing the budget for education to improve educational infrastructure and teacher training ; establishing courses for adults to reduce illiteracy

- to ensure women’s access to quality health-care, including obstetrics and family planning, in particular by: ensuring access to contraception, particularly in rural areas; and taking measures to allow women access to safe abortions with a view to reducing levels of maternal mortality
 - to take measures to increase women’s participation in public and political life, including by adopting and respecting quotas for representation of at least 30%, in accordance with international and regional standards and commitments
 - To ensure the full participation of women in peace negotiations and peace-building, in accordance with UN Security Council Resolution 1325 and subsequent resolutions on women, peace and security
 - to invite the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences and the Special Rapporteur of the African Commission on Human and Peoples’ Rights (ACHPR) on the rights of women in Africa, to visit the country
 - to fully respect freedom of association, the right to information and expression as enshrined in the Transitional Constitution
 - to present the Media Bill before Parliament for its adoption ensuring that it is in conformity with international human rights standards
 - to take all necessary measures to implement the provisions contained in the Joint Declaration on Crimes against Freedom of Expression adopted on June 25, 2012 by the UN Special Rapporteur on Freedom of Opinion and Expression, the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression
 - to invite the UN Special Rapporteur on Freedom of Opinion and Expression and the Special Rapporteur of the ACHPR on Freedom of Expression and Access to Information to visit the country
 - respect and implement the UN 1998 Declaration on the protection of human rights defenders
 - to publicly recognise the role and importance of the work of human rights defenders
 - to protect physical and psychological integrity of human rights defenders
 - to open investigations on all cases of threats and harassment against human rights defenders
 - to invite the UN Special Rapporteur on Human Rights Defenders and the Special Rapporteur of the ACHPR on Human Rights Defenders to visit the country
 - to adopt and revise laws to clarify the mandates of the different security forces, especially dealing with their power of arrest
 - to ensure that any persons arbitrarily detained be immediately released
 - to close all illegal places of detention
 - to commit to a programme of rehabilitation of detention centres
 - to establish specialised centres for people with mental illnesses
 - to ensure that all forms of arrest and detention are at law subject to judicial oversight within the shortest possible time after arrest and detention
 - to adopt alternative forms of punishment than detention and jail in appropriate cases
 - To invite the Special Rapporteur of the ACHPR on Prisons and Conditions of Detention to visit the country
- The human rights unit of UNMISS
 - to hold programmes and trainings on the protection of human rights defenders

- The international community
 - to develop intensive programmes and campaigns on women’s rights promotion and protection
 - to support local women’s rights associations, and notably, to commit to core funding.
 - to monitor infringements on the respect of the right of freedom of expression
 - to open a call for proposals to support the work of local human rights defenders
 - to hold or support trainings of journalists on media deontology
 - to support programmes for rehabilitation of detention facilities
- The European Union delegation in South Sudan
 - to implement the EU guidelines on the protection of women’s rights and human rights defenders

The Legal and Institutional Framework

FIDH recommends

Regarding the 2011 Transitional Constitution

- The President of South Sudan
 - to appoint additional full-time and part-time members of the Commission from the four names initially submitted by civil society organisations to make the constitutional review process as inclusive as possible.
- Members of the National Constitutional Review Commission
 - to ensure constant consultations with civil society representatives and the Human Rights National Commission in its constitutional reviewing process
 - to maintain the Bill of Rights in the draft of the Permanent Constitution
 - to include in the draft of the Permanent Constitution :
 - i) a general non-discrimination provision, such as : “Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status”
 - ii) a provision abolishing the death penalty
 - iii) the human rights protection as part of the Principles and Objectives of the Permanent Constitution
- The National Human Rights Commission
 - to provide the National Constitutional Review Commission with a position paper on the reviewing process with regard to human rights
- The International Community
 - to finance the participation of experts to support the work of the National Constitutional Review Commission as foreseen in the Transitional Constitution

Regarding the international instruments

- The Government of South Sudan
 - to present as soon as possible the Bill on procedures to accede/ratify international conventions before the Parliament
 - to ratify international human rights instruments, such as :
 - i) International Covenant on Civil and Political Rights, its Protocol and the Second Protocol aiming at the abolition of the death penalty
 - ii) International Covenant on Economic, Social and Cultural Rights and its Optional Protocol
 - iii) International Convention on the Elimination of All Forms of Racial Discrimination
 - iv) Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol
 - v) Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and its Optional Protocol
 - vi) Convention of the Rights of the Child
 - vii) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
 - viii) International Convention for the Protection of All Persons from Enforced Disappearance
 - ix) Convention on the Reduction of Statelessness
 - x) Convention relating to the Status of Refugees
 - xi) Convention on the Rights of Persons with Disabilities
 - xii) Rome Statute of the International Criminal Court
 - xiii) Convention on the Prevention and Punishment of the Crime of Genocide
 - xiv) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity
 - xv) The four Geneva Conventions and the two Protocols
 - to ratify regional human rights instruments, such as :
 - i) African Charter on Human and Peoples' Rights and its Protocols on the Rights of Women in Africa and the Establishment of the African Court on Human and Peoples' Rights, making the declaration of its Article 34.6 allowing individuals and NGOs to seize the Court
 - ii) African Charter on the Rights and the Welfare of the Child
 - iii) African Charter on Democracy, Elections and Governance
 - iv) African Union Convention on Preventing and Combating Corruption
 - v) Protocol of the Statute of the African Court on Justice and Human Rights
 - vi) OAU Convention Governing the Specific Aspects of Refugee Problems in Africa
 - vii) African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa
- The Human Rights Unit of UNMISS
 - to hire the 100 staff its budget allows to offer effective technical assistance to South Sudan
- The international community
 - to work with the GoSS to ratify the core international and human rights instruments within the shortest possible time

Regarding the legislation

- The Government of South Sudan or the Parliament
 - to initiate Bills on Non-profit organisations, Media, and National Security in conformity with international human rights provisions

- The Law Review Commission
 - to review national laws to make them in conformity with the Constitutional Bill of Rights
 - to regularly and systematically consult with civil society representatives, notably Human Rights and Women Rights NGOs, the National Human Rights Commission and the members of the Human Rights and Humanitarian Affairs committee of the Parliament
- The International Community
 - to support the mandate of the Law Review Commission regarding the dissemination of the South Sudanese legislation to the population
 - to continue efforts to support trainings of agents in charge of the implementation of the law on new legislation and human rights protection

Regarding the Human Rights Departments in the Executive and Legislative Branch

- The Government of South Sudan
 - to support further staffing in the human rights departments of the Ministries of Justice and Foreign Affairs
 - to take all necessary measures to disseminate information on the Constitutional Bill of Rights and the human rights provisions of national law to the public
 - to engage in national-wide campaigns of promotion and protection of human rights.
 - to implement the MoU signed between the Minister of Education and the Human Rights Commission to train children on human rights
- The Governmental and Legislative Human Rights Departments and Committees
 - to fully cooperate with the National Human Rights Commission and human rights NGOs
 - to propose a policy of strategic use of internships qualified in human rights law in government departments.
- The International Community
 - to support and/or organise trainings on human rights to members of departments of the Ministries of Justice and Foreign Affairs, Members of Parliament and notably members of the Human Rights and Humanitarian Affairs Committee and its secretaries
 - to support the participation of members of governmental and legislative human rights departments and committees to international and regional human rights fora, such as to the sessions of the African commission on Human and Peoples' Rights and to the UN Human Rights Council.

Regarding the Judiciary and Legal Profession

- The Government of South Sudan and the Judiciary as the case may be
 - to ensure that the Constitutional Review Commission develops a constitutional framework that sets up the judiciary of South Sudan to be truly legally and practically independent, impartial from and accountable to the Constitution.
 - to come up with legislation that establishes a truly legally and practically independent professional body to independently regulate the legal profession.
 - to provide the judiciary with sufficient human and financial resources to recruit a sufficient number of judges and court support staff, to make the judiciary function more efficiently and independently.

- to pass legislation that creates a basis for the judiciary to have effective oversight over all arrests and detentions in Southern Sudan.
 - to approach NGOS and the international community to help provide technical support to the judiciary, including capacity building in key justice administration and delivery areas.
 - to urgently finalise the recruitment process of judicial officers to ensure that the judiciary is adequately staffed.
 - to build courtrooms and other necessary infrastructure to make the courts accessible in the whole of Southern Sudan.
 - to develop and implement in collaboration with the legal profession a system of legal aid for the poor and most marginalised in South Sudan
- The Legal Profession in South Sudan
 - to begin a dialogue with the Ministry of Justice on the self-regulation of the legal profession including sponsoring parliamentary legislation on the establishment of an independent and self-regulating law association ;
 - to begin an ongoing dialogue with the judiciary including holding periodic bar-bench colloquia to resolve matters of mutual concern around access to justice for all.
 - to initiate and maintain programmes for the continuous legal education of members of the legal profession and to approach NGOs for technical assistance if need be.
 - to develop a system in collaboration with the government a pro-bono system to support the poor and most marginalised to get legal representation.
 - The International Community
 - to provide justice sector support to South Sudan as part of the stabilisation of South Sudan and consolidation of the democratic gains.

Regarding the National Human Rights Commission

- The Government of South Sudan
 - In future budgets, to give full financial support to the Human Rights Commission to run offices in all States, develop new thematic desks, acquire equipment and means of transport, in order to safeguard its independence in conformity with the Paris Principles
- The African Network of Human Rights National Institutions
 - To integrate the South Sudan National Human Rights Commission in all its activities
- The International Community and UN agencies, notably the UNHCHR
 - to continue its support (financial, training, transport and equipment) to the Human Rights Commission
- The National Human Rights Commission
 - to produce more systematic reports on thematic issues and situations of serious human rights violations
 - to provide the Constitutional Review Commission with position papers on the conformity of the Permanent Constitution and laws with human rights standards
 - to create a website where its mandate, reports and complaints procedures can be made available
 - to collect data on the number of complaints received
 - to propose internships to individuals qualified in human rights law.

Acronyms

Abyei Boundaries Commission (ABC)
African Center for Justice and Peace Studies (ACPJS)
African Commission on Human and Peoples' Rights (ACHPR)
African Union High-level Implementation Panel (AUHIP)
Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
Committee Empowerment for Progress Organisation (CEPO)
Comprehensive Peace Agreement (CPA)
European Union (EU)
Government of South Sudan (GoSS)
Inter-Governmental Authority on Development (IGAD)
International Federation for Human Rights (FIDH)
Justice and Equality Movement (JEM)
Joint Border Verification and Monitoring Mechanism (JBVMM)
Justice and Equality Movement (JEM)
Office for the Coordination of Humanitarian Affairs (OCHA)
Permanent Court of Arbitration (PCA)
South Sudan Bar Association (SSBA)
South Sudan Democratic Movement (SSDM)
South Sudan Human Rights Society for Advocacy (SSHRSA)
South Sudan Liberation Army (SSLA)
Sudan Armed Forces (SAF)
South Sudan Law Society (SSLS)
Sudan People's Liberation Movement (SPLM)
Sudan People's Liberation Movement and Army (SPLM/A)
Sudan People's Liberation Army North (SPLA/N)
Sudan People's Liberation Army South (SPLA/S)
Sudan Revolutionary Forces (SRF)
South Sudan Law Society (SSLS)
South Sudan Bar Association (SSBA)
United Nations Interim Security Force in Abyei (UNISFA)
United Mission in South Sudan (UNMISS)
UN Security Council (UNSC)

This report was realized with the support of the Democratic Governance mission of the French Ministry of European and Foreign Affairs. The opinions expressed in this document are those of FIDH only.

Establishing the facts

investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society

training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level

Mobilising the international community

permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

Informing and reporting

mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

**FIDH
represents 164
human rights organisations
on 5 continents**

FIDH - International Federation for Human Rights

17, passage de la Main-d'Or - 75011 Paris - France

CCP Paris: 76 76 Z

Tel: (33-1) 43 55 25 18

Fax: (33-1) 43 55 18 80

www.fidh.org

Director of the publication: Souhayr Belhassen

Editor: Antoine Bernard

Authors: Arnold Tsunga, Marceau Sivieude

Design: CBT

This report is published in French and in English.

The International Federation for Human Rights (FIDH) authorizes reproduction of excerpts of this publication as long as credits are given and that a copy of the text including such excerpts is sent to its headquarters.

FIDH represents 164 human rights organisations on 5 continents



inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 164 member organisations in more than 100 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organisations, FIDH is not linked to any party or religion and is independent of all governments.

fidh

Find information concerning FIDH's 164 member organisations on www.fidh.org