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Technical assistance and capacity-building

Technical assistance and capacity-building for South Sudan in the field of human rights

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report is submitted pursuant to Human Rights Council resolution 18/17 on technical assistance and capacity-building for South Sudan in the field of human rights. It contains an outline of the human rights challenges faced by South Sudan as a new, underdeveloped State emerging from decades of war. It identifies the priority entry points for assisting the Government of South Sudan in its efforts to promote and protect human rights.

The High Commissioner stresses the importance of supporting ongoing efforts by the Government and development partners to build the capacity of rule of law institutions, and makes targeted recommendations for courses of action to address outstanding capacity shortfalls.

* Late submission.

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I. Introduction

1. The present report is submitted in accordance with Human Rights Council resolution 18/17, in which the Council invited the Office of the United Nations High Commissioner for Human Rights (OHCHR), in collaboration with the Government of South Sudan, to identify and assess areas of assistance and, upon its request, to assist the Government in its efforts to promote and protect human rights, and to present a report on the implementation of resolution 18/17 to the Council at its twenty-first session.

2. In resolution 18/17, the Human Rights Council acknowledged the commitments made by the Government of South Sudan to strengthen national mechanisms of promotion and protection of human rights, and called on the Government to implement those commitments. The Council also encouraged the international community to provide the Government with technical and financial assistance, and to support the Government in its efforts to promote and protect human rights.

3. From 8 to 12 May 2012, the High Commissioner visited South Sudan, where she met with the President of South Sudan and senior Government officials, the South Sudan Human Rights Commission, the Head of the United Nations Mission in South Sudan (UNMISS) and other United Nations partners, and civil society organizations. She also conducted a field visit to Bor in Jonglei State. The mission provided the High Commissioner with an opportunity to witness first-hand the situation of human rights in South Sudan and to hold discussions with a variety of stakeholders on ways and means to advance the human rights agenda in the country.

4. Subsequently, a team of OHCHR staff members carried out a mission to South Sudan, from 13 to 18 May 2012. Building on the visit of the High Commissioner, they held in-depth meetings at the working level with various State actors, including representatives of the Ministry of Justice, the Human Rights Commission, the Legal and Constitutional Review Commission, the Human Rights and Humanitarian Committee of the South Sudan National Assembly, as well as with the Deputy Chief Justice of South Sudan. The team also met with officials of UNMISS and other United Nations agencies and bodies operating in the country, as well as with representatives of national and international non-governmental organizations.

5. The present report is based on information made available to OHCHR by the Government of South Sudan, UNMISS and other sources, including United Nations agencies funds and programmes in South Sudan.

6. On 26 April 2012, OHCHR sent a note verbale to all Member States accredited to the United Nations Office in Geneva and to all United Nations agencies, funds and programmes to solicit information on assistance they may provide in South Sudan. Contributions were received from Canada, Greece, Luxembourg, Mexico, Norway, Slovakia and Spain, the United Nations Office on Drugs and Crime and the United Nations Population Fund, all of which currently fund and implement human rights-related programmes in South Sudan.

7. A draft copy of the present report was shared with the Government of South Sudan for factual comments.

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

II. Background

9. After nearly two decades of civil war between the North and the South, and an interim period lasting five and a half years as an autonomous region under the Comprehensive Peace Agreement of 2005, South Sudan became independent on 9 July 2011 following a referendum held in January that same year, in which an overwhelming majority voted in favour of secession from the Sudan.

10. During the six-year interim period under the Comprehensive Peace Agreement, Southern Sudan, which had autonomous status, met key transitional political milestones and established national institutions. The transitional Constitution was promulgated to cover the interim period, articulating citizens' rights and the core functions of various branches of Government. The Government launched the South Sudan Development Plan, which outlined key objectives and activities of the State. South Sudan also started to create and systematize key State functions, including taxation and revenue collection, and prepared essential legislation. The period also witnessed the return of more than 2 million South Sudanese, many of them from the neighbouring countries.

11. As a new State, however, South Sudan faces a number of daunting and complex challenges. Its capacity to deliver basic services, foster security and promote the rule of law and human rights remains weak. Its economy is almost entirely dominated by the oil sector, poverty is widespread and most of the country lacks infrastructure. Corruption is rampant and very few accountability mechanisms exist to deter misuse or mismanagement of public resources. More than 80 per cent of the State's 2 billion dollar annual budget (now reduced owing to austerity measures following the suspension of oil exports, which accounted for 98 per cent of the country's revenue) goes to the payment of salaries for security forces and the civil service, leading to an economy based solely on public sector wages. Investment in infrastructure and basic service delivery and development, especially outside of Juba, have been minimal, with a consequent lack of State infrastructure required to protect and integrate the vast number of returnees from the North and neighbouring countries. Furthermore, the new State has been beset by violence and insecurity caused by continued inter-communal tensions, abuses by security forces, weak rule of law institutions and fragile, tense relations with its neighbour, the Sudan.

12. Compounding these problems, decades of marginalization and war have left South Sudan with some of the worst human development indicators in the world. More than 90 per cent of the population is estimated to live below the poverty level and half of all children do not attend school. The region has the second highest maternal mortality rate in the world; 20 per cent of the population struggles to feed itself in a typical year. Less than 40 per cent of the population has access to health care. A 15-year-old girl in South Sudan is said to have a higher chance of dying during pregnancy or childbirth than of finishing secondary school. Underpinning these challenges is the high level of illiteracy, which translates into a lack of awareness of human rights and democratic values.

13. A key challenge is the development of governance and rule of law institutions based on principles of political inclusiveness and transparency. The capacity of many of the institutions of government, including not only the legislature, judiciary and key institutions in the executive, but also the ruling Sudan People's Liberation Army (SPLA) and law enforcement agencies, remains weak. The legal framework and rule of law, including the customary law system, are inadequate. Many laws are not yet in place, while many others need to be harmonized with international human rights law. South Sudan has yet to ratify all the core international human rights treaties.

14. The lack of a meaningful State presence, particularly outside major urban areas, has led to increased militarization of civilians. In vast areas of the country, the police,

prosecutors and the judiciary are chronically underresourced and poorly trained. Some progress in the professionalization of the police, by means of training programmes and the establishment of a national training centre, has not obviated the challenges for the South Sudan National Police Service, which has an illiteracy level estimated as high as 90 per cent. This capacity gap has led in part to the usurpation of police powers by the SPLA. The establishment of such national institutions as the Human Rights Commission has been severely affected by the recent austerity measures. As a result, the Commission lacks the capacity and resources necessary to carry out its statutory and oversight functions.

15. While many of the threats posed to security and stability in South Sudan are internal, relations with the Sudan have deteriorated to the brink of an outright war in the country's first year of existence. Political tensions between the two States have persisted in the post-independence period as a result of the failure to resolve major issues concerning aspects of the Comprehensive Peace Agreement, including border demarcation, wealth-sharing and the fate of the disputed territory of Abyei. Tensions have flared up with fighting erupting in Abyei and in the Kordofan and Blue Nile States in the Sudan. The Sudan accuses South Sudan of supporting insurgents of the Sudan People's Liberation Army North (SPLA-N), a charge denied by the Government in Juba. The latest escalation of violence, the worst since the independence of South Sudan, was witnessed in April 2012, when South Sudan captured and occupied Heglig, home to oil fields that account for about half of the total oil production of the Sudan, after accusing it of using the area as a launching pad for attacks against South Sudan. In response to international pressure, the Government of South Sudan announced the unconditional withdrawal of the SPLA from Heglig. Meanwhile, fighting between the Sudanese Armed Forces and SPLA-N in the Sudan States of South Kordofan and Blue Nile and their proxies has pushed streams of refugees into South Sudan, with more than 170,000 settling in the Upper Nile and Unity States.

III. Human rights challenges and priorities

16. As a new State emerging from years of conflict and underdevelopment, South Sudan faces a vast number of human rights challenges, which pose a threat to the peace, security and stability of the country and the region. The Government has pledged to promote and protect human rights and fundamental freedoms, and has made some progress in putting in place laws and policies to that effect. During the universal periodic review of South Sudan,¹ the Government pointed out that it had started to build up its administration and institutions of governance since the signing of the Comprehensive Peace Agreement, including the establishment of a human rights commission with a mandate to promote and protect human rights and fundamental freedoms. It also stated that provisions in its transitional Constitution incorporated basic human rights principles and provisions, including from the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

17. In spite of the above-mentioned achievements, a number of concerns and issues were raised by delegations during the universal periodic review, including the impact of armed conflicts on civilians; combating impunity; the need for the country to complete its transition from a militarized society to a democratic system based on the rule of law;

¹ Southern Sudan participated in the eleventh session of the universal periodic review, in May 2011, even though it was still to become an independent State at the time. The review was held on the basis of a specific arrangement that reflected Southern Sudan's autonomous status during the transitional period of the Comprehensive Peace Agreement.

establishing effective human rights mechanisms to ensure respect for human rights, including national human rights institutions in line with the Paris principles; ratifying the main international human rights treaties; and establishing a moratorium on executions with a view to the definitive abolition of the death penalty.² Most of the universal periodic review recommendations remain to be fully implemented.

18. The main human rights challenges underlined in the present report echo the universal periodic review recommendations, and relate to the Government's inability to protect civilians, the weak administration of justice and rule of law, the need to protect the rights of women, the lack of enjoyment of social and economic rights, and the need to address gaps in the legal framework.

A. Protection

19. The Government of South Sudan bears primary responsibility for providing security and protection to its civilian population. Large-scale loss of life in South Sudan as a result of armed conflict highlights the State's inability to protect civilians. The overwhelming majority of victims of acts of violence in the country are civilians, including women and children. Perpetrators range from individual bandits to heavily armed ethnic groups, sometimes mobilized en masse. Although tensions between different groups in South Sudan have existed for generations, violence has increased dramatically as a result of the widespread proliferation of firearms. In 2011 alone, more than 3,000 people reportedly died from violent conflicts in South Sudan.³ The escalation of conflict is likely to increase as disputes over already limited resources arise between host communities and the growing numbers of returnees from the Sudan and neighbouring countries.

20. In December 2011 and January 2012, the State of Jonglei witnessed serious inter-communal violence which resulted in a large number of casualties as well as mass displacement of civilians. A report published by UNMISS following the incident concluded that the failure of the Government to protect civilians from violence, investigate previous incidents and hold perpetrators accountable contributed to the attacks, which resulted in more than 800 deaths.⁴ In mid-October 2011, the Government launched a civilian disarmament operation in Jonglei to address the widespread proliferation of arms in that State. Allegations of violations of human rights, including sexual violence by security forces, were reported in the context of the disarmament operation.

21. Civilians also continue to bear the brunt of the border clashes between South Sudan and the Sudan. Despite the ongoing efforts made by the international community to resolve the disputes between the two States, during the reporting period, the Sudan continued to carry out indiscriminate aerial attacks on South Sudan, resulting in death and the massive displacement of civilians along the border areas. The massive influx of displaced persons has created acute protection challenges. Heavy rains have restricted access to the main camps along the border, including for human rights monitors, leaving the displaced to face a humanitarian catastrophe. In addition, the situation of generalized insecurity has reportedly led to numerous instances of sexual abuse.

² See A/HRC/18/16, paras. 83-84.

³ See the United Nations Development Assistance Framework report on South Sudan (2012 – 2013).

⁴ See UNMISS report on incidents of inter-communal violence in Jonglei, South Sudan, 25 June 2012. Available from <http://unmiss.unmissions.org/Default.aspx?tabid=4969&language=en-US>.

B. Administration of justice and rule of law

22. One legacy of years of armed conflict and underdevelopment in South Sudan is a justice system that is weak, ineffective and inadequate. The shortage of professional police and qualified judges and lawyers across much of South Sudan, as well as lack of basic training, infrastructure, transport and equipment, severely affects the administration of justice. The scope of territorial coverage and jurisdiction of the formal justice system is narrow, and access to justice remains severely limited. The capacity of many institutions of Government to uphold the rule of law and to promote and protect human rights is weak. The traditional justice system, which covers more than 80 per cent of the country, mainly relies on customary and traditional practices that very often violate statutory provisions and international human rights standards. These chronic shortfalls adversely affect the delivery of justice, including due process rights and legal representation.

23. The death penalty remains in force in South Sudan; in 2011, at least six prisoners were executed even though they had not been legally represented by counsel. Access to legal aid is limited, and lawyers are not only expensive to retain, but too few in most areas. Weak prosecutorial capacity and an insufficient number of judges continue to result in widespread violations of human rights in the administration of justice, including perennial trial delays, excessive remands, prolonged pretrial detention and overcrowded prisons.

24. Largely as a result of an inadequately trained police force, arbitrary arrest and detention are widespread in South Sudan and commonly combined with other serious human rights violations, such as torture or other ill treatment of detainees and prolonged detention. Many people have been detained as a result of flawed arrests and prosecutions, or without any solid legal justification. A variety of State actors, including the police, military and security personnel, bear responsibility for these abuses. Interference by military and political figures in the justice system sometimes leads to arbitrary arrest and detention, as the police often act on instruction or under threat rather than in accordance with the law. Arrest and detention of family members in lieu of suspects remains a common practice, as is protective custody, imprisonment for non-payment of debts and prolonged pretrial detention. Children are sometimes tried and detained with adults, and are not offered rehabilitation programmes or sufficient educational opportunities in prison. In the absence of any psychiatric institutions in the country, people who show signs of mental instability are often sent to prison. Meanwhile, detention conditions across the country remain very poor, characterized by severely overcrowded and unhygienic cells and dilapidated infrastructures.

25. Impunity remains widespread in South Sudan, particularly among members of the security forces. SPLA members often refuse to submit to civilian authority. Human rights abuses are often not investigated and perpetrators are rarely identified and brought to justice. State security agents enjoy what often seems to be complete impunity for human rights violations, including arbitrary arrest and detention, ill treatment of detainees, sexual and gender-based violence, and violations of the right to life.

26. Of grave concern is the almost total lack of capacity to investigate and prosecute serious crimes committed in the context of inter-communal violence. Despite having established an investigation committee in the aftermath of the violence in Jonglei, the Government has yet to demonstrate that it is serious about holding accountable those responsible for such violence. Similarly, in March 2011, following a United Nations-led investigation, a committee was formed by the Government to investigate allegations of torture, rape and death of trainees at a police training academy outside Juba. The committee presented its findings and recommendations to the Government. To date, no further action has been taken to hold the perpetrators accountable.

C. Protection of the freedoms of expression, association and assembly

27. Journalists and human rights defenders in South Sudan face intimidation and arrest in the conduct of their activities. State security forces have been reported to subject journalists to harassment, arbitrary arrest and detention for publishing stories critical of the Government. In November 2011, security forces arrested without charge the editor and deputy editor of a local newspaper following the publication of an article critical of the President. Both journalists reported that they were beaten and tortured while in detention. Likewise, in May 2012, a radio journalist was detained in Rumbek, Lake State, for participating in a radio talk show during which the police was criticized by callers for demanding money before allowing citizens to file complaints.

28. Partly owing to fear of harassment and intimidation, civil society organizations have not been able to play an effective role in raising awareness about human rights in South Sudan. This is compounded by the fact that the majority of such organizations lack the training, expertise and resources necessary to contribute meaningfully to the process of democratization and to the promotion and protection of human rights. A key challenge is to provide the necessary support to effectively strengthen the capacity of civil society to monitor and report on human rights and to engage in advocacy with the Government.

29. Members of several political and opposition groups from around the country have also been arbitrarily arrested and detained by the SPLA in connection with their political activities. In Upper Nile State, the United Nations was denied access to nine members of the Sudan People's Liberation Movement for Democratic Change reportedly in SPLA custody. The SPLA has denied that the men were in their custody. Similarly, the United Nations was also denied access to Sudanese detainees, mostly of Darfurian and Misseriya origin, believed to be held by the SPLA for political reasons.

D. Promoting and protecting the rights of women

30. Women and girls in South Sudan continue to face discrimination and abuse, including domestic violence, forced marriages and sexual violence. In spite of the Government's stated commitment to the empowerment of women, discrimination against women remains endemic and widespread, exacerbated in part by cultural and traditional practices. Women and girls are routinely deprived of their basic rights, such as the right to education and the right to choose a spouse or own and to inherit property.

31. Although the transitional Constitution of South Sudan and statutory laws contain protection guarantees for women and girls, they are rarely enforced. Serious crimes against women are rarely investigated. Family law, marriage, divorce and custody issues also tend to be addressed under customary law, which does not grant equal rights to women and men and focuses more on reconciliation than on ensuring accountability. These entrenched inequalities affect all women in the country, but impoverished women living in rural communities in particular.

E. Economic, social and cultural rights

32. In a climate of extreme poverty and underdevelopment, the enjoyment of economic, social and cultural rights remains beyond the reach of the vast majority of the South Sudanese, in particular the rights to food, health, access to clean and safe water and sanitation, education and adequate housing. Indeed, 78 per cent of people in South Sudan live below the poverty level. Illiteracy is widespread, with only four per cent of children attending school in Unity State, for example. South Sudan has one of the highest maternal

mortality rates in the world, while indicators worryingly suggest that HIV is on the increase. Access to food is also a matter of grave concern; five States show pre-famine indicators, and 40 per cent of the population is dependent on food rations. Only 25 per cent of the population has access to safe water. These indicators are expected to further decline with the influx of persons of South Sudanese origin from the Sudan.

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

33. South Sudan has taken important but incomplete steps to establish a legal framework for the promotion and protection of human rights. Notably, the National Legislative Assembly passed the Human Rights Commission legislation in 2006, and the Government has engaged in broad consultations on the draft legislation on political parties and electoral matters. Important pieces of legislation remain to be enacted, however, including on the media, national civil society and the national intelligence services.

34. South Sudan employs a plural legal system in which customary and statutory laws coexist. Under article 5 (c) of the transitional Constitution of the Republic of South Sudan of 2011, “customs and traditions of the people” are recognized as one of the sources of law in South Sudan. The Constitution recognizes the application of customary law in courts, subject to the Constitution and the law, as stated in article 167(3). The application of customary laws imposes customs, traditions and norms that contravene human rights principles enshrined in the Bill of Rights of the transitional Constitution of South Sudan.

35. South Sudan acceded in July 2012 to the Geneva Conventions, but has yet to ratify the main international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women. It is also not a party to the main regional human rights instruments, such as the African Charter on Human and Peoples’ Rights. Ratification of international human rights treaties will constitute an important step towards the creation of a climate conducive to the promotion and protection of human rights. The Government has committed to the ratification of all the main international human rights treaties to lay the foundation for a national legal framework designed to protect human rights.

IV. Priority areas for technical assistance

36. Technical assistance to South Sudan in the field of human rights should build on the policies and programmes currently being implemented by the Government of South Sudan with the support of UNMISS, the United Nations country team and the country’s development partners.

37. Significant efforts and funds have already been invested for the development of a legal and policy framework that prioritizes the protection of human rights. In August 2011, the Government adopted the South Sudan Development Plan for the period 2011-2013, which spells out the development and State-building priorities of the new State, and identifies human rights and gender equality as cross-cutting issues.

38. In July 2012, the United Nations country team and the Government signed the United Nations Development Assistance Framework for South Sudan, which is aligned with the South Sudan Development Plan. One of its goals is to improve access to justice and the rule of law, especially the core government function relating to the judiciary, law enforcement and corrections. In addition, the United Nations Development Programme

(UNDP) provides material and technical support to the Ministry of Justice, the judiciary, the police and prison services and the Human Rights Commission.

39. UNMISS also provides assistance to the police and prison services, civil and military justice, the security sector and the Human Rights Commission through the mission's specialized offices, namely the United Nations police, the Rule of Law and Security Institutions Support Office and the Human Rights Division.

40. UNMISS, in partnership with UNDP, is implementing the United Nations Rule of Law Indicators project, an instrument designed to monitor changes in the performance of criminal justice institutions, namely law enforcement, judicial and corrections institutions, and to establish a baseline against which progress may be assessed. The project will provide an essential tool for the design of future capacity-building and technical assistance programmes.

41. OHCHR carries out its human rights programme in South Sudan through the UNMISS Human Rights Division. The Division has the mandate to monitor and report on the situation of human rights and to provide technical assistance. A specific unit has been set up within the Division for technical cooperation activities. The Division is also a member of the United Nations country team, where its key role focuses on furthering the integration of human rights in humanitarian and development programming.

A. Legal framework

42. The institutions involved in developing the legal framework in South Sudan should be adequately supported to ensure that legislation is compliant with international obligations and that the constitutional review and legislative processes are inclusive and transparent. Such institutions include the South Sudan Constitutional Review Commission, the Law Review Commission, the Ministry of Justice and the National Legislative Assembly.

43. The Constitutional Review Commission, established by article 200 of the transitional Constitution, is mandated to review the transitional Constitution. The work of the Commission must be supported to ensure that it may fulfil its mandate, in particular with regard to collecting views and suggestions from all stakeholders and conducting a nationwide public information and civic education programme.

44. The South Sudan Law Reform Commission was established as an independent constitutional body by the provisions of article 137 of the transitional Constitution to conduct research with a view to developing, modernizing and reforming the law. The Commission should be assisted in its tasks of harmonizing customary law regimes with the statutory laws of South Sudan and the principles of international law. Experiences from other countries that have similar mixed legal systems should continue to be shared with South Sudan through legal literature and conferences, study trips and technical assistance. In this context, the Ministry of Justice has already established the Customary Law Resource Centre in Rumbek, an initiative which should be further supported.

45. The Directorate of International Treaties and Conventions of the Ministry of Justice, in collaboration with the Ministry of Foreign Affairs and International Cooperation, expressed interest in broadening its knowledge of the process of ratification of and accession and adherence to international treaties. In response to that request, the UNMISS Human Rights Division organized three training workshops on this issue in February, March and April 2012, in collaboration with the Human Rights Commission, the Directorate on Treaties and Human Rights of the Ministry of Justice, the Human Rights Department of the Ministry of Foreign Affairs and the Human Rights Committee of the National Assembly. Following the workshops, the United Nations has also provided

support to the Government on the establishment of an interministerial working group to review draft legislation and undertake preparatory work on treaty ratification.

46. The UNMISS Human Rights Division has provided technical and advisory services to the National Assembly through the latter's Human Rights and Humanitarian Affairs Committee. Assistance has included comprehensive legal reviews of the Citizenship Act and media bills, which were aimed at harmonizing draft legislation with international and regional human rights standards. In addition, the Division has made use of its network of field offices to conduct training workshops on the promotion and protection of human rights, targeting members of parliament, in particular in the states of Unity and Northern Bahr el Ghazal. To fulfil its objective of monitoring the performance of the executive power in human rights and humanitarian affairs issues, Committee members would benefit from further training on international human rights law, exchanges of experience with parliaments from neighbouring countries and capacity-building on promotion and monitoring activities.

B. Judiciary

47. Priority areas with regard to technical assistance to the judiciary include continuous training of judges, prosecutors and lawyers, legal aid, mobile courts and the building of a comprehensive juvenile justice framework.

48. South Sudanese prosecutors, lawyers and judges would benefit from continued training in criminal justice legislation, as well as in domestic and international human rights and women's rights law. In addition, most lawyers start law practice almost immediately after completion of law school, as the country lacks a professional training school. Support for the establishment of a legal training institute would also improve the capacity of legal staff members in the ministries and other relevant institutions.

49. The UNMISS Human Rights Division has conducted pilot initiatives relating to the application of customary law in South Sudan. In this context, UNMISS developed and delivered a series of training programmes for traditional authorities in Western Equatoria State to support and strengthen human rights through specific interventions focused on their jurisdictional powers and mechanisms. UNMISS is also mentoring court liaison and probation officers and training them to address issues of prolonged and arbitrary detention. Such programmes should be supported and replicated in other parts of the country.

50. Legal aid is also an area for technical assistance. As acknowledged by the Ministry of Justice, most South Sudanese are not aware of the right to free legal aid or of the right to have legal representation in serious criminal, civil, land and family matters. The Ministry of Justice is expected to develop a legal aid strategy for the period 2012–2014.

51. Members of the judiciary, representatives of the Ministry of Justice and international actors working with the judiciary, all aware that statutory courts are not likely to expand considerably in the near future, have expressed interest in setting up mobile courts in South Sudan. The right to access to justice is unlikely to be fulfilled unless creative measures, such as mobile courts, are taken.

52. The Government acknowledges that there is no comprehensive juvenile justice system in South Sudan. The Child Act is yet to be implemented and the Independent Child Commission to be formed. Neither are prosecutors and law enforcement officers familiar with the Act. The existing juvenile justice units within the Ministry of Justice are in need of strengthening and a comprehensive policy framework for juvenile justice should be developed.

C. South Sudan National Police Service

53. The South Sudan National Police Service is in need of sustained assistance in the fulfilment of its mandate to prevent, combat and investigate crime, maintain law and public order, protect people and property, and uphold and enforce the Constitution and the law.

54. Three hundred United Nations police are co-located with the South Sudan National Police Service with the aim of transferring knowledge and skills. This important aspect of technical assistance to police is undermined by the limited access of UNMISS to many locations owing to poor infrastructure. The United Nations police, in collaboration with stakeholders, have developed a strategic training plan for the period 2012–2015, which lays the foundation for long-term institutional development and draws upon the National Police Service Strategic Plan for 2010–2013 and the Framework for Action Plan for 2011–2015. The UNMISS Human Rights Division works closely with United Nations police by providing specific human rights modules.

55. Donors and the international community should continue to support ongoing technical assistance by United Nations police and focus on the priority needs of the South Sudan National Police Service, including literacy training for police members, infrastructure development and training in crime investigation, gender-based violence and human rights.

D. South Sudan National Prison Service

56. The South Sudan National Prison Service currently falls short of fulfilling its mission to be correctional, reformative and rehabilitative. International actors working on the prison system have commended the leadership of the Prison Service, which is aware of applicable international standards. The main challenges that it faces remain the lack of resources and capacity among prison personnel, particularly in the States. A prison assessment conducted in all States by the UNMISS Human Rights Division in 2011 reflects concerns about overcrowding and inadequate food and health care. The Corrections Advisory Section of the UNMISS Rule of Law and Security Institutions Support Office provides the Prison Service with advice and technical assistance, and has corrections advisers assigned to prisons throughout South Sudan. Despite this assistance, new facilities are necessary, as is the financial and human capacity to maintain prison facilities and to respect international standards.

E. Human Rights Commission

57. The Human Rights Commission was established in 2006 following the signing of the Comprehensive Peace Agreement. It has both oversight and promotion functions. Oversight powers include investigating, monitoring and reporting human rights violations. Its promotion functions cover human rights education, training and awareness-raising. The Commission has been operating offices in all 10 States; owing, however, to current austerity measures, State offices have been regionalized, and only three are currently operational. The Commission has put in place a strategic plan for 2012–2015 and prepared a work plan for 2012.

58. UNMISS has provided the Human Rights Commission with continuous support, while OHCHR has co-located a consultant within it. The consultancy has already contributed to the Commission's strategic planning and institutional development. The Commission faces, however, numerous challenges. As it is not well known by the public, it does not receive many complaints and has yet to issue public reports on human rights

issues. Commission staff members, despite their motivation, lack long-term training in investigation, monitoring, reporting, advocacy and human rights law. Moreover, the physical infrastructure of the Commission does not provide for adequate working conditions.

59. Although the Human Rights Commission lacks funds for a full range of activities, it is not clear whether it would have the capacity to manage further resources efficiently. Even with limited resources, however, the Commission could do more to establish itself as a leading voice in human rights in the country. The Commission should make it a priority to be, and to be perceived, as independent of the Government, and be more proactive in investigating alleged violations and in public advocacy.

60. An institutional development grant could improve the capacity of the Human Rights Commission, provided that it has clear benchmarks and is implemented in an incremental and phased manner. The grant should also gradually promote the emergence of an independent Commission by attaching disbursement to transparent appointments, security of tenure of commissioners and issuance of public reports on key human rights issues.

F. Gender awareness programmes

61. The Government of South Sudan has taken some steps towards addressing discrimination and violence against women, including measures to support girls' education and to ensure greater participation of women in Government. Much remains to be done, notably in human rights education and awareness-raising. With an 80 per cent illiteracy rate, most women and girls have very little knowledge of their rights. Programmes to educate people about the legal rights of women and girls will be essential to overcome years of entrenched discriminatory practices against women. The Government needs to demonstrate further its commitment to the promotion and protection of women's rights by ratifying relevant treaties and conventions on women's rights, including the Convention on the Elimination of All Forms of Discrimination against Women and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

V. Conclusion and recommendations

62. **Since it declared its independence on 9 July 2011, South Sudan has made important efforts to lay down the foundations of a new country and to establish the institutions necessary to respond to the needs of its population. In the area of human rights, progress has been made at the institutional and legislative levels.**

63. **Tremendous challenges, however, remain to ensure that the people of South Sudan live in a country that fully respects their human rights. These challenges concern the establishment of an adequate legal framework, the establishment and/or strengthening of institutions and the creation of an environment conducive to the promotion and protection of human rights. While the national authorities at the highest level have emphasized their commitment to the promotion and protection of human rights, critical gaps are yet to be addressed.**

64. **While the primary responsibility for the promotion and protection of human rights lies with the Government of South Sudan, OHCHR urges the international community to assist national actors in implementing the following recommendations:**

(a) **To define a clear human rights strategy by developing a comprehensive national human rights plan of action, including objectives, indicators, lines of responsibility and budgetary requirements;**

(b) To ensure the presence of the State throughout the national territory, including the justice sector, to protect the population from violence and to grant all citizens the right to redress;

(c) To adopt and implement a human rights-based approach to development by ensuring that human rights are integrated into programmes and policies;

(d) To take all measures necessary to develop a robust legal framework for the promotion and protection of human rights in South Sudan and, in particular:

(i) To ratify the main international and regional human rights instruments, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights;

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

(iii) To ensure that the application of customary law does not contradict international human rights standards;

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

(e) To ensure that the fight against impunity is dealt with as a matter of priority; in this regard, the Government should:

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

(ii) Support capacity-building of the judiciary and, in particular, the training of judges, prosecutors and lawyers; and establish legal aid mechanisms and ensure the right of victims to reparation;

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

(iv) Support the South Sudan National Prison Service, ensuring that it has adequate resources and capacity to provide a correctional service respectful of international standards.
