

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**WORKSHOP ON
HUMAN RIGHTS
CAPACITY BUILDING
IN SOUTH SUDAN**

DROI



DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION

DIRECTORATE B

POLICY DEPARTMENT

WORKSHOP

SOUTH SUDAN:

ENHANCING CAPACITIES FOR HUMAN RIGHTS

Abstract

As the newest country in the world and one emerging from decades of conflict and hardship, South Sudan faces many challenges, including its capacity to promote and protect human rights. The participants in the workshop 'South Sudan: Enhancing capacities for human rights', which took place on 19 March 2013, confirmed that the country's principal problems associated with human rights included lack of laws, protection mechanisms and expertise. Participants offered suggestions for tackling the obstacles, such as technical assistance for institutions and training for civil society.

This workshop was requested by the European Parliament's Subcommittee on Human Rights.

BASED ON PRESENTATIONS OF

Expedit KKAAYA, principal trainer for the Access to Justice Programme of RCN Justice & Démocratie, Kampala, UGANDA

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SUMMARY

The workshop 'South Sudan: Enhancing capacities for human rights', organised for the Subcommittee on Human Rights (DROI), took place on 19 March 2013 in the European Parliament, Brussels, and was chaired by MEP Veronique de Keyser. The objective of the workshop was to facilitate a debate about the challenges that South Sudan faces as a new country building its human rights capacity, about ways to overcome these challenges and the possibilities for the EU to support these efforts.

EU Special Representative (EUSR) for Sudan and South Sudan Rosalind Marsden emphasised the necessity of immediately and unconditionally implementing agreements between Sudan and South Sudan. Important agreements include those establishing safe de-militarised border zones, instituting joint-border monitoring mechanisms and re-opening of cross-border trade (particularly the oil exports through South Sudan). According to Marsden, the principal human rights issues include the impact of armed conflict on civilians, the increasing number of refugees, harassment of human rights activists and journalists, a lack of basic services and the country's customary laws. There are still few mechanisms to protect human rights defenders and women.

EUSR Marsden noted that the EU is strongly committed to supporting South Sudan. EU projects include engaging civil society in the constitutional review process, training civil society members on human rights, combating gender based violence and building the judiciary's capacity.

Exedit Kkaaya, principal trainer for the Access to Justice Programme of RCN Justice & Démocratie, observed that various mechanisms are in place to uphold human rights in South Sudan, although the capacity of governmental institutions remains weak. Many international and regional standards have not yet been ratified and are therefore not applied at the local level. Legislation is lacking, which means that the implementation of constitutional guarantees remains incoherent. Other factors also hinder implementation, including the vastness of the country's territory; the lack of harmonisation between customary and statutory laws; the lack of training and expertise of government officials, civil society and the general public; and a widespread lack of political will.

Mr Kkaaya underlined the need to establish a comprehensive juvenile justice system and a human rights training centre for legal professionals and officials from the country's penitentiary service. The South Sudan National Police Service requires support to fulfil its large mandate. Mr Kkaaya noted that regional human rights institutions (such as the African Court on Human and Peoples' Rights and the African Commission of Human and Peoples' Rights) will have a role once the appropriate agreements have been ratified.

Kathrin Scherr from the Max Planck Foundation for International Peace and the Rule of Law pointed out that South Sudan had taken a 'clean slate approach' with respect to the treaties to which Sudan had previously been a party. The country has yet to ratify most key international and regional human rights treaties. Ms Scherr indicated that those international human rights treaties that have been signed and ratified by South Sudan are directly applicable under national law. Within the domestic legal hierarchy, these treaties occupy the rank of constitutional law.

Ms Scherr also noted that the country needs a stronger judicial system with a wider territorial scope that extends to rural areas. Customary and statutory laws must be harmonised. According to Ms Scherr, the EU should support training the judiciary in the human rights and constitutional law. South Sudanese prosecutors, lawyers and judges would also benefit from continued training in criminal justice legislation.

WORKSHOP

SUBCOMMITTEE ON HUMAN RIGHTS
POLICY DEPARTMENT, DG EXPO

Tuesday, 19 March 2013

**11.00 - 12.00 ROOM: Paul-Henri Spaak (PHS) P5B001
BRUSSELS**

UN Photo/Paul Banks



South Sudan Enhancing Capacities for Human Rights

Guest speakers:

Rosalind MARSDEN

EU Special Representative for Sudan and South Sudan

Kathrin Maria SCHERR

Max Planck Foundation for International Peace and the Rule of Law

Expedil KKAAYA

principal trainer for the Access to Justice Programme of RCN
Justice & Démocratie

Members of the HUMAN RIGHTS COMMITTEE

Parliament of South Sudan

Chair:

**Barbara
LOCHBIHLER**

Moderator:

**Véronique
DE KEYSER**

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PARLEMENT EUROPEEN PARLAIMINT NA HEORPA PARLAMENTO EUROPEO EIROPAS PARLAMENTS
EUROPOS PARLAMENTAS EURÓPAI PARLAMENT IL-PARLAMENT EWROPEW EUROPEES PARLEMENT
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1 PROGRAMME

Workshop on

South Sudan: Enhancing Capacities for Human Rights

Tuesday, 19 March 2013

11h00 - 12h00

Room: P5B001

Paul-Henri Spaak building, Brussels

Moderated by

Véronique De Keyser (S&D), chief observer of European Union Election Observation Mission

Guest speakers:

Rosalind **Marsden**, EU Special Representative for Sudan and South Sudan
on the human rights and political situation in South Sudan, including its relations with Sudan

Kathrin Maria **Scherr**, Max Planck Foundation for International Peace and the Rule of Law
on the challenges regarding capacity building to promote and protect human rights in South Sudan

Exedit **Kkaaya**, principal trainer for the Access to Justice Programme of RCN Justice & Démocratie
on completed projects in South Sudan in the field of access to justice

Members of the Human Rights Committee, Parliament of South Sudan

The workshop can be followed [online](#):

<http://www.europarl.europa.eu/ep-live/en/committees/video?event=20130319-1000-COMMITTEE-DROI&category=COMMITTEE&format=wmv>

2 HUMAN RIGHTS CAPACITY BUILDING IN SOUTH SUDAN

by Expedit Kkaaya

2.1. BACKGROUND

2.1.1. Some facts

- South Sudan became an independent state on 9th July 2011 to become the United Nations 193rd member country.
- It has a total area of 644,329 sq. Km.
- It has a population of about 9.1 million
- More than half of its population is below the age of 18 and about two thirds are under the age of 30.
- Approximately 80 percent of the people of South Sudan live in rural areas, and are largely dependent on farming and livestock.
- Its estimated GDP per capita income was \$1,546 in 2011.
- More than half of the population lives below the poverty line.
- Petroleum production is the main industry in the country. It exports crude oil, which accounts for more than 95% of the country's budget.
- Occasional flares in the 'North-South' conflict between Sudan (Khartoum) and South Sudan (Juba) have created a corridor of instability around the common borders of the two states.

2.1.2. The Human Rights Legal framework

- Its supreme law is *The Transitional Constitution of the Republic of South Sudan, 2011*, adopted by its National Legislative Assembly on 7th July 2011, as an amendment to the *Interim Constitution of Southern Sudan, of 2005*, and came into force on 9th July 2011.
- Part two of the Constitution constitutes the bill of rights containing the following rights and freedoms:- Right to Life and Human Dignity; Personal Liberty; Freedom from Slavery, Servitude and Forced Labour; Equality before the Law; Right to found a Family; Rights of Women; Rights of the Child Freedom from Torture; Right to a fair trial; Right to Litigation; Restriction on Death Penalty; Right to Privacy; Religious Rights; Freedom of Assembly and Association; Right to Participation and Voting; Freedom of Movement and Residence; Right to Own Property; Right to Education; Rights of Persons with Special Needs and the Elderly; Right to Public Health Care; Right of Access to Information; Rights of Ethnic and Cultural Communities; and the Right to Housing.
- Some of these rights are reflected further in a few enactments of the National Legislative Assembly such as, *The Child Act, 2008*; *The Code of Criminal Procedure Act, 2008*.
- Article 9 (3) of *The Transitional Constitution of the Republic of South Sudan, 2011*, (T.C.S.S.) provides that; 'all 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.'
- The government has made some progress in putting in place laws and policies to protect human rights. It joined the Mine Ban treaty in November 2011. In June 2012, the president signed into force a Refugee Provisional Order that incorporates international standards on refugee rights and a Provisional Order implementing the Geneva Conventions. But South Sudan has yet to ratify international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), and the African Charter on Human and Peoples' Rights (ACHPR).

2.1.3. Institutional framework

- The South Sudan Human Rights Commission; established by article 145 of the *Transitional Constitution of the Republic of South Sudan, 2011* (T.C.S.S.) and one of its duties is to 'monitor the Bill of Rights' and its 'application' (see articles 9 (4) and 10. Among its specific functions is to 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; visiting police jails, prisons and related facilities with a view to assessing and inspecting conditions of the inmates and make recommendations to the relevant authority; establishing a continuing programme of research, education and information, and so on. (See article 146 of T.C.S.S.)
- The Judiciary; established by articles 51 (c) and 123 the T.C.S.S. has the duty to ensure that the Bill of Rights is upheld, protected and applied. (See article 9 (4) and 10 T.C.S.S.)
- The Police and Prison Services; established by article 155 and 156 respectively of the T.C.S.S. have the obligation to respect, uphold and promote the rights and freedoms of individuals and groups enshrined in the Bill of Rights by virtue of being organs and agencies of Government (see article 9 (2) T.C.S.S.)

2.1.4. Civil society

- There are some international Human Rights N.G.Os active in the country, including; Human Rights Watch, Amnesty International.
- Hardly any local Human Rights N.G.Os

2.2. BRIEF OVERVIEW OF THE CHALLENGES REGARDING CAPACITY BUILDING TO PROMOTE AND PROTECT HUMAN RIGHTS IN SOUTH SUDAN

'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.'

2.2.1. Legal framework

- Non ratification of international and regional human rights treaties excludes the application of international standards domestically.
- Lack of enabling legislation for implementing the constitutional guarantees.
- Lack of specific / specialised procedural laws to guide the enforcement of rights.

2.2.2. Institutional limitations

- Limited law enforcement capacity in a country with a vast territory.
- Limited access to enactments of the National Legislative Assembly.
- The majority of the police, Judges, lawyers and prosecutors are not only unfamiliar with international and regional human rights standards, but are also not in a position to apply them in concrete situations in national proceedings.
- Many inmates are detained following flawed arrests and prosecutions, or without any solid legal justification.
- Children are still tried and detained with adults while dozens of people with mental disabilities languish in prison across the country without proper treatment.

- Considering the lack of well-trained police, prosecutors, and judges, and absence of a functioning system of legal aid, death sentences are likely to be arbitrary and result in irreversible miscarriages of justice.

2.2.3. Awareness limitations

- The majority of those in government and the general public lack a foundational knowledge of human rights (particularly definitions of human rights as outlined in the international human rights instruments), violations of human rights, and approaches to addressing human rights violations and to promoting human rights.
- Civil society organizations have not been able to play an effective role in raising awareness about human rights in South Sudan.
- Majority of such organisations lack the training, expertise and resources necessary to continue 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 monitor and report on human rights and to engage in advocacy with the Government.

2.2.4. Lukewarm political will

- Lack of accountability for serious crimes is a longstanding problem in South Sudan, e.g no arrests have been made yet in the wake of allegations that the S.P.L.A was involved in the killing of more than 800 people, destruction of hundreds of homes, and displacing thousands, in Jonglei state in December 2011 and January 2012.
- Security forces continue to arrest, harass, and detain journalists because of what they wrote or said, and no disciplinary action is taken against them.
- Lack of a coherent and harmonised approach to the development of a human rights framework and training.

2.3. COMPARING THE CHALLENGES WITH THOSE OF OTHER AFRICAN COUNTRIES

- The more established nations are more into institutional reform while South Sudan is grappling with institutional establishment and strengthening

2.4. ANALYSIS OF THE PRIORITIES IN THE FIELD OF HUMAN RIGHTS

2.4.1. Establishment of an adequate legal framework

- This is key to the promotion of coherence and harmonisation of standards and procedures of protection and enforcement.

2.4.2. Establishment and strengthening of institutions

- Construction of courts, places of temporary custody and prison development to a standard that complies with minimum rights standards.

2.4.3. Training and advocacy

- There is need to ensure that judges, prosecutors and lawyers are able to articulate and properly apply the requirements of human rights standards in these difficult situations.

2.5. EXAMINING THE POSSIBLE ROLE OF REGIONAL HUMAN RIGHTS INSTITUTIONS

- The African Court on Human and Peoples' Rights will have a role upon ratification of the Charter by South Sudan.

- The African Commission of Human and Peoples' Rights too will have a role upon ratification of the Charter by South Sudan.
- In the meantime, networking with regional experts and practitioners from the international civil society, as well as from academia and other international organisations, will improve on the capacity of domestic institutions to articulate and properly apply the requirements of human rights standards.
- When South Sudan eventually joins the East African Community, the East African Law Society, The East African Court of Justice and the East African Civil Society Forum (EACSOFF) too will be instrumental.

2.6. RECOMMENDATIONS TO ADDRESS THE MAIN CAPACITY SHORTFALLS

- Specialised training is required in this field for legal professionals. There is need for establishment of a Human Rights Training Centre at which information on good practices can be generated and integrated into curricula for the training of judges, prosecutors and other legal professionals in matters of human rights. This holds the added advantage of developing an in-house capacity for future training, a core principle of capacity building.
- Before the construction of places of temporary custody and prison development, training on community sanctions and alternative measures to detention could be adopted as one measure to curtail prison overcrowding. There is also need to increase the knowledge of Penitentiary Service officials on the standards and requirements as to conditions of detention provided by various international instruments on prohibition of ill-treatment.
- To address impunity, increasing knowledge of core human rights instruments will contribute to their application in day-to-day work within public offices. This can be coupled with providing the Human Rights Commission with technical skills training on forensics, interviewing vulnerable people and application of human rights and related standards, the development of operational procedures, and training in the area of conciliation and mediation.
- The Commission must be supported to ensure that it may fulfill its mandate in particular with regard to collecting views and suggestions from all stakeholders and conducting a nationwide public information and civic education programme.
- The Law Reform 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.
- 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.
- 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.
- 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 of juvenile justice should be developed.

- 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, focus on the priority needs of the South National Police Service, including literacy training for police members infrastructure, development and training in crime investigation, gender based violence and human rights.

3 CHALLENGES REGARDING CAPACITY BUILDING TO PROMOTE AND PROTECT HUMAN RIGHTS IN SUDAN

by Kathrin Maria Scherr

3.1. INTRODUCTION

After an interim period of five and a half years established by the 2005 Comprehensive Peace Agreement (CPA), that ended 22 years of civil war with northern Sudan, South Sudan became an independent nation on 9 July 2011. After the Peace Agreement and the subsequent referendum on self-determination leading to the secession of South Sudan, the political situation between the two countries remains tense. Disputes over oil and unresolved border issues with Sudan continue to strain ties and a resulting suspension of oil exports in the South has forced the new nation to operate on an austerity budget.

Nevertheless, over the past eight years since the signing of the CPA the government in Juba has made significant progress in systematizing state functions such as revenue collection, setting up key institutions, including South Sudanese police, prison services, and courts, building necessary infrastructure, and passing new legislation. At independence the new nation of South Sudan made a firm commitment to uphold human rights. In 2011 President Salva Kiir also signed into force a new constitution, the Transitional Constitution of the Republic of South Sudan (TCSS) that proclaims the country to be 'founded on justice, equality, respect for human dignity and the advancement of human rights and fundamental freedoms'.¹

Yet, the legacy of two decades of armed conflict presents big challenges to the new country in its efforts to promote governance and the rule of law and to establish a functional legal and justice system. There are still persistent weaknesses in the rule of law in South Sudan, resulting in serious human rights concerns. The following paragraphs will outline some of the most pertinent challenges in the field of human rights protection that we, the Max Planck Foundation for International Peace and the Rule of Law, have encountered and identified in the course of our work in South Sudan in the area of capacity building to promote and protect human rights.

3.2. CHALLENGES IN THE AREA OF CAPACITY BUILDING TO PROMOTE AND PROTECT HUMAN RIGHTS IN SOUTH SUDAN

3.2.1. Ratification of international human rights instruments

Sudan (including the territory of South Sudan before separation in 2011) is party to several international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Rights of the Child (CRC), as well as the Optional Protocol to the CRC on the involvement of children in armed conflict; and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Sudan is also party to the African Charter on Human and Peoples' Rights (Banjul Charter).

With the secession from Sudan in 2011, the new nation of South Sudan has applied a clean-slate approach with respect to all international treaties that Sudan had previously signed and ratified. Even though it is disputed under international law whether a successor state is bound by the obligations of international human rights treaties that were binding on the predecessor state, South Sudan has opted

¹ Article 1 (5) TCSS

to accede and not to succeed to international human rights treaties adhered to by Sudan. As a result, until now South Sudan has only acceded to the Geneva Conventions in July 2012 and recently signed the African Charter on Human and Peoples' Rights.

Generally speaking, the South Sudanese constitution follows a very inclusive approach with respect to the application of international human rights treaties. Article 9 (3) TCSS stipulates 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.'* Accordingly, international human rights treaties, which have been signed and ratified by South Sudan are directly applicable under national law and take up the level of constitutional law within the domestic legal hierarchy.

The country has yet to ratify some of the key international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of Persons with Disabilities (CRPD); the African Charter on the Rights and Welfare of the Child (ACRWC) *et al.*

3.2.2. Lack of knowledge of the constitutional and international human rights guarantees

Influenced by its predecessors, the Interim Constitution of Southern Sudan (ICSS) and the Interim National Constitution of 2005 (INC), Part Two of the Transitional Constitution of South Sudan incorporates a Bill of Rights that contains far-reaching guarantees pertaining to civil, political, economic and social rights. Notable features of the wide scope of protection are, for example, the requirement to have a 25 per cent quota requiring women's representation in both chambers of the legislature as well as the national executive (Article 16 (4) TCSS). Moreover, the TCSS contains far reaching fair trial guarantees (Art. 19 TCSS), extensive religious rights (Art. 23 TCSS), and also wide ranging social rights, e.g. the right to education (Article 29 TCSS), public health care (Article 31 TCSS) and the right to housing (Article 34 TCSS). However, economic and social rights have so far remained largely unfulfilled in South Sudan, with low levels for the realization of the rights to food, health, access to clean and safe water and sanitation, education and suitable housing.

Despite the extensive catalogue of rights guaranteed by the constitution, there is no explicit provision under national law that all rights contained in the Bill of Rights can be enforced in a court of law. In fact, the legal framework does not provide for effective remedies for individuals whose rights were violated. In addition to that, there is very little knowledge not only among citizens but also among South Sudanese lawyers and judges on the substance of these laws. Access to printed legal materials, even current laws, remains severely limited. Furthermore, individuals have no or little public awareness of human rights standards.

3.2.3. Partly still inadequate legal framework

Several laws still have to be adopted or amended in South Sudan in order to uphold human rights standards effectively. Moreover, existing national laws are often not in conformity with international and regional human rights treaties. One of the biggest concerns is that South Sudan still has no law regulating the National Security Service that defines or limits its powers of arrest and detention. This is a major gap in the legal system and calls into question the lawfulness of any interference by the National Security Service with citizens' rights. In addition to that, weaknesses in the justice system and a lack of effective judicial oversight over the conduct of security forces give rise to serious human rights concerns.

Moreover, under domestic law there is no legislation regulating family law that guarantees women equal rights in marriage and divorce. South Sudan uses a plural legal system in which customary and statutory laws coexist. According to Article 5 (c) of the TCSS '*customs and traditions of the people*' are recognized as one of the sources of law in South Sudan. As promulgated in Article 167 (3) TCSS, the constitution recognizes the application of customary law in courts, subject to the constitution and the law. The application of customary laws often imposes customs, traditions and norms that contravene human rights principles enshrined in the Bill of Rights. Statutory laws guaranteeing equal rights for women could be used as an alternative to customary laws, which often discriminate against women.

Moreover, the country still lacks an adequate legal framework governing the media. In the absence of laws regulating the media, editors and journalists are especially vulnerable to harassment, intimidation, assaults, arbitrary arrest, and censorship in the conduct of their activities. The current Penal Code and Criminal Procedure Act are also in need of revision. Laws regulating criminal procedures have to be more precise in order to avoid giving rise to interpretation that infringes upon the right of every South Sudanese citizen to security, due process and a fair trial.

3.2.4. Insufficient implementation of existing human rights guarantees

Even though the Transitional Constitution of South Sudan contains an extensive catalogue of human rights guarantees, these rights are often not fully implemented in practice. Laws are often misunderstood and lead to cases of misapplication. Furthermore, judges and prosecutors fail to ensure that legal processes take place in accordance with domestic law and in respect of the right to a fair trial. As a result prisons and other detention centres are full of individuals arrested without a warrant, detained without being charged, and with no prospect of a trial.

3.2.5. Weak judicial system

A strong and effective judiciary is not only crucial for the system of checks and balances, but also to achieve peace in South Sudan. Currently the justice system still remains weak and ineffective and is plagued by a shortage of qualified lawyers and judges, as well as professional police. Furthermore, apart from being under-staffed the judiciary suffers from a lack of basic training, infrastructure, transport and equipment, which severely affects the administration of justice in South Sudan.

In addition, the scope of territorial coverage and jurisdiction of the formal justice system in South Sudan is narrow and access to justice remains severely limited. According to the Judiciary Act, there should be statutory courts in every county and *payam*. In reality, however, the court infrastructure is frequently absent in rural areas, and only some of South Sudan's counties have functioning statutory courts. Despite the court structure provided for in the Judiciary Act, so far there are no statutory courts at the *payam* level in South Sudan. The insufficient scope of territorial coverage of the formal justice system makes it difficult or even impossible for rural litigants to file complaints or appeals. This situation is exacerbated by the absence of a functioning system of legal aid in South Sudan. Hence, access to justice remains severely limited.

3.2.6. Inconsistencies with customary law

While South Sudan operates a plural judicial system with statutory and customary courts, the traditional justice system covers more than 80 per cent of the country. Customary courts are accepted forums of dispute resolution in South Sudan, which are generally more accessible and familiar to the population. However, the criminal jurisdiction and the sentencing power of customary courts remains unclear and their exercise of judicial powers is not sufficiently overseen by the formal justice system. Procedures and rulings of customary courts often raise serious human rights concerns, as

they are frequently not in compliance with fair trial standards. Chiefs presiding over customary courts issue their rulings without any previous legal training. While they are not part of the official state judiciary, their decisions are enforced by state law enforcement.

Furthermore, customary law is not always in compliance with the human rights guarantees contained in the Transitional Constitution of South Sudan. Traditional courts often apply discriminatory customs, for example when it comes to denying a married woman the right to own and inherit property. Child marriage, forced marriage and the use of girls to pay debts are also accepted practices under customary law. While decisions from county level customary courts can be appealed to statutory courts, in practice most people are not aware of such a possibility and do not know how to go about exercising their right to appeal.

3.3. ANALYSIS OF THE PRIORITIES IN THE FIELD OF HUMAN RIGHTS: ESTABLISHMENT OF AN ADEQUATE LEGAL FRAMEWORK / INSTITUTIONS AND REFORMS

3.3.1. Future Constitutional Process

The on-going process for a permanent constitution as regulated in the TCSS is an important opportunity to strengthen South Sudan's human rights framework. After several delays due to disagreements about political party and civil society representation in the National Constitutional

Review Commission (NCRC) and problems regarding the funding of the Commission, the National Legislative Assembly recently extended the NCRC's mandate until the end of 2014. The TCSS will remain in effect until a permanent constitution is adopted, which will probably only happen after the national elections in 2015.

The NCRC, which is responsible for drafting the permanent constitution, should consult widely on the constitution's content, as the commission's mandate requires, and ensure that the draft text includes a robust Bill of Rights. To guarantee public consultations, Article 202 TCSS tasks the National Constitutional Review Commission to *'collect views and suggestions from all stakeholders'* and to *'conduct a nation-wide public information programme and civic education on constitutional issues'*.

3.3.2. Ratification of international human rights instruments

It is important for South Sudan to become a member to the most important international human rights instruments. South Sudan should establish a robust human rights framework by ensuring succession to the instruments previously signed and ratified by Sudan, and by ratifying additional regional and international human rights treaties.

3.3.3. Capacity building and training for the Judiciary

A strong Judiciary is crucial to maintain or achieve stability in a country that is still faced by the lack of accountability for serious human rights violations. An effective judiciary also contributes to the process of democratisation and justice reform. According to the TCSS, the Judiciary in South Sudan is tasked to protect human rights (Articles 9 (4) and 10 TCSS). Moreover, the constitution furnishes the Supreme Court with the power to interpret the constitution, decide about the constitutionality of laws, and protect human rights (Article 126 TCSS).

Generally speaking, human rights guarantees require states to take appropriate and/or effective measures to protect and promote human rights. International human rights treaties often explicitly require states to ensure that any person whose rights are violated shall have an effective remedy under national law and that those who claim a remedy have the right thereto determined by competent judicial or other authorities (see, for example, Article 2(3) ICCPR). Accordingly, courts in South Sudan have to take active measures to implement the human rights guarantees contained in the

TCSS and in international and regional human rights treaties that were signed and ratified by South Sudan. South Sudan still faces limited law enforcement capacity and a longstanding problem of inter-communal violence. It is therefore crucial for the Judiciary in South Sudan to prosecute human rights violations effectively and to bring the perpetrators of such crimes to justice.

3.3.4. Enactment of necessary laws and revision of existing laws

Existing legislation needs to be revised or amended to implement the human rights standards provided for in the TCSS and international instruments, in particular with regard to equal rights of women and protection of children. There is, for example, still no juvenile justice system in South Sudan.

3.3.5. Reforms or training regarding the customary law courts

The dispute settlement function of customary judicial authorities is well anchored in the Transitional Constitution of South Sudan (Arts. 167-168 TCSS). The Local Government Act has completed the integration of the Traditional Authority into the judicial structure of South Sudan, and given the Customary Law Courts concrete powers, including significant dispute settlement functions. Since the local population is more inclined to trust its local chiefs and community elders than government representatives, the Traditional Authority can play an important role in establishing the rule of law in South Sudan. However, the key judicial actors at the local level – for instance, the Paramount Chiefs, Head Chiefs and Chiefs – have very little or no formal legal training and are unaware of the broader legal system and court structure within which they operate. They are also unfamiliar with international human rights standards and fair trial principles, which are binding on Customary Law Courts through the TCSS.

3.4. Summary and Recommendations to address the main capacity shortfalls with a view on possible policy options for the EU

3.4.1. Support of the NCRC in the constitutional process

The Constitutional Review Commission, established by Article 200 of the TCSS, is mandated to review the transitional constitution. The work of the Commission must be supported to ensure that it can 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.

3.4.2. Training of the Judiciary in the area of human rights and constitutional law

Support should be provided to develop the capacities of the South Sudanese legal system, in particular, to provide technical assistance to the Judiciary and the Supreme Court, especially with respect to the capacity of the Supreme Court of South Sudan acting as a Constitutional Court. The Justices of the South Sudanese Supreme Court have to be provided with in-depth training on constitutional adjudication. In addition to that, it will be important to pursue the integration and harmonisation of the different organisational structures of the judicial system, in particular with respect to customary law and traditional justice. The question that needs to be addressed is how the different organisational structures of the South Sudanese judicial system can be integrated and how cooperation can be improved among the various judicial actors in South Sudan.

3.4.3. Capacity building for lawyers

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 to that, South Sudan is in the process of establishing a Legal Training Institute (LTI), which will provide professional legal training for lawyers. Setting up the LTI is an important step in institutionalizing training for young lawyers and all the lawyers who had to switch from Sharia-based

law to common law with the independence of South Sudan. Further support for the establishment of the LTI would also improve the capacity of legal staff members in the ministries and other relevant institutions.

3.4.4. Capacity Building for the National Legislative Assembly and the Council of States in view of new laws and amendments of old ones

Most of the 334 members of Parliament are not familiar with legal issues. So far there are hardly any effective debates in the NLA 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 *'[t]he 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.'* In addition to training, the legislature needs assistance with the revision and amendment of certain laws, such as the Code of Criminal Procedure, the Judiciary Act and the Local Government Act.

3.4.5. Capacity Building for the Ministry of Justice and other Ministries in view of new laws and amendments of old ones

Apart from the legislature, training sessions should also be offered to the national executive. This concerns especially questions of human rights and support with the revision and amendment of laws regarding South Sudan's accession to international human rights treaties.

3.4.6. Enhancing general awareness among civil society of the guarantees contained in international instruments and the TCSS

Awareness raising is needed in South Sudan to empower people with the tools to share ideas and information, as such initiatives have not taken place so far after the country became independent from the rest of the Sudan. Therefore, a campaign that informs people about their human rights as protected by law will enable the people of South Sudan to assert their individual rights more proactively and encourage them to raise their voices and needs in the process of drafting the permanent constitution for South Sudan.

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