



Statement from the Transitional Justice Working Group on the Transitional Government of National Unity's Opposition to the Hybrid Court for South Sudan

10 June 2016

When the Government of the Republic of South Sudan and the Sudan People's Liberation Movement-in-Opposition (SPLM-IO) signed the Agreement on the Resolution of the Crisis in South Sudan (ARCISS) in August 2015, South Sudanese were hopeful that the newly formed Transitional Government of National Unity (TGONU) would break with the corrupt and abusive governance practices of the past. Although its authorship remains hotly contested, the recent opinion article in the New York Times, entitled, "South Sudan Needs Truth, Not Trials," brings into doubt the commitment of the top leadership in the TGONU to turn over a new leaf and build a state that is accountable to its people. The article says that the Government of South Sudan should renege on its promise to establish the Hybrid Court, as provided for in Chapter V of the ARCISS. Instead, the article argues that South Sudan should establish a truth and reconciliation commission that would provide amnesty to perpetrators of international crimes, whether or not they express remorse for their acts.

This backpedalling by the TGONU comes amid growing calls for justice and accountability from populations in South Sudan. According to a recent survey by the South Sudan Law Society (SSLS) and the United Nations Development Programme (UNDP), 93 percent of the 1,525 respondents surveyed said that individuals suspected of conflict-related abuses should be prosecuted in courts of law and 83 percent of respondents supported the involvement of international justice mechanisms. Support for prosecutions was particularly pronounced in areas that have been subjected to the most direct violence as a result of the conflict. Much as South Sudanese yearn for reconciliation, forgiveness and healing, history has shown that without accountability, the future is set for more atrocities.

The argument put forward in the op-ed plays into people's fears that efforts to pursue justice pose a threat to the consolidation of peace in post-conflict societies. But this argument has repeatedly shown itself to be based on faulty assumptions. In January 2015, for example, the African Union Peace and Security Council deferred consideration of a report by the Commission of Inquiry on South Sudan for fear of derailing the ongoing peace process. Yet when the report was handed over to the warring parties a few months later, it did not impact the peace process in the slightest. To the contrary, the parties proceeded to commit to a comprehensive transitional justice program in the August 2015 ARCISS, including the Hybrid Court, a truth and reconciliation commission and a reparations authority.

Efforts to hold individuals accountable for international crimes are necessarily long-term endeavors. It took the victims of Hissène Habré's rule in Chad 26 years and numerous cases filed in multiple jurisdictions before he was eventually convicted by an African Union-backed court in Senegal. The International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda are just winding up now after more than 20 years of work. What the peace agreement proposes for the Hybrid Court of South Sudan is

not going to happen overnight. It will take several years for the institution to establish itself and conduct investigations before it is ready to begin issuing indictments. As such, there is no direct threat to the current political order in South Sudan and the notion that people would return to the bush because of the court's establishment simply does not hold water.

The peace agreement enjoys the support of the entire world and provides the only solution to the many problems facing South Sudan. Guarantors of the peace agreement include major countries from every part of Africa, the Troika (US, UK and Norway), China, the EU, the AU and the UN. Given this broad support, the President and First Vice-President have no moral authority to unilaterally deviate from its terms. Is this what the President and First Vice President has to tell the victims who died at their watch? Can the two leaders put themselves in the place of the victims, widows, orphans and disable and answer the questions that they keep asking themselves daily as why them in this crisis? The Transitional Government should instead focus on issues that put South Sudan now and the generation to come at the right path respecting humanity, culture of human rights, tolerance and above all security for the people.

To rescue our country from the hardships to which we have been subjected over the past two-and-a-half years, we, the undersigned members of the Transitional Justice Working Group (TJWG), urge President Salva Kiir and First Vice-President Riek Machar to withdraw their stated opposition to the Hybrid Court and publicly renew their commitment to abide by the terms of the peace agreement. South Sudan can no longer afford to lose its citizens and tolerate impunity. Reconciliation and healing are important for the nation but to move South Sudan forward in a path to peace and justice must be done and people must account for the lives of the tens of thousands of innocent South Sudanese who died in this war.

Signatories:

1. Assistance Mission for Africa (AMA)
2. Dialogue and Research Initiative (DRI)
3. Human Rights Development Organization (HURIDO)
4. South Sudan Law Society (SSLS)
5. South Sudan Women Empowerment Network (SSWEN)
6. Foundation for Democratic and Accountable Governance (FODAG)
7. Solidarity Ministry Africa for Reconciliation and Development (SMARD)