

Mandates of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: OL
SSD 1/2015:

29 July 2015

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 25/2, 24/5, and 25/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Non-Governmental Organization Bill, 2015 (NGO Bill), whose provisions seem to contravene South Sudan's international human rights obligations.**

When under Parliamentary consideration, the Non-Governmental Organization Bill, 2013, was the subject of two previous communications sent on 4 December 2013 (case SSD 1/2013, see A/HRC/26/21) and on 23 October 2014 (case SSD 1/2014, see A/HRC/28/85), as well as a press release on 17 December 2013 (see <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14107&LangID=E>). The Special Rapporteurs regret not having received a response to their communications to date and call on the Government of South Sudan to respond to the concerns raised in this and previous communications without further delays.

According to the information received:

On 13 May 2015, the National Legislative Assembly passed the NGO Bill, a law whose provisions seem to contravene the country's human rights obligations. The law is reportedly awaiting signature by the President to be adopted.

The problematic provisions that were analysed in length in the Special Rapporteurs' past communications reportedly appear largely similar to the ones contained in the current NGO Bill. These provisions which include, amongst others, definitions of the permissible work and objectives of associations, regulations of the associations' work, registration and revocation procedures and

penalties against members of associations remain not in compliance with international human rights law and standards pertaining to the right to freedom of association.

Serious concern persists that the NGO Bill could have a negative impact on the essential work undertaken by civil society groups, including humanitarian organizations, in South Sudan. We reiterate our concerns about what we consider being narrow definitions of the permissible work and objectives of associations (chapter II – Principles and Objectives of Voluntary and Humanitarian Work); undue State interference in and overregulation of the work of associations in South Sudan (chapter III – Powers and Functions of Relief and Rehabilitation Commission); burdensome and discretionary registration procedures and vague grounds for the revocation of registration (chapter IV – Registration of Non-Governmental Organizations); and severe penalties against members of associations found in violation of its provisions and arbitrary limitations to the right of associations to freely choose their members (chapter VII – Miscellaneous Provisions).

Such provisions appear to be in contravention of international human rights law and standards and can be used to quell criticism and deter people wishing to exercise their rights to freedom of association and to freedom of opinion and expression. Similar concerns were expressed by the United Nations High Commissioner for Human Rights in a recent report which refers to a climate of fear and repression against civil society organizations (A/HRC/28/53, paragraph 24).

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please explain how the provisions of the NGO Bill are in accordance with South Sudan's obligations under international human rights law, particularly with regard to the rights to freedom of association and freedom of expression.

We would appreciate receiving a response within 60 days. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting your Excellency's response, we would like to urge your Excellency's Government to review critically the NGO Bill, which appear to impose restrictions on the rights to freedom of association, expression and opinion, taking into consideration relevant international human rights law provisions and in cooperation with

civil society organizations. The full array of States obligations to respect, protect and fulfil the right of every person to freely associate and express opinions should be considered for this exercise. We stand ready to provide technical assistance to ensure that State's normative framework complies with international human rights norms and standards governing freedoms of association and assembly.

Please accept, Excellency, the assurances of our highest consideration.

David Kaye

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Maina Kiai

Special Rapporteur on the rights to freedom of peaceful assembly and of association

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Michel Forst

Special Rapporteur on the situation of human rights defenders

Annex

Reference to international human rights law

In connection with the above concerns, we would like to refer your Excellency's Government to articles 19 and 20 of the Universal Declaration of Human Rights (UDHR) which guarantee the rights to freedom of expression, assembly and association.

Furthermore, we wish to draw the attention of your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1, 2, 5, points a), b) and c), article 6 points b) and c) and 13.

In connection with the right to freedom of association, we would like to refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

In specific connection with the right to freedom of opinion and expression, we would like to refer to Human Rights Council resolution 12/16, and paragraph 5 (n), where States are called upon to “review their procedures, practices and legislation, as necessary, with a view to ensure the full and effective implementation of all their obligations under international human rights law, including to ensure that any limitations on the right to freedom of opinion and expression are only such as are provided by law and are necessary for the respect of the rights and reputations of others, or for the protection of national security or of public order (*ordre public*) or of public health or morals”.

In addition, we would like to take this opportunity to draw your attention to the analysis of the NGO Bill contained in the recent Observations Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/29/25/Add.3, paragraphs 80 – 86) and to the best practices compiled in the Special Rapporteur's first thematic report to the Human Rights Council (A/HRC/20/27), in particular:

- “A regime of notification to establish an association should be in force. Associations should be established after a process that is simple, easily accessible, non-discriminatory, and non-onerous or free of charge. Registration bodies should provide a detailed and timely written explanation when denying the registration of an association. Associations should be able to challenge any rejection before an impartial and independent court” (paragraph 95);

- “[a]ny associations, including unregistered associations, should be allowed to function freely, and their members operate in an enabling and safe environment” (paragraph 96);
- “[a]ssociations should be free to determine their statutes, structure and activities and to make decisions without State interference” (paragraph 97);
- “[T]he right to freedom of association equally protects associations that are not registered” (paragraph 56); and
- “Newly adopted laws should not request all previously registered associations to re-register so that existing associations are protected against arbitrary rejection or time gaps in the conduct of their activities (paragraph 62).