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SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

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 G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9)
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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 16/4, 24/5, and 16/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **Non-Governmental Organizations Bill, 2013 ("Bill")** which is expected to undergo a third reading during the current Parliamentary session.

Chapter I – II Definitions and regulations

The Non-Governmental Organizations Bill provides that, to be considered as a NGO, an association should perform only a defined list of activities. This list seemingly excludes a number of areas such as defending human rights, promoting good governance and combating corruption. Similarly, article 7 lists the objectives NGOs should have in fulfilling their duties, namely (7) (a) Emergency relief [...]; (b) Prevention, mitigation and management of any risk resulting from disaster; (c) Coordination of relief [...]; (d) Coordination with concerned public institutions in formulation and implementation of relief [...] programs; (e) Rehabilitation of economic and social infrastructure affected by disaster; (f) Consultation with beneficiaries and any relevant government institution in determination of relief [...] priorities; and (g) Building local capacity of [...] NGOs".

Concerns are expressed that the NGO Bill defines narrowly the permissible work and objectives of NGOs, thus unduly limiting the right to freedom of association.

Chapter III Regulatory body

The Bill provides for the establishment of a Non-Governmental Coordination Board (“Board”) as a regulatory body for NGOs. The Board is composed of: 8 government representatives; the Executive Director of the Board; three members appointed by the National Minister responsible for Humanitarian affairs and Disaster Management; “two representatives of the National and International NGOs”; and “two from civil society organizations”. In addition, the Bill confers to the Board broad regulatory authority, e.g. the Board is authorized “to facilitate and coordinate the work of all national and foreign” NGOs, and “to provide policy guidelines to the [NGOs] for harmonizing their activities with the National Development Plan for South Sudan”.

Concerns are expressed that the composition of the Board is unbalanced and that it could allow for undue State interference in the right to freedom of association. Further concerns are expressed that the Bill confers excessive regulatory authority to the Board in intervening in NGOs’ activities and decisions.

Chapter IV Registration

The Bill introduces a registration process, implemented by the Registrar that is burdensome on NGOs, denotes increasing scope of Government oversight of NGOs, and includes vague provisions and administrative discretion that could be used to suppress dissenting views or beliefs. For example, article 16 (2) provides the Registrar with “Any other function that may be assigned by the Minister or Chairperson of the Board to the Registrar”; Article 17 sets registration requirements that include information that may be unknown or difficult to estimate at the time of the application such as “proposed average annual budget” and “all sources of funding”; moreover, the denial of registration may result from contravening “Fairness in selection of areas for allocation of projects”, “Accountability towards beneficiaries, donors or relevant public institutions”, “Sustainability of services”, “Participation of local communities” and “No-interference with national policies”; in addition, there is no time period for the Registrar to review the application for registration and; according to article 31, a registered NGO must seek approval from the Registrar “to alter its activities agreed with the government”.

Furthermore, the Bill criminalizes unregistered associations. Article 17 (6) imposes that NGOs “be duly registered with the Board” and have a “valid permit issued by the Board” to operate. Article 28 states that “It shall be an offense for any person to operate a Voluntary and Non-Governmental Humanitarian Organization in South Sudan [...] without registration certificate under this Bill”. Article 28 (2) and (3) prescribe excessive criminal penalties for an offense under

this Bill, including imprisonment or disqualification from holding office in an organization. In addition, article 22 (a) requires that NGOs renew their permits annually “upon payment of a prescribed fee”.

The Bill also includes broad grounds for revocation of registration that may be arbitrarily applied. Article 23 (1) (b) and (c) states that the Board may revoke an NGO’s registration for contravening the provisions of the NGO Bill or “any other applicable law” or for the failure without justification to perform activities for one year.

Concerns are expressed that the registration procedures are burdensome and subject to administrative discretion. Further concerns are expressed that NGOs are subjected to an authorization regime that does not set time limits to respond to submissions. In addition, concerns are expressed at the severe criminal sanctions imposed against individuals working in NGOs that contravene the provisions of the NGO Bill, which could deter people from exercising their fundamental right to freedom of association. Further concerns are expressed that the Bill requests registered NGOs to renew their permits annually through a payment of a fee, which could lead to arbitrary rejections or interruptions of the conduct of their activities and could unduly obstruct the exercise of the rights to freedom of association. Similar concerns are expressed that the grounds for the revocation of NGOs are vague and fail to include procedural safeguards.

Chapter VI-VII Financial provisions, employment rules and transitional provision

The Bill gives authority to the Board to “prescribe rules and procedures for audit of account of Non-Governmental Organization[s]”, thus imposing a financial burden on NGOs and creating a significant risk of financial unsustainability for smaller organizations with lesser means. Furthermore, article 32 (2) (c) requires that the total number of national staff within an NGO should “be not less than 80% of the total staff of the organization”, thus limiting the possibility of NGOs to select their staff freely and potentially jeopardizing their independence. Additionally, the Bill stipulates in article 35 a transitional provision of three months for all registered NGOs to “apply for renewal of their registration under this Bill”.

Concerns are expressed that the NGO Bill could curtail the right to freedom of association by imposing onerous financial procedures to NGOs and imposing registered NGOs to re-register within a very short time frame. In addition, concerns are expressed that the employment rules are arbitrary and unduly limit the right to freely determine the composition of the staff.

In relation to all the above-mentioned concerns, we would like to draw your attention to the first thematic report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/20/27), which stated that:

- “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).

In this connection, we would like to refer 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 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice".

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the Declaration:

- article 5 point a) which establishes that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels, to meet or assemble peacefully;

- article 5 points b) and c) which provide that for the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right to form, join and participate in non-governmental organizations, associations or groups, and to communicate with non-governmental or intergovernmental organizations;

- article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters; and

- article 13 which stipulates that everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedom, through peaceful means, in accordance with article 3 of the declaration.

We would also like to refer your Excellency's Government to article 19 of the Universal Declaration of Human Rights (UDHR), which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

We would also like to recall the rights to freedom of peaceful assembly and of association as set forth in article 20 of the UDHR which provides that "[e]veryone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association."

In this connection, 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."

Moreover, 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. To what extent are the alleged restrictions and undue interference imposed by the Non-Governmental Organizations Bill, 2013 accurate?

2. Please explain how the provisions of the 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.

Given the seriousness of the allegations and urgency of the matter being discussed now by Parliament, we would like to inform your Excellency's Government that we intend to issue a press release on the issues contained herein.

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

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

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