

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: AL
SSD 1/2014:

23 October 2014

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 Organizations Bill, 2013 ("Bill")**.

The Non-Governmental Organizations Bill, 2013 was the subject to a previous communication sent to the Republic of South Sudan on 4 December 2013, case no. Case no. SSD 1/2013, see A/HRC/26/21, and a press release dated 17 December 2013.

According to the information received:

The Non-Governmental Organizations Bill, 2013 ("Bill") is reported to be in the fourth and final reading at the National Legislative Assembly (NLA).

We wish to reiterate a number of serious concerns in relation to the draft legislation, in particular the following provisions:

- *Chapter I –II "Definitions and regulations"* of the Bill defines narrowly the permissible work and objectives of Non-Governmental Organizations ("NGOs"), thus unduly limiting the right to freedom of association.
- *Chapter III "Regulatory body"* may create an imbalance in the composition of the Board and 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"* provides for registration procedures that 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 provisions"* 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 connection with above alleged facts and concerns, please refer to **the Reference to international law Annex** where the applicable international human rights instruments and standards that we would like to recall are outlined.

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 therefore be grateful for your observations on the following matters:

1. Please provide any additional information and any comments you may have on the above-mentioned allegations.
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.

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.

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

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 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 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."

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).