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Information on South Sudan for Consideration by the Committee on the Rights of the Child at its 91st Session (29 August - 23 September 2022)

Introduction

1. Equality Now, an international human rights NGO with ECOSOC status, STEWARDWOMEN, YWCA South Sudan, Christian Agency for Peace and Development (CAPaD), Self Help Women Development Organization (SHWDO), and Women for Change, respectfully submit this report to the Committee on the Rights of the Child (CRC) for consideration of the initial State Party report in relation to South Sudan. Our submission details concerns with regard to laws related to children's rights and specifically, as aligned to the Committee's List of Issues:
 - a) The place of customary norms and law and its impact on:
 - The definition of a child (Article 1)
 - The principle of non-discrimination (Article 2)
 - The best interests of the child (Article 3)
 - The right to care, family and parental responsibility (Articles 5, 7, 8, 9 and 18)
 - The right to education (Article 28).
 - b) Legislative, administrative and other measures to ensure implementation of the Convention (Articles 4).
 - c) Violence against children (Article 19).
2. We acknowledge that the State Party report identifies significant challenges that hinder the protection, promotion, and fulfillment of children's rights and admits that there remains much to be done in terms of legislation, implementation, resourcing and data collection to ensure their realization. The internal conflict in South Sudan and the COVID-19 pandemic worsened the political, economic and social instability to the detriment of children, who bear the largest brunt of the negative consequences. The Revitalized Peace Agreement on the Resolution of the Conflict in the Republic of South Sudan of 2018, however, presents an opportunity to fast-track the realization of these rights, while the Permanent Constitution-making process offers an opportunity to align

national legislation with international and regional norms as well as provide clarity on issues that have long created impunity for violation of children's rights.

Enabling legislative framework

3. South Sudan has ratified key international and regional human rights instruments that protect the rights of children including the Convention on the Rights of the Child (CRC), 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 Elimination of All Forms of Discrimination against Women (CEDAW), the African Charter on Human and Peoples' Rights (ACHPR) and the African Union Convention Governing Specific Aspects of Refugee Problems in Africa.
4. However, the Government of South Sudan is yet to accede to three critical instruments. We urge the Committee to recommend to the State Party that, in a bid to bolster the support for children's rights, the rights of girls and of young people in South Sudan, to:
 - a) Fast-track the accession and deposit of the instruments of accession of (i) the African Charter on the Rights and Welfare of the Child (ACRWC), and (ii) the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), which have both been approved by the Transitional National Legislative Assembly.
 - b) Ratify the African Youth Charter.

Customary Law in South Sudan

5. Article 3 of the Transitional Constitution recognizes the Constitution as the supreme law of the land with binding force on all persons, institutions, organs and agencies of government throughout the country, and the states' constitutions and all laws shall conform to the Constitution. Article 5 recognizes customs and traditions as a source of law, and throughout the Constitution reference is made to customary norms, traditions, beliefs and laws. At the same time, Article 16 (4)(b) thereof obliges the Government to ensure that at all levels, it enacts laws to combat harmful customs and traditions which undermine the dignity and status of women.
6. Customary norms and traditions play a critical role in African States and are recognised in regional human rights instruments such as the ACHPR¹. However, the right encompasses a positive cultural context so that any customs, traditions or beliefs that in any way violate human rights should not be allowed to stand.

¹ Ratified by South Sudan on 19 May 2016. <https://www.achpr.org/legalinstruments/detail?id=49>

Article 17: "(2) Every individual may freely take part in the cultural life of his community. (3) The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State."

Article 29(7) Every individual shall have the right: To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society;

7. Section 98(1) of the Local Government Act 2009 provides that Customary Law Courts have judicial competence to adjudicate on customary disputes and make judgments in accordance with the customs, traditions, norms and ethics of the communities. Section 98(2) provides that Customary Law Courts do not have the competence to adjudicate on criminal cases except those criminal cases with a customary interface referred to by a competent Statutory Court. However, customary courts ordinarily do adjudicate on criminal issues that have an impact on culture such as sexual offences including rape and defilement.
8. The right of access to justice is a fundamental element of the rule of law, and it is essential to the realisation of human rights everywhere. This right is multidimensional and comprises six interrelated and essential components: justiciability, availability, accessibility, good quality and accountability of justice systems, and provision of remedies for victims.²
9. There is no unified customary law in South Sudan, therefore each of the 64 plus tribes have their own codified and uncoded customary laws. In addition, lack of access to statutory courts as compared to customary courts limits the relevance of statutory laws and additionally limits transparency and accountability. Statutory courts, including the specialized Gender Based Violence Court, are generally limited in number and hence sparsely spread across the country. While South Sudan has enacted dozens of laws and has ratified several regional and international instruments, their use in legal disputes and courts is limited and sometimes customary law is allowed to take precedence.
10. For instance, a 2011 Supreme Court decision in the case of **Government of South Sudan vs Thon Marier Bouc**³ held that in cases of pregnancy of a girl, the elements of rape such as the consent to sexual intercourse with a man, or her age, are immaterial and hence not considered. Section 247(2) of the Penal Code Act provides that consent given by a person below the age of eighteen years shall not be deemed to be consent for purposes of rape of a minor. The Supreme Court disregarded the statutory provision on rape, held that the perpetrator was not guilty and that the 16 year old girl should marry the father of her child. The patriarchal mentality of some South Sudanese judicial officers leads them to disregard statutory laws and apply customary laws to the detriment of girls and country, and this attitude permeates all of society.
11. In this regard, we urge the Committee to recommend to the following to the Government of South Sudan:
 - a) Enhance the capacity of government actors including the judiciary, customary leaders, police, and members of the public on the rights under the Convention and the Transitional Constitution.

² Committee for the Elimination of All Forms of Discrimination against Women 'General Recommendation 33 on Women's Access to Justice' CEDAW/C/GC/33 <https://undocs.org/pdf?symbol=en/CEDAW/C/GC/33>.

³ SC/CR-APP No. 57/2011

- b) Codify customary law to be in line with the Convention, enhance the capacity of traditional leaders and raise public awareness on the limited jurisdiction of customary courts, and ensure decisions of customary courts are consistent with the Convention and the Transitional Constitution to enhance access to justice, transparency and accountability.
- c) Establish statutory courts and Gender-Based Violence Courts across the country to make them accessible to all.
- d) Fast-track the Permanent Constitution-making process to provide for statutory law to take precedence over discriminatory customary norms, as well as align other legislation that exempts the application of statutory law so as to conform with the Convention.

The definition of a child and the age of marriage

12. Article 17(5) of the Transitional Constitution and Section 5 of the Child Act, 2008 defines a child as any person under the age of eighteen years. Section 23(1) of the Child Act protects every child from early marriage and Section 26(1) protects every female child from sexual abuse and exploitation and gender-based violence, including rape, incest, early and forced marriage, female circumcision and female genital mutilation. Article 15 of the Transitional Constitution states that “every person of *marriageable age* shall have the right to marry a person of the opposite sex and to start a family according to their respective family laws”. However, the Article does not set the minimum age of marriage and the use of “*respective family laws*” means according to the customs and traditions of each community. The State Party report acknowledges that “in some communities in the country, the end of childhood is often culturally determined by the attainment of puberty as governed by such community customs and traditions. This can have serious implications for the protection of children’s rights, particularly in relation to child marriage and this remains a major challenge to the Government.” (para 46)
13. The Government of South Sudan has committed to ending child marriage by 2030⁴ and article 17 of the Transitional Constitution provides that every child has the right not to be subjected to exploitative practices or abuse and not to be subjected to negative and harmful cultural practices which affect his or her health, welfare or dignity, and to be protected from abduction and trafficking. However, these admirable intentions are at odds with customary practices which are protected by the provisions of Article 33 of the Transitional Constitution. Article 33 provides that ethnic and cultural communities shall have the right to freely enjoy and develop their particular cultures. Members of such communities shall have the right to practice their beliefs, use their languages, observe their religions and raise their children within the context of their respective cultures and customs in accordance with the Transitional Constitution and the law.
14. Prevalence rates of child marriage are very high in South Sudan, with 52% of girls in the country being married before 18.⁵ Further, the conflict in South Sudan has led to an

⁴ UNFPA, “Statement on ending child marriage in South Sudan by the Ministry of Gender, Child and Social Welfare and UNFPA”, 3 December 2018.

⁵ <https://microdata.worldbank.org/index.php/catalog/2588>

increased rate of child, early and forced marriage, particularly in conflict-affected areas. A report by Oxfam in 2019 found that in Nyal, an estimated 71% of girls are married before the age of 18, which is significantly higher than the pre-conflict national rates of child marriage.⁶

15. Section 247(2) of the Penal Code Act provides that consent given by a person below the age of eighteen years shall not be deemed to be consent for purposes of rape of a minor, meaning that any sexual relations with a minor is rape, in line with the Child Act. However, section 247(3) specifically states that “sexual intercourse by a married couple is not rape”. Given the high rates of child marriage, the effect is that children in early marriages are not protected from sexual assault by their ‘spouses’ even if they are under eighteen.
16. Section 273 of the Penal Code Act prohibits forced marriage, which occurs when a person kidnaps or abducts any woman with the intent that she may be compelled to marry any person against her will, or in order that she may be forced to submit to illicit intercourse. However, while the section criminalizes kidnapping for the purposes of marriage, it also provides that the matter can be resolved according to custom.
17. Even where the statutory law is clear, customs and traditions are allowed to prevail, allowing impunity for violations such as child, early and forced marriage and violence from male family members when the girls resist. Girls who have declined forced marriages by their kidnappers or abductors have been subjected to torture, violence and even death. Most girls and their families, who sometimes may not support forced marriage, silently accept this gross violation for fear of reprisal from the community and knowing that the customary courts would allow the perpetrators to marry them. This is a serious violation of girls’ rights that requires urgent action from the government.
18. The result of this is that girls are at risk of being abducted and married against their will since it is usually the parents who discuss and resolve the matter. Once their daughters are abducted and their virginity is called into question, parents usually prefer to see them married off.
19. We urge the Committee to recommend to the Government of South Sudan:
 - a) The harmonization of its legislation to set a clear minimum age of marriage at 18 to avoid conflict between statutory and customary law.
 - b) Ensure that all criminalized practices against children, including child, early and forced marriage and sexual violence are prevented, that children are protected and that perpetrators are prosecuted so as to stop impunity.

The principle of non-discrimination and the best interest of the child

20. Although the Transitional Constitution, Child Act and other legislation enshrine non-discrimination against children and against girls specifically, the reality is that girls

⁶<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620620/rr-born-to-be-married-efm-south-sudan-180219-en.pdf>

continue to be discriminated against in all aspects of life due to the subordinate position they occupy in a patriarchal, custom-led society. Issues of inheritance favour boys and even the right to education is more readily provided for boys than girls.

21. Similarly, the principle of the best interests of the child is not applied in reality. These issues permeate other aspects of life such as inheritance, the right to education, the right to care, family and parental responsibility (Articles 5, 7, 8, 9 and 18) and the right to education (Article 28).
22. The Family Law Bill, which was tabled in Parliament in 2017, provides for marriage, including setting a minimum age of marriage at 18, divorce and succession to property including distribution of property in regards to testate and intestate succession. It is in line with regional and international human rights norms and would solve the challenges brought about by the application of customary law.
23. We call upon the Committee to recommend that the Government of South Sudan:
 - a) Fast-track the enactment of the Family Law Bill.
 - b) Expedite the Permanent Constitution-making process to enshrine the principles of non-discrimination and the best interest of the child.
 - c) Put in place measures to substantially increase girls' successful completion of education so as to address the high illiteracy rate among girls.
 - d) Develop strategies, programmes and nation-wide campaigns with civil society that focus on reversing negative societal attitudes and harmful practices that support the discrimination and bias against children, especially girls.

Violence Against Children

24. Despite the presence of a legal and policy framework on children's rights and violence against children in South Sudan, and the establishment of Special Protection Units in police stations, one-stop centres and the specialized Gender-Based Violence (GBV) Court in Juba, the reality is that sexual violence remains a huge threat. Sexual and gender-based violence against women and girls continues to rise at an alarming level as a result of the inter-ethnic conflict since independence waged by multiple armed groups and impunity brought on by customary norms and practices and inadequate institutional frameworks and accountability mechanisms.⁷ Between 50 to 75 percent of women and girls had experienced intimate partner violence in their lifetime and around one third had been sexually assaulted by a non-partner at least once.⁸
25. Impunity is a key factor in fuelling domestic and gender-based violence, as there are hardly any consequences for men and there are a myriad of factors that do not promote any kind

⁷ Report of the Commission on Human Rights in South Sudan, 2019
https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoHRSouthSudan/A_HRC_40_CRP.1.docx

⁸ What Works to Prevent Violence against Women and Girls consortium, "No safe Place: A lifetime of violence for conflict-affected women and girls in South Sudan", 2017.

of accountability.⁹ Social stigma, cultural practices, differing levels of implementation, and policy ignorance act as barriers to ending sexual violence in South Sudan. There is a need to raise awareness among members of the public and in communities to ensure a change in attitudes in line with the State obligation to prevent and protect its citizenry from sexual and gender-based violence.

26. Similarly, the Anti-Gender Based Violence Bill, tabled in Parliament in 2019 is aimed at reforming and consolidating the law relating to gender-based violence including domestic violence, intimate partner violence, sexual violence and offenses, assault, harassment, harmful customary practices, and child protection; to provide for the protection of victims of gender-based violence; constitute the Anti-Gender-Based Violence Committee; establish the Anti-Gender-Based Violence Fund; to establish the Anti-Gender-Based Violence Court; establish the One-Stop Centre also known as Family Protection Centre.
27. We urge the Committee to recommend that the Government of South Sudan:
 - a) Fast-track the enactment of the Anti-GBV Bill.
 - b) Strengthen the criminal justice system to prevent and respond to sexual and gender-based violence against children and combat impunity for perpetrators of such violence.
 - c) Ensure that the customary law courts do not adjudicate over criminal law matters including sexual and gender-based violence cases to enhance access to justice and effective remedy for survivors consistent with international standards and in compliance with the principle of non-discrimination.
 - d) Undertake nation-wide public awareness campaigns that focus on root causes of violence against children, in particular cultural and traditional practices that normalize sexual and gender-based violence.

Legislative, administrative and other measures to ensure the implementation of the Convention

We respectfully urge the Committee to recommend the following to the Government of South Sudan:

28. Prioritize children and gender issues by ensuring that sufficient human, technical and financial resources are provided for the implementation of the Convention on the Rights of the Child.
29. Take all necessary measures to ensure that the laws and policies providing for children's rights are fully implemented and that their implementation is monitored, including public information campaigns and monitoring data on SGBV.

About the authors of the report

30. **Equality Now** is an international NGO with ECOSOC status with the mission to achieve legal and systemic change that addresses violence and discrimination against all women and girls around the world. Founded in 1992, Equality Now's main areas of work include

⁹ Report of the Commission on Human Rights in South Sudan to the Human Rights Council (2019)

ending sexual violence, ending sexual exploitation, ending harmful practices and achieving legal equality.

31. **YWCA South Sudan** is a National Non-governmental Organization in South Sudan with seven branches located in the former South Sudan States of Western Equatoria, Central Equatoria and Western Bar el Ghazal. The organization's head office is located in Yambio and has a national coordination office in Juba. YWCA South Sudan's work focuses on five thematic programs areas namely, improving protection and security for girls and women, enhancing women's and girls' economic empowerment, leadership capacity of young women and strengthening institutional governance.
32. **Christian Agency for Peace and Development (CAPaD)** is a faith-based nonprofit organization founded in 2007 with a focus on peacebuilding, empowerment, advocacy, governance, education, trauma awareness & mental health and voluntarism in South Sudan. Its mission is rebuilding lives and restoring hopes to the most affected and disadvantaged youth, women and children who have been devastated as a result of civil wars, poverty and ethnic violence conflicts. CAPaD focuses on issues that youth, women and children are struggling with, that includes lack of access to social justice, ignorant and negative social norms e.g early and forced child marriages, displacement, poverty, gender equality, trauma, sexual gender-based violence, social and ethnic divides, illiteracy and poor quality education, youth unemployment, insecurity and access.
33. **Self Help Women Development Organization (SHWDO)** is a nonprofit and nonpartisan organization, initiated in 2009 as a Women Group and later transformed into a Civil Society Organization (CSO) in 2010. The organization has its head office in Yambio, the State Capital of Western Equatoria State and is currently operating with six field offices or branches; in Asanza, Yambio, Nzara, Ezo, Tambura and Ibba in the greater Western Equatoria Region. The core mandate is women empowerment and women's rights.
34. **Women for Change (WFC)** is a national non-governmental organization (NNGO) formed in 2016 by a group of South Sudanese women from various diversity and experiences, with a feeling of supporting the well-being and economic stability of widows, school dropouts and children suffering from intentional and unintentional causes. As a women and child-centred and humanity-driven organization working for and with women and children affected by the crisis and embarks on women, child and general protection, Gender Based Violence AOR, Child Protection AOR, education (formal & non-formal), reproductive health, livelihoods and food security, peacebuilding, organizational capacity strengthening, advocacy and visibility in the states of Central Equatoria State, Eastern Equatoria State, Warrap State and Western Bahr el Ghazal.
35. **STEWARDWOMEN** is a women-led national organization in South Sudan with Observer Status to African Commission on Human and People's Rights. It was founded in March 2009 to address the problems of sexual and gender-based violence, harmful customs on women and girls, child labor and trafficking among others., community insecurity and

conflicts, poor governance and illiteracy in South Sudan. Our vision is a “South Sudanese society, “free from the violations of the human rights of women and children” and our mission is to develop, shape and empower South Sudanese women to advocate for policies that foster equal economic opportunity, and secure human rights for women and children”.