

Ottawa

Wednesday, October-01-14

Article 43 on South Sudan

Developments in South Sudan Conflict: Impunity for South Sudan National Security Service (NSS) enshrined in a proposed law

Our Articles 1 to 3 and 5 to 41 were situation analyses of the conflict in South Sudan. Our articles 4 (A), 4 (B) and 4 (C) were the first of our series on “Who is Who”. This article 43 is dedicated to sharing with you Amnesty International’s report condemning the proposed law and asking the Law Makers in South Sudan not to pass it.

Quote:

South Sudan | 1 October 2014 Last updated at 01:20

South Sudan: Parliament Must Reject New Security Bill with Excessive Powers

By Amnesty International Press Office

South Sudan’s National Security Service (NSS) will be granted sweeping powers to arrest, detain, seize property and conduct searches if a fundamentally flawed bill currently before parliament becomes law, warned Amnesty International today.

“The bill grants the National Security Service virtually unrestricted powers of arrest, search and seizure and is at odds with South Sudan’s Transitional Constitution and with regional and international human rights law and standards. It should not be passed in its current form,” said Elizabeth Deng, South Sudan researcher with Amnesty International.

“While the National Security Service urgently needs a legal mandate, any law passed must ensure appropriate limits on its powers and provide individuals adequate opportunity for redress. It grants officers immunity from criminal proceedings, opening the door to impunity.”

Parliament should also improve public dissemination of the draft bill and all other bills being considered. It should make every effort to ensure easy, prompt, effective and practical access to these bills by citizens across the country.

Amnesty International reviewed the draft bill presented on Monday to the National Legislative Assembly. It will be debated again on Wednesday.

Talking points:

- Excessive powers of arrest, detention, search and seizure.

- Absence of provisions for accountability for members of the NSS.
- Failure to provide guarantees required under international human rights law.

Background

Since South Sudan gained independence in 2011, the National Security Service (NSS) has operated with no legal mandate. The bill to define and delimit NSS powers was drafted by the Ministry of Justice and submitted to the National Legislative Assembly (NLA) in May 2014. The third reading is scheduled to take place on Wednesday.

NSS officers have engaged in unlawful arrests and detentions. In particular, since the outbreak of conflict in December 2013, they have played a particular role in undermining the right to freedom of expression by harassing, intimidating and arbitrarily detaining journalists. (link to <http://www.amnesty.org/en/library/info/AFR65/007/2014/en>)

Additional comments on the bill:

- While the Transitional Constitution provides that the mandate of NSS should focus on “information gathering, analysis and advice to the relevant authorities,” the bill grants the NSS extremely broad functions and powers in relation to arrest, detention, search and seizure. To remain within its constitutional mandate for intelligence-gathering and analysis, all police powers, including arrest, detention, search and seizure should be carried out by a different and appropriate law enforcement agency, in a lawful manner;
- Bearing in mind that the NSS’s mandate does not constitutionally extend to arrest and detention, the provisions in relation to arrest contradict constitutional requirements that a person must be informed about the reasons of arrest at the moment of arrest and be presented to a judicial authority within 24 hours. The current draft contains only the obligation to inform a person about “charges” within 24 hours;
- Bearing in mind that the NSS’s mandate does not constitutionally extend to arrest and detention, the provisions in relation to arrest fail to provide due process guarantees required under regional and international human rights law, including: the right to remain silent; the right to effective defense; the right to challenge the lawfulness of arrest; the right to communicate in private with a lawyer. The right to access a lawyer and to communicate with family are subject to vague limitations;
- Bearing in mind that the NSS’s mandate does not constitutionally extend to arrest and detention, the bill does not specify permissible places of detention;
- The bill grants the NSS powers to collect, search for and seize information without specifying the necessary criteria or scope for use of these powers and without providing for any restrictions or procedures that must be followed. There are no controls for the use of these powers and

safeguards against abuse. Though the bill states that NSS officers “shall exercise all powers of the police under the applicable police service law and criminal procedure laws,” it should make clear that requirements for judicial oversight and obtaining warrants described in these laws also apply to NSS officers;

- The bill fails to provide for effective oversight. It provides that complaints against the NSS should be made to the NSS itself and that, where complaints are made to any other public institution, these should be forwarded to the NSS. The bill fails to specify procedures for the handling of complaints, the rights of victims, possible remedies or oversight for the handling of complaints;
- The bill does not sufficiently provide for accountability of members of the NSS; Unlawful behavior by NSS members is mainly subject to a special tribunal. The bill grants members of the NSS immunity from criminal proceedings unless authorized by the Minister or Director General;
- The death penalty should be removed as a punishment for criminal offences defined in the bill.

With the above in mind, Amnesty International is calling for members of parliament to vote against the bill and to ensure that the bill is revised so that it is in keeping with the limited constitutional mandate of the NSS and complies with regional and international human rights law.

To arrange an interview with Elizabeth Deng,
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