CONCEPT NOTE

ON

THE ESTABLISHMENT

OF THE

COMMISSION OF INQUIRY ON SOUTH SUDAN
I. INTRODUCTION

1. The Republic of South Sudan gained its independence on 9 July 2011 just over two years ago, pursuant to a referendum, which was the culmination of the comprehensive peace agreement that ended decades of civil war and violent conflict with The Sudan. The independence of South Sudan made it the 54th member state of the African Union (AU), which played a pivotal role in ending its conflict with The Sudan and its emergence as an independent state. It is against this background of a fledging new state and the enormous investment of the AU in ensuring a sustainable democratic South Sudan that the recent conflict among the various parties in the new state is extremely disconcerting to the AU. It became imperative for the AU to leave no stone unturned in ensuring an end to the conflict and the emergence of an environment of sustainable peace that would enable a sustainable democratic culture to emerge in the new state. To this end, the 411th Meeting of the Peace and Security Council (PSC) of the African Union at the level of Heads of State and Government held in Banjul, The Gambia on 30 December 2013 considered the situation in South Sudan and adopted Communiqué PSC/AHG/COMM.1 (CDXI) which, inter alia:

“Requests the Chairperson of the Commission, in consultation with the Chairperson of the African Commission on Human and Peoples’ Rights (ACHPR) and other relevant AU structures, to urgently establish a Commission to investigate the human rights violations and other abuses committed during the armed conflict in South Sudan and make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities. Council requests that the above-mentioned Commission submit its report to Council within a maximum period of three months.”

2. In the implementation of the above Decision, the Chairperson of the African Union Commission (AUC) in consultation with the relevant AU Organs and Structures has taken various steps, including issuing statements and visiting South Sudan where she held consultations with the different parties involved in the present conflict. In furtherance of implementing the said PSC decision, the Chairperson of the AUC hereby establishes a Commission of Inquiry to be known and called “The African Union Commission of Inquiry on South Sudan” (South Sudan Commission of Inquiry).

II. Mandate of the Commission of Inquiry

3. The mandate of the South Sudan Commission of Inquiry is aptly captured in the above Communiqué of the PSC and can be distilled out as follows:

   a) To investigate the human rights violations and other abuses committed during the armed conflict in South Sudan;

   b) To investigate the causes underlying the violations;
c) To make recommendations on the best ways and means to ensure accountability, reconciliation and healing among all South Sudanese communities with a view to deterring and preventing the occurrence of the violations in future; and

d) To make recommendations on how to move the country forward in terms of unity, cooperation and sustainable development;

e) To submit a report within a maximum period of three (3) months.

III. **Terms of Reference of the Commission of Inquiry**

4. Pursuant strictly to the above Communiqué, the Terms of Reference (ToR) of the South Sudan Commission of Inquiry shall be to:

   a) Establish the immediate and remote causes of the conflict;

   b) Investigate human rights violations and other abuses during the conflict by all parties from 15 December 2013;

   c) Establish facts and circumstances that may have led to and that amount to such violations and of any crimes that may have been perpetrated;

   d) Compile information based on these investigations and in so doing assist in identifying perpetrators of such violations and abuses with a view to ensuring accountability for those responsible;

   e) Compile information on institutions and process or lack thereof that may have aided or aggravated the conflict resulting in violations of human rights and other abuses;

   f) To examine ways on how to move the country forward in terms of unity, cooperation and sustainable development;

   g) Present a comprehensive written report on the overall situation South Sudan to the African Union Peace and Security Council within a period of three (3) months from the commencement of its activities.

   h) Make recommendations based on the investigation on the following:

      i. appropriate mechanisms to prevent a recurrence of the conflict;
ii. mechanisms to promote national healing and cohesiveness, particularly focusing on the need for all South Sudanese communities to live together in peace;

iii. modalities for nation building, specifically focused on building of a functional political order, democratic institutions and post-conflict reconstruction;

iv. accountability mechanisms for gross violations of human rights and other egregious abuses to ensure that those responsible for such violations are held to account.

5. The Commission of Inquiry may develop additional terms in line with its mandate within established AU methodology and best practices.

IV. Composition

6. The South Sudan Commission of Inquiry shall be composed of five (5) eminent high-level members under the Chairpersonship of a former African Head of State or Government, or a former African high-level international civil servant. The Chairperson of the AUC shall, in consultation with the Chairperson of the African Commission on Human and People’s Rights, appoint the members of the Commission of Inquiry.

7. Thus, the Commission of Inquiry shall be composed of five (5) members as follows:

- A former Head of State or Government from an AU Member State, or a former high level African international civil servant;
- A retired or serving Judge;
- A reputable representative of civil society;
- A Representative of the African Commission on Human and Peoples’ Rights;
- A representative of Women, Youth, and Children.

8. The Members of the commission of Inquiry shall be appointed by the Chairperson of the AUC guided by the following key considerations:

a. A proven track record of independence and impartiality. The background of candidates, their prior public statements or political or other affiliations should not be such that would affect their independence and impartiality, or create perceptions of bias;
b. Knowledge of and experience in human rights, international humanitarian law, public international law; conflict resolution, transitional justice mechanisms, national reconciliation and healing mechanisms,

c. Knowledge of and experience in human rights fact-finding and investigations principles, standards and methodology, including sexual violence.

d. Commitment to upholding all human rights and ensuring gender equality;

e. Should a member of the Commission resign his or her appointment before the completion of the inquiry, the Chairperson of the AUC shall appoint his or her replacement taking the above considerations into account

f. To avoid a disruption of the Inquiry, a quorum of three (3) members of the Commission including the Chairperson will be sufficient in carrying out the work of the Commission.

V. Technical and Administrative Support Team

9. The South Sudan Commission of Inquiry shall be assisted by a technical support team that will be operationalized in the Office of AUC Legal Counsel (OLC) as its coordinating Secretariat to provide both technical and administrative support to the work of the Commission. In the work of the Secretariat input will be drawn from other relevant stakeholders within the AUC such as the Department of Political Affairs, the Department of Peace and Security, the African Commission on Human and People’s Rights, and the Gender, Women and Development Directorate.

10. The technical and administrative support team shall consist of personnel who possess demonstrated experience in international human rights law, international humanitarian law, international criminal law, general and human rights investigation, legal analysis, regional political expertise, gender and sexual violence, and very high human rights and transitional justice expertise report drafting as well as administrative support skills.

11. It is hereby proposed that the following thirteen (13) personnel shall be required to support the Commission of Inquiry:

i. Executive Secretary – P6
ii. Chief Investigator – P5
iii. Investigator x2 – P4
iv. Political Analyst – P4
v. Senior Legal Expert – P4
vi. Human Rights Expert – P3
vii. Senior Researcher – P3
viii. Legal Expert – P3
ix. Gender Expert – P3
x. Senior Security Liaison Officer – P3
xi. Administrative Officer – P2
xii. Finance Officer –P2
xiii. Administrative Assistant
xiv. Driver

12. Members of the Technical and Administrative Support Team may either be engaged as short-term staff, seconded staff, or staff members of the Commission from the relevant stakeholder Departments and Directorates.

VI. Timeframe

13. In accordance with the PSC Communiqué, the South Sudan Commission of Inquiry must present its report within a maximum period of three (3) months from the commencement of its work. It is hereby proposed that the Commission should be empanelled to commence before the March 2014 and to submit its final report three (3) months thereafter.

14. Should the Commission require more time to complete its work, the Commission through the Chairperson of the African Union Commission shall seek an extension of time from the Peace and Security Council of the African Union.

VII. Operational Modalities

15. The Technical and Administrative Support Team will be based at the AUC Headquarters in Addis Ababa and shall operate from the OLC as its Secretariat. The Secretariat will establish necessary contacts with the AU Liaison in Juba, the UN Office of the High Commissioner for Human Rights (OHCHR) based in Juba, the United Nations Mission in South Sudan (UNMISS), as well as other relevant stakeholders, to enable members of the Commission to amply carry out their mandate.

16. Arrangements shall be made for the members of the Commission (accompanied by key technical and administrative support team staff) to meet with officials from the Government of South Sudan as well as the other armed groups. This is in addition to meetings with Civil Society Organizations (CSOs) and other actors that could assist it in its investigations.

17. The Members of the Commission of Inquiry shall undertake a minimum of three (3) field visits to South Sudan during the duration of the mandate of the Commission and shall be accompanied by such support team staff as necessary.
18. Security measures shall be taken to ensure the safety of members of the Commission of Inquiry and their technical support team. The Secretariat in close collaboration with the AU Liaison Office, OHCHR and UNMISS shall identify areas and places for visits as well as identifying key victims and witnesses to be interviewed in the presence of the Members of the Commission and the key Members of the Secretariat.

19. The Members of the Commission of Inquiry shall spend additional time in Addis Ababa to finalise their report and submit same to the AU Peace and Security Council through the Chairperson of the AUC.

VIII. Methodology

20. At its first meeting the Commission shall adopt the terms of reference, methods of work and provisional programme of work prepared by the Office of the Legal Counsel in close consultation with relevant Departments of the AU Commission and the Secretariat of the African Commission on Human and Peoples’ Rights.

21. At the commencement of its activities, the Secretariat shall establish an information management system and at the conclusion of the work of the Commission, the Secretariat shall ensure the archiving of relevant documentation.

22. In developing its investigation plans, the Commission of Inquiry shall seek, collect and review all available documentation pertaining to the human rights situation in South Sudan, including UN reports and those gathered by national and international specialists and non-governmental organizations.

23. In conducting its investigations, the Commission of Inquiry shall interview victims, witnesses and sources, gather and review documentary, audio and visual information, have access to and use satellite imagery and other types of information that will aid the inquiry.

24. At the discretion of the members of the Commission of Inquiry, and in line with its working modalities, the Chairperson of the Commission of Inquiry may make media statements that only go to inform the public as to the activities of the Commission rather than the substance of the inquiry.

25. The Commission of Inquiry may modify the operational modalities as necessary in line with method of work as agreed to by the members of the Commission.

IX. Witness and Victim Protection

26. Appropriate steps shall be taken to consider witness and victim protection concerns that may arise during and after the work of the Commission. In particular, the
Commission of Inquiry shall adopt procedures and methods of work aimed at protecting such persons during all stages of its work as well as thereafter.

27. The Commission of Inquiry shall seek to promote and facilitate appropriate witness and victim protection mechanisms during and after the period of its work, including utilizing the presence of a witness protection adviser from the OHCHR or UNMISS on the ground. The Commission through African Union channel shall also seek appropriate guarantees from the authorities in South Sudan and other armed groups to ensure full protection and security for the Commission, witnesses and those who provide support to the Commission.

X. Confidentiality and Disclosure of Information

28. Members of the Commission of Inquiry shall be required to take an oath of office at the time of their appointment and inauguration by the Chairperson of the African Union Commission. They shall sign an undertaking in writing to act independently and impartially throughout their tenure, to respect confidentiality and not to disclose information during and after the end of their assignment.

29. All staff in the technical and administrative support team shall be required to sign a written undertaken to always act in an independent and impartial manner and to respect, during their tenure with the commission/mission and afterwards, the confidentiality of all information gathered or accessed in the course of the work of the commission, to ensure the safety of such information and not to share it with anyone outside of the commission except if duly authorized according to AU rules and regulations.

XI. Security, Cooperation with Authorities, privileges and immunities

30. Prior to the deployment of the Commission of Inquiry, guarantees shall be sought and obtained from the concerned authorities in South Sudan as well as other armed groups concerning respecting the Commission’s mandate, terms of reference, its independence and impartiality and its unhindered access to all places, persons or sources of information relevant to its investigations, and the safety and security of its personnel, proceedings, information, and all persons who are required to cooperate with it during and after the investigation.

31. The concerned authorities in South Sudan and the armed groups shall be requested to provide written assurances that the above principles and obligations will be respected and met. The Commission’s deployment to South Sudan shall commence only after assurances have been received from the Government of South Sudan and other armed groups.
32. The Commission of Inquiry shall consult the AU Liaison Office in Juba, OHCHR and UNMISS on the security aspects related to the preparation of possible field missions.

33. The members of the Commission of Inquiry and their support team shall be guaranteed the required immunities and privileges. In particular, they shall enjoy the privileges and immunities accorded to Experts under Article VI and VII of the General Convention on Privileges and Immunities of OAU/AU adopted in 1965 and Articles V, VI and VII of the 1946 Convention on the Privileges and Immunities of the United Nations.

XII. Funding and logistical support

34. The AU will ensure that adequate cost of conducting the South Sudan Commission of Inquiry will be prepared

35. While the Secretariat will provide both operational and substantive support to the Commission of Inquiry, the Commission will also rely, to the extent possible, on the logistics, security and other required operational support by the AU Liaison in Juba, UN actors on the ground, particularly UNMISS and the support to be provided by other partners.

36. While the members of the Commission of Inquiry shall receive daily subsistence allowance (DSA), honoraria and have all their travel covered by the AUC, the technical and administrative support team shall be recruited either as short-term staff, seconded staff from appropriate entities, or the deployment of appropriate staff of the AUC to service the inquiry.

37. Concerted efforts must be made to obtain the necessary funds for the deployment of the Commission of Inquiry. It is recommended that such funds could initially be disbursed from the Peace Fund of the AUC’s Peace and Security Department while other sources such as funds held by the Department of Political Affairs and support from member states of the African Union and partners may be sought.