



EAST AND  
HORN OF  
AFRICA  
HUMAN RIGHTS  
DEFENDERS  
PROJECT  
(EHAHRDP)

# **“Change will not come until we talk about reality”**

The Closing Space for Human Rights  
Defenders in South Sudan



**“Change will not come until we talk about reality”**  
**The Closing Space for Human Rights Defenders in South Sudan**  
Published December 2013

East and Horn of Africa Human Rights Defenders Project  
Human Rights House, Plot 1853, Lulume Rd., Nsambya  
P.O Box 70356 Kampala Uganda  
Phone: +256-312-256-820  
Fax: +256-312-256-822  
Email: [program@defenddefenders.org](mailto:program@defenddefenders.org), [hshire@yorku.ca](mailto:hshire@yorku.ca)  
Web : <http://www.defenddefenders.org>

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Report by John Foley with contributions from Neil Blazevic, Rachel Nicholson, Caroline Kyo- here, and Kamau Ngugi  
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# **“Change will not come until we talk about reality”**

The Closing Space for Human Rights Defenders  
in South Sudan

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“Civil society members are not like political parties. Politicians have a lot, including money, to lose. For us, we have nothing to lose. I just think people should be able to enjoy their rights”

**Human Rights Defender, Juba, 2013**

“The history of war has always been a scapegoat. During the war, we saw human rights violations, yes, but we were united...Now there is a divide between those in government, and those outside-including civil society”

**Human Rights Defender, Yei, 2013**

“Change will not come until we talk about reality”

**South Sudanese Human Rights Defender, 2013**

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# Foreword

The new Republic of South Sudan stands at a pivotal point in its short history. Following the 2011 referendum that saw it obtain its hard-won sovereignty, there was initial optimism that the country would be able to forge a new path founded on respect for human rights and the rule of law, and distance itself from the darkness of its recent past. There were encouraging early signs that human rights defenders would be afforded a safe space within civil society to contribute to nation-building.

Since 2011, South Sudan has made laudable progress in a number of key areas amidst a complex and highly challenging economic and security situation. However, as the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) documents in this report, the new nation has fallen far short of ensuring a safe operating environment for its human rights defenders.

Over the course of three years, four research missions, and more than sixty interviews, EHAHRDP has documented an undeniable and concerning pattern of harassment, intimidation, and violent attacks against human rights defenders working in South Sudan. Against this backdrop, it is particularly troubling that proposed new legislation currently tabled before parliament poses a serious existential threat to non-governmental organisations engaged in advocacy and awareness-raising on human rights issues.

While the complexity and scale of the challenges facing South Sudan are undeniable, and recent public affirmations of South Sudan's commitment to human rights are encouraging, it is hard to reconcile these pronouncements with the information we have gathered, and outlined in this report.

The United Nations Declaration on Human Rights Defenders affirms that everyone, individually and in association with others, has the right to submit to governmental and public bodies, criticism and proposals for improving their functioning and to draw attention to any aspect of their work that may hinder or impede the promotion, protection and realization of human rights and fundamental freedoms.<sup>1</sup> In South Sudan, human rights defenders seeking to advocate or raise public awareness on matters of human rights are routinely denied this basic right.

There are many pressing challenges facing the new state that can only be meaningfully realised by creating a space within which all South Sudanese citizens, including human rights defenders, can speak openly and without fear of reprisal.

In preparing this report, EHAHRDP seeks not only to provide an accurate description of the situation, but just as importantly to provide concrete and pragmatic recommendations to the Government of South Sudan and its international partners on how the operating environment for human rights defenders might be strengthened.

EHAHRDP's commitment to human rights defenders in South Sudan is long-standing, and pre-dates the country's independence in 2011. In 2005, EHAHRDP and Amnesty International held the landmark Human Rights Defenders Conference in Entebbe, Uganda. It provided a unique opportunity for human rights defenders from East Africa and the Horn of Africa to share their experiences, exchange ideas and build networks to support each other. This conference brought together 43 human rights

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1 United Nations General Assembly, 'Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms' A/RES/53/144, 8th March 1999 Article 8(2)

defenders from across the region. The South Sudan Law Society (SSLS) acted as the first focal point of the network in South Sudan<sup>2</sup>, and I am encouraged to note their ongoing work in the defence of human rights, as documented in this report.

In August 2012, EHAHRDP helped to facilitate the creation of the South Sudan Human Rights Defenders Network, a coalition of South Sudanese human rights defenders and organisations. The network aims to ensure effective collective efforts to address the particular concerns and challenges that human rights defenders in South Sudan face. Community Empowerment for Progress Organization (CEPO) was elected to host the Network and to chair the steering committee.

EHAHRDP continues to work with human rights organisations across the region to empower and support them to lead the efforts to address their concerns at the national level. EHAHRDP has helped to establish national coalitions and networks of human rights defenders in Burundi, Kenya, Rwanda, Somalia, Sudan, Tanzania and Uganda.

EHAHRDP reiterates its commitment to standing alongside civil society in South Sudan in their efforts to achieve full respect for human rights. For its part, EHAHRDP is proud to be launching this report in Juba to coincide with a week-long workshop, 'Claiming Spaces', designed to impart tactical skills to South Sudanese human rights defenders.

I wish to take this opportunity to thank all of the individuals and human rights organisations that contributed to these research findings and told their stories to our research team, without whose assistance this report would not have been possible.



**Hassan Shire Sheikh**  
**Executive Director**  
**East and Horn of Africa Human Rights Defenders Project**

**Chairperson**  
**East and Horn of Africa Human Rights Defenders Network**  
**Pan-African Human Rights Defenders Network**

**December 2013**

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<sup>2</sup> See "Defending the Defenders: A Human Rights Defenders Conference", Amnesty International/ East and Horn of Africa Human Rights Defenders Project, July 2006, <http://www.defenddefenders.org/our-publications/>

# About EHAHRDP

Established in 2005, the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) seeks to strengthen the work of human rights defenders (HRDs) throughout the region by reducing their vulnerability to the risk of persecution by enhancing their capacity to effectively defend human rights.

EHAHRDP acts as the secretariat of the East and Horn of Africa Human Rights Defenders Network which represents more than 75 members across eleven countries, including in South Sudan, and envisions a region in which the human rights of every citizen as stipulated in the Universal Declaration of Human Rights are respected and upheld.

EHAHRDP also serves as the secretariat of the Pan-African Human Rights Defenders Network (PAHRD-Net). PAHRD-Net was formed as a result of deliberations at the All African Human Rights Defenders Conference ('Johannesburg +10') hosted in April 2009 in Kampala, Uganda. The five functioning sub-regional networks forming the PARHD-Net are: the North Africa Human Rights Defenders Network (hosted by the Cairo Institute for Human Rights Studies (in Egypt), the West African Human Rights Defenders Network (Lome, Togo), the Southern Africa Human Rights Defenders Network (hosted by the International Commission of Jurists, the Africa regional office, Johannesburg, South Africa), the Central Africa Human Rights Defenders Network (Douala, Cameroon), and East and Horn of Africa Human Rights Defenders Network (hosted by East and Horn of Africa Human Rights Defenders Project, Kampala, Uganda).

PAHRD-Net is aimed at coordinating activities in the areas of protection, capacity building and advocacy across the African continent.

# 1. Executive Summary

South Sudan, the world's newest country, faces many profound challenges as it emerges from decades of conflict. These challenges can only be met through the establishment of practices, norms and laws that place human rights and respect for the rule of law at the centre of nation building. In tandem, the Government of South Sudan must urgently take steps to ensure that human rights defenders are able to carry out their activities without harassment or intimidation, as provided by the UN Declaration on Human Rights Defenders.<sup>1</sup>

Human rights defenders in South Sudan face serious risks in undertaking monitoring and advocacy on human rights issues. Since its independence in July 2011, the initial promise of a defined space for civil society in South Sudan has progressively been eroded. Throughout the period covered by this report, the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) has documented numerous incidents whereby human rights defenders in South Sudan have been subjected to threats, arrest, detention, kidnap, and in one case, murder.

EHAHRDP has documented a widespread and progressively deteriorating and hostile environment for human rights defenders in South Sudan. Over the course of three years and four research missions to the country, we have conducted over 60 interviews with South Sudanese human rights defenders and other actors involved in the promotion and protection of human rights in South Sudan. Our research shows a narrowing of the space for human rights defenders, and inertia on the part of the Government of South Sudan in taking the necessary steps to acknowledge and reverse this trend.

The nascent South Sudanese state has made some laudable progress since independence.

These achievements are notable for being made in the context of deeply entrenched political, economic, military, and social problems. The government has recently ratified a number of international legal instruments, a step that should be applauded. However, the government's public position does not reflect the lived reality for many South Sudanese human rights defenders. The widespread clampdown on human rights defenders documented in this report requires more than public acknowledgement. The Government of South Sudan and its international partners must take immediate and concrete steps to protect the invaluable work of its human rights defenders, and to ensure an end to the pattern of violence and intimidation outlined in this report.

<sup>1</sup> United Nations General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, A/RES/53/144, 8 March 1999

## 2. Key Recommendations

### ***To the Government of South Sudan:***

- Immediately take steps to ensure that all its state agencies, including the army and all branches of its security apparatus, cease all intimidation, harassment and attacks against human rights defenders;
- Commit to withdrawing from parliament the *Voluntary and Humanitarian Non-Governmental Organizations Bill 2013*, and undertake to redraft the law to bring it in line with international standards, and to acknowledge the serious concerns raised by civil society;
- Ensure that amendments to draft legislation regulating the media comply with international standards, serve to genuinely protect the sanctity and necessary independence of the media, and are urgently sent to parliament for its consideration;
- Ensure transparent and thorough investigations into all reported threats or attacks against human rights defenders, and commit to hold perpetrators of such threats or attacks accountable in accordance with international legal standards.

### ***To the Parliament of South Sudan:***

- Ensure that legislation protects the rights and freedoms of human rights defenders and the media, and reject any proposals that fail to meet international standards;
- Adopt the necessary legislation to confirm South Sudan's accession to key international and regional human rights instruments.

### ***To Donors and Development Partners:***

- Continue and expand direct financial and technical support to human rights defenders working across all states of South Sudan;

- Recognise the acute structural limitations of printed media in South Sudan, and expand financial, practical and technical assistance to journalists, media outlets, and editors;
- Continue to support the nation building needs of the Republic of South Sudan with financial and technical support, and to ensure that such support is made contingent upon the state meeting achievable and measurable human rights commitments- including a commitment to protect human rights defenders.

### ***To the United Nations Security Council***

- Strengthen the mandate of the Human Rights Division of United Nations Mission in South Sudan (UNMISS), and provide the necessary funding, security, and other resources so as to be able to strengthen its human rights monitoring, investigation, verification, and reporting capacities.

### ***To the United Nations Human Rights Council***

- Ensure that future resolutions adopted on South Sudan at the Human Rights Council reflect the reality of the human rights situation in the country, recognising the challenges that exist and recommending concrete improvements, including increased monitoring and reporting by the UNMISS Human Rights Division.

### ***To South Sudanese Human Rights Defenders***

- Maximise efforts to strengthen networks of human rights defenders in the country to mutually strengthen each others' work.

## 3. Methodology

In producing this report, EHAHRDP staff undertook four research missions to South Sudan between December 2010 and November 2013, and conducted over 60 interviews. We met with South Sudanese human rights defenders, including print and radio journalists, lawyers, and members of civil society in Juba and Yei. In a number of cases, we were able to follow up with individual interviewees several times over the course of this three-year project. We interviewed members of the diplomatic corps in Juba, representatives of the Government of South Sudan, the South Sudan Human Rights Commission, international NGOs operating in South Sudan, and representatives of the United Nations Mission in South Sudan (UNMISS). EHAHRDP is grateful to all interviewees for their time in meeting with us, and for sharing their experiences and recommendations.

During the same period, EHAHRDP helped to facilitate the establishment of the South Sudan Human Rights Defenders Network in August 2012. This coalition of South Sudanese human rights organisations aims to ensure that the rights of human rights defenders are respected and upheld in South Sudan. As part of its mandate, EHAHRDP coordinated a number of training and capacity building initiatives for South Sudanese human rights defenders throughout the period.

To preserve anonymity, the names and identifying details of some interviewees have been omitted from this report. In the majority of cases, interviewees were happy to share their stories publicly.

We recognise that the observations and recommendations made in this report place obligations on us all, including regional NGOs such as EHAHRDP.

As such, we are pleased to be launching this report in Juba, to coincide with a week-long training workshop, aimed at building the technical capacity of South Sudanese human rights defenders.

## 4. Background

South Sudan is the world's newest country. Between 1983 and 2005, the Second Sudanese Civil War was fought between the southern-based Sudan People's Liberation Movement and Army (SPLM and SPLA), and the government of Sudan based in Khartoum. The SPLA/M was led by the late Dr. John Garang, who later became the Vice President of Sudan, and was described as a voice for *"people in the North and South who wanted Sudan to turn away from its repressive and violent past and toward a 'New Sudan'."*<sup>2</sup>

The humanitarian consequences of the Second Civil War were devastating, with millions of people killed and displaced over the course of the long conflict. The governing legal document of the new republic recognises the origins of the state in a *"long and heroic struggle for justice, freedom, equality and dignity in South Sudan."*<sup>3</sup>

On 9<sup>th</sup> January 2005, both sides to the conflict signed the Comprehensive Peace Agreement (CPA), which brought an end to overt hostilities. The CPA enshrined special arrangements for three disputed border territories (Abyei, Blue Nile and the Nuba Mountains region of Southern Kordofan State) and paved the way for South Sudan's independence, some six and a half years later. The CPA allowed for the formation of the Government of Southern Sudan, and the Government of National Unity, and an Interim Constitution was adopted by Southern Sudan in December 2005.

During most of the course of the 22-year civil war, non-governmental organisations (NGOs) in Southern Sudan were focussed largely on humanitarian assistance.<sup>4</sup> Those NGOs that

did engage in human rights advocacy were understandably more concerned with human rights abuses committed by the Sudan Armed Forces (SAF) in the north<sup>5</sup> and as a result, throughout much of its early history, the SPLM/A escaped widespread domestic scrutiny of its human rights record by civil society. This is now changing.

Following several years of complex peace negotiations supported by the international community, a referendum was held in January 2011. Almost 3.8 million people (98.83% of voters) voted in favour of secession from Sudan.<sup>6</sup> South Sudan declared independence from Sudan on 9<sup>th</sup> July 2011, and was admitted as a new nation state by the United Nations General Assembly on 14<sup>th</sup> July 2011.

At the outset of this research in 2010, Southern Sudan was an autonomous region within the Republic of the Sudan, with a civil society that was still in the early stages of formation. Since its formation in July 2011, the nascent state has existed and operated under the provisions of the Transitional Constitution of the Republic of South Sudan.

Since independence, South Sudan has been governed by President Salva Kiir Mayardit, who is also chairman of the SPLM. In July 2013, President Kiir dismissed his vice-president, Riek Machar, along with his entire cabinet and the Secretary General of the SPLM, Pagan Amum. President Kiir subsequently nominated eighteen new cabinet ministers on 31<sup>st</sup> July 2013. Since then, a number of other senior government appointments have been made, including the appointment of James Wani Igga as vice president in August 2013.

On 15<sup>th</sup> November 2013, President Kiir dissolved the internal structures of the SPLM party, leaving only the secretariat and himself as chairman.

2 Natsios, A, *"Sudan, South Sudan and Darfur: What everyone needs to know"*, Oxford University Press, 2012, pp.68

3 Transitional Constitution of the Republic of South Sudan (Preamble)

4 For example: Operation Lifeline Sudan, a consortium of UN humanitarian agencies and NGOs that coordinated humanitarian relief activities in southern Sudan from 1988-2005. For further detail, refer to Conciliation Resources, *"Operation Lifeline Sudan: War, Peace and Relief in southern Sudan"*, Lam Akol, Accessible at <http://www.c-r.org/accord->

[article/operation-lifeline-sudan](http://www.c-r.org/accord-article/operation-lifeline-sudan)

5 See, International Center for Not-for-Profit Law, South Sudan country profile, Retrieved 25<sup>th</sup> November 2013 from <http://www.icnl.org/research/monitor/southsudan.html>

6 Southern Sudan Referendum Commission, Final Results Report, 7<sup>th</sup> February 2011

Given the SPLM's history as an opposition movement, it is unsurprising that South Sudan remains a heavily militarised country. In 2012/13, 58% of the national budget was spent on the security sector, which is due to decrease slightly in the current financial year. President Kiir has offered amnesties to a number of former rebel fighters, and many are in the process of being integrated into the SPLA, other security organs and the civil service.<sup>7</sup> At the time of writing, South Sudan remains beset by a number of armed insurgent militia groups, including David Yau Yau's Cobra Faction, based in Pibor County, Jonglei. Jonglei State has been the focus of a great deal of international attention throughout 2013, and tens of thousands of people remain displaced by alarming levels of inter-communal violence. Recent flooding across parts of South Sudan has particularly affected Jonglei State and increased the urgent need for humanitarian assistance.

Under Article 100 of the Transitional Constitution, President Kiir's term will expire on 8<sup>th</sup> July 2015, and elections are due to be held that year. On 23<sup>rd</sup> September 2013, President Kiir voiced uncertainty about the ability to hold elections on time, citing a lack of funds to complete a census, and delays in drafting the permanent constitution. However that same month, the vice president addressed the United Nations General Assembly to confirm that elections will be held in 2015. In November 2013, former vice president Riek Machar confirmed his intention to challenge President Kiir for the leadership of the SPLM ahead of the election.<sup>8</sup>

It is against this backdrop of uncertainty and instability that human rights defenders in South Sudan are trying to establish and embed human rights principles and norms.

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7 Voice of America, "South Sudan Ex-Rebels Join Army After Presidential Amnesty", 26<sup>th</sup> November 2013, Retrieved 27<sup>th</sup> November 2013 from <http://www.voanews.com/content/south-sudan-rebel-join-army-amnesty/1798514.html>

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8 Voice of America, "Former South Sudan Official wants to be Ruling Party's Presidential Candidate", 26<sup>th</sup> November 2013, Retrieved 27<sup>th</sup> November 2013 from <http://www.voanews.com/content/former-south-sudan-official-wants-to-be-ruling-party-presidential-candidate/1798422.html>

## 5a. Civil Society Organisations

Since December 2010 when EHAHRDP began its research in South Sudan, the number of civil society organisations, associations, networks, coalitions and individuals involved in defending human rights has grown significantly. The technical capacity, influence, and public profile of many of these organisations has also increased, as too have the number of structured forums for public dialogue with the government and international community. Human rights defenders work in many different settings in South Sudan, including within registered civil society organisations, and as print and radio journalists and lawyers.

In tandem, human rights defenders have discovered the limits of the government's toleration of criticism. Over the course of the last three years, the nature of the relationship between civil society and government has become notably tenser. NGOs, journalists, and other members of civil society have increasingly begun to focus and report on the human rights record of the government, and in doing so have come to be misunderstood, vilified and routinely attacked (both rhetorically and physically) by the ruling SPLM and its security apparatus.

Throughout the period covered by this research, the risks for human rights defenders engaging in reporting and advocacy on human rights issues have grown progressively more acute. Those individuals and organisations involved in public advocacy and reporting on human rights concerns have been subject to an undeniable pattern of threats, harassment, intimidation, and overt physical attacks by various arms of the South Sudanese state and its security forces.

Compounding these events, many of which are documented in this report, are serious and well-founded concerns that a proposed new law regulating NGOs will be used to stifle and control the operating environment for civil society actors involved in monitoring and reporting on human rights issues. In parallel, perceived inertia in parliament and confusion over the passage of a number of laws that have been tabled for several years, is contributing to a climate of increasing

uncertainty and fear within civil society.

Many of the human rights defenders interviewed for this report described a relationship with the state that is antagonistic, and one that has progressively deteriorated since independence was achieved in 2011. One human rights defender commented to us, *"whenever I speak out on human rights issues, I am painted politically as someone who is 'paid for', or against the government"*. This was a recurrent theme throughout many of our interviews in 2013.

In July 2011, at the first South Sudan Civil Society Convention, one speaker commented:

*"...at this moment of establishing a new state, it is important that civil society insists on the principles that make it distinct from political parties. This is the moment at which fundamental principle of human rights, of freedoms of speech, of assembly and movement, should be emphasized. This is the time when civil society can lay down its vision for the future of South Sudan, based on principles of democracy, pluralism and human rights."*<sup>9</sup>

Without exception, the human rights defenders interviewed for this report understood and heeded this call. Nevertheless, some of the human rights defenders we interviewed perceive there to be a growing tendency on the part of the government to frame any criticism of its actions by human rights defenders as being politically motivated. There has been a failure on the part of the state to recognise that legitimate criticism, public human rights advocacy, and investigative reporting is a necessary function of both the human rights, and political discourse.

In spite of the enormous challenges and risks outlined in this report, virtually all of the human

<sup>9</sup> Address delivered on behalf of Justice Africa to the First National Civil Society Convention of South Sudan, July 2011, attended by EHAHRDP. Written outline of the address, attributed to Alex de Waal and dated 22<sup>nd</sup> July 2011, provided at the same event.

rights defenders we interviewed expressed optimism about South Sudan's future, and a belief that positive change is achievable for the new country. The changes sought, including a secure and safe environment within which human rights defenders can work, require the government to tolerate legitimate criticism, and foster a space for constructive dialogue with human rights defenders. Biel Boutros Biel of the South Sudan Human Rights Society for Advocacy conveyed his deep sense of optimism in South Sudan's future, but noted that *"change will not come until we talk about reality"*.

Other civil society organisations EHAHRDP spoke with described routinely receiving threats directly linked to their releasing public statements on human rights matters. Edmund Yakani, executive director of Community Empowerment for Progress Organization (CEPO) told EHAHRDP,

*"We issue a lot of statements and we receive continuous threats. We have our own procedures for dealing with them. We will receive an SMS telling us to stop. We think they are from National Security. We always print the SMS out, report it to the police and open a case."*

### ***Deng Athui Mawiir and the South Sudan Civil Society Alliance***

On 4<sup>th</sup> July 2012, Deng Athui Mawiir, chairperson of the South Sudan Civil Society Alliance and an outspoken advocate on anti-corruption issues was abducted and kidnapped outside the Nile Beach Hotel in Juba. The Civil Society Alliance, formed in 2011, is an umbrella organisation that has sought to strengthen the capacity and coordination of civil society across South Sudan.

Deng described a terrifying ordeal to EHAHRDP.

*"Someone jumped up behind me and placed a bag over my head. For two days, I did not know myself". Deng was beaten repeatedly over the course of three days, deprived of food, and interrogated by several unknown men regarding his anti-corruption work. "I was asked, 'who gave you money to destroy this country?'"*

On 7<sup>th</sup> July 2012, three days after his abduction, Deng's kidnappers drove him to a new location.

*"They put me in the car. I felt like we were crossing a river. Then we stopped in a forest. They told me, 'you will talk'... There were some sounds in the distance, and they told me to lie down. I refused-I felt they were going to kill me".*

At this point, Deng's kidnappers fled and he was able to make his way to a nearby police station.<sup>1</sup>

In spite of filing a formal police complaint, at the time of writing Deng has had no information regarding a criminal investigation, and the perpetrators of this crime have not been publicly identified or brought to account.

Chillingly, the attacks against the South Sudan Civil Society Alliance were not isolated. On 22<sup>nd</sup> October 2012, Ring Bulabuk, a defence lawyer working with the Alliance was kidnapped in Juba. Relatives and friends were reported to have said that the kidnappers were members of South Sudan's security services.<sup>2</sup> Several days later, Bulabek was found abandoned in a Juba graveyard. Prior to his arrest, he had received threats to stop working on a legal suit against an army general in a land dispute in the Malakia area of Juba<sup>3</sup>.

1 EHAHRDP interview, 2013. For further details, please refer to Global Witness, *"Attack on activist threatens anti-corruption efforts in South Sudan"*, 12<sup>th</sup> July 2012, Retrieved 24<sup>th</sup> November 2013 from <https://www.globalwitness.org/library/attack-activist-threatens-anti-corruption-efforts-south-sudan> and Front Line Defenders, *"South Sudan: Kidnapping and violent assault of human rights defender and anti-corruption activist Mr. Deng Athui Mawiir"*, 13<sup>th</sup> July 2012, Retrieved 24<sup>th</sup> November 2013 from <http://www.frontlinedefenders.org/node/18958>

2 See Sudan Tribune, *"US concerned over S. Sudan's expulsion of US official"*, 5<sup>th</sup> November 2012, Retrieved 24<sup>th</sup> November 2013 from <http://www.sudantribune.com/spip.php?article44452>

3 See Sudan Tribune, *"Second South Sudan civil society member kidnapped and beaten"*, 29<sup>th</sup> October 2012, Retrieved 24<sup>th</sup> November 2013 from <http://www.sudantribune.com/spip.php?article44348>

On 4<sup>th</sup> September 2012, the offices of the South Sudan Human Rights Society for Advocacy (SSHURSA) were raided and looted by “unknown gunmen.”<sup>10</sup> SSHURSA is an independent, non-political human rights organisation based in Juba, with co-ordination offices in other states. The raid on SSHURSA’s office, which they suspect is linked to their high profile advocacy across a range of human rights issues, has understandably shaken the organisation. *“As human rights defenders, you are not sure of your next move. You can disappear. Threats are common,”* SSHURSA told us recently. In spite of this incident and others, SSHURSA continues to publish regular, timely and well researched public statements in line with its mandate.

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10 EHAHRDP interviews. For details regarding SSHURSA’s public response to the incident see: Sudan Tribune, *“Office of South Sudan activists raided in Juba”*, 6<sup>th</sup> September 2012, Retrieved 8<sup>th</sup> September 2013 from <http://www.sudantribune.com/spip.php?article43821>

## 5b. Lawyers as HRDs

In August 2013, six South Sudanese lawyers submitted a petition to the Supreme Court, on behalf of suspended SPLM Secretary General, Pagan Amum. The lawyers sought to challenge restrictions on Amum's rights to freedom of expression and movement by President Kiir on constitutional grounds.

Within days of filing the petition on 7<sup>th</sup> August 2013, at least two of the lawyers received threatening text messages. Dong Samuel Luak, former Secretary General of the South Sudan Law Society, was one of the lawyers involved in the petition. He describes receiving threatening messages from "the top managers of the national security in South Sudan,"<sup>11</sup> which caused him to leave the country in fear for his life. When he spoke to EHAHRDP by phone in November 2013, he expressed dismay at the risks faced by himself and other human rights defenders. *"The space which was created for civil society following the Comprehensive Peace Agreement has started to narrow and is now almost closed."*

Lawyers play a crucial role in defending human rights, and EHAHRDP was fortunate to meet with numerous individual lawyers and a number of legal organisations during the course of its research in South Sudan.

The South Sudan Law Society (SSLS) was established in 1994 and is similarly involved in the provision of legal aid services. In addition, the SSLS publishes recommendations regarding legal reform, and runs programmes on constitutional development and land rights. EHAHRDP met with SSLS on a number of occasions throughout the course of its research, most recently in November 2013. Two years ago, the Society told EHAHRDP that it was rare for lawyers to be targeted or face threats for engaging in human rights work. The situation now appears starkly

different. Lawyers working on 'sensitive' cases have received threatening SMS messages, from numbers that the SSLS say are known to be linked to the security services.

Defining what is or is not a 'sensitive' case in South Sudan involves a certain amount of guesswork, and local knowledge. Clearly, the case that resulted in Dong Samuel Luak leaving the country in fear for his life involved political issues in a more overt manner than other types of human rights cases. Irrespective, there are no circumstances in which a lawyer should be targeted or threatened on the basis of the client he represents.

The Association of Human Rights Lawyers was founded in 2012. Issa Muzamil Sebit described the core work of the Association as the provision of legal aid services nationwide, taking on public interest cases, and engaging in sensitisation and public education (often via radio programmes) on human rights issues. Like many of the lawyers we met with, Issa acknowledged the problems facing human rights defenders outlined in this report, but was pragmatic in suggesting a way forward. *"Simply criticising is not enough- there has to be reform."* It was in this spirit of pragmatism, that the Association recently hosted a conference,<sup>12</sup> at which several senior government ministers and members of the judiciary engaged frankly and openly on a range of human rights topics.

The South Sudan Women Lawyers Association (SSWLA), founded in 2010, is an organisation made up of 65 women lawyers. Its mandate is to work towards the protection of women, and the enjoyment of women's human rights. SSWLA undertakes paralegal training, and provides legal aid services with a focus on gender specific human rights cases (including gender and sexual based violence, and property rights). SSWLA lobbies the government for the ratification of international human rights treaties generally, but specifically those relating to women such as the Convention to Eliminate All Forms of Discrimination Against Women.

11 EHAHRDP interview. See also: The New Sudan Vision, "Exiled lawyer says regime change 'only way forward' in South Sudan", 23<sup>rd</sup> September 2013, Retrieved 10<sup>th</sup> October 2013 from <http://www.newsudanvision.com/diaspora/2753-q-a-exiled-lawyer-says-regime-change-only-way-forward-in-south-sudan>

12 'The Role of Lawyers in Nation Building', Conference, Juba, 9<sup>th</sup> November 2013

SSWLA described its central challenges as navigating the complex interrelationship between customary and statutory law, and trying to foster norms whereby human rights cases be heard by statutory courts, rather than presided over by local chiefs.

On a very practical but no less important note, SSWLA described how a lack of resources and limited funding opportunities were hampering its activities and aspirations to grow. Similar concerns regarding resource constraints were raised by a number of the organisations EHAHRDP's research team met with.

## 5c. Journalists

The media landscape in South Sudan is beset by many deeply entrenched structural problems. Reliable indicators suggest that the country's literacy rate stands at around 27%.<sup>13</sup> A lack of roads and basic infrastructure means that it is impossible or prohibitively expensive to report from, and transport newspapers to large parts of the country. Internet access remains very limited. In Juba, there is currently only one functioning printing press, operated by the Citizen newspaper. By necessity, many newspapers are printed abroad at considerable expense.

Radio stations are comparatively widespread, and broadcast in both English and local languages. Many stations are reliant upon external sources of funding to operate viably, although a number of commercial stations operate in Juba. UNMISS and Fondation Hirondelle finance Radio Miraya, accessible via short wave radio across most of the country. The Catholic Church supports the Catholic Radio Network, which is made up of nine stations nationwide.

Many of the journalists and other human rights actors that we interviewed were quite candid about the pervasive lack of capacity among journalists in South Sudan, and how this contributes to a fractious relationship with state security forces.

Poverty Alfred Taban, a journalist based in Yei and Secretary General of the Yei branch of the Union of Journalists of South Sudan (UJOSS) eloquently explained some of the main problems:

*“Media managers generally do not have media backgrounds. There are very few professional journalists in South Sudan. Travel costs are also very difficult, and many journalists don't have the necessary equipment. They lack skills in how to protect themselves, which makes most of them shy away from the profession. The security services are very rigid with journalists. Some journalists*

<sup>13</sup> Secure Livelihoods Research Consortium, 'Livelihoods, basic services and social protection in South Sudan', Working Paper 1, July 2012

*write patently false information, even if they have the right information. The security services understand the media a bit better, partly as a result of dialogue meetings. But still, ignorance among security personnel about the role of the media is a very big issue.”*

Journalists that we spoke with described a complex reporting dynamic, in which certain topics are widely understood to be 'off-limit' or too risky to report on, without any statutory clarity on where lawful limits to the press actually lie. Further, the lack of any laws codifying the right to access to information contributes to a somewhat anarchic and highly strained relationship between journalists and the press.

South Sudan is currently ranked 124<sup>th</sup> of 179 nation states for press freedom by Reporters Without Borders.<sup>14</sup> This represents a deterioration from its inaugural ranking of 111<sup>th</sup> in 2011/12- a debut that was notable and impressive for representing a “breakaway from one of the worst ranked countries,” Sudan.<sup>15</sup>

This deterioration is reflective of the trends observed by EHAHRDP. Throughout the course of our research, EHAHRDP heard numerous accounts of journalists being threatened, intimidated, and harassed, and newspaper editors being subjected to interference, censorship and suspected surveillance by the security services.

Whilst we found examples of such incidents throughout the course of each research mission, the more recent events recounted to us by journalists were particularly alarming and indicative of a worsening climate for free speech in South Sudan.

<sup>14</sup> Reporters Without Borders, *Press Freedom Index 2013*, Retrieved 17<sup>th</sup> November 2013 from <http://en.rsf.org/press-freedom-index-2013,1054.html>

<sup>15</sup> Reporters Without Borders, *Press Freedom Index 2011/12 and commentary*, Retrieved 17<sup>th</sup> November 2013 from [http://en.rsf.org/spip.php?page=classement&id\\_rubrique=1043](http://en.rsf.org/spip.php?page=classement&id_rubrique=1043)

At the institutional level, the owners, managers and editors of newspapers have been subject to threats, harassment, arrest and detention by the security forces. Journalists and editors that we spoke to described an operating environment in which newspapers were targeted and threaten by security services for reporting on an eclectic range of issues- ranging from reporting on matters of national security, to offending individual ministers or government officials.

In May 2013, Alfred Taban, editor-in-chief of the Juba Monitor, was arrested and detained along with his managing editor, Michael Koma. The Juba Monitor had recently published a statement by the Bul Community of Unity State, in which allegations were made against a government minister. Taban was detained and questioned for several hours. As he recounted to EHAHRDP:

*“There was no intention of taking me to court. They just wanted to intimidate me and my staff. For me, I am used to it, but my younger staff members are scared. They don’t want us to pursue these stories... they want to scare journalists away from investigating.”*

On 28<sup>th</sup> June 2013, the government of Lakes State intervened to shut down Good News Radio in Rumbek, part of the widespread Catholic Radio Network. State officials claimed that the temporary closure of the station was due to it not being appropriately licensed. However, the South Sudan Human Rights Society for Advocacy publicly stated that it believed that the station was targeted after airing a programme that addressed the recent death of an inmate in Rumbek prison.<sup>16</sup>

16 Biel Boutros Biel of South Sudan Human Rights

## The murder of Isaiah Abraham

On 5<sup>th</sup> December 2012, journalist Isaiah Ding Abraham Chan Awuol (more widely known as Isaiah Abraham) was assassinated in the Gudele suburb of Juba. Abraham was one of the most prolific and outspoken journalists in South Sudan, and a regular contributor to a number of websites, including the Sudan Tribune. In his final article prior to his murder, Abraham wrote about relations between Sudan and South Sudan, and called on both governments to end cross-border support to rebel groups.<sup>1</sup>

According to a number of sources we interviewed, Abraham received a series of warnings prior to his murder.

At the time of writing in November 2013, no one has been held accountable for Abraham’s murder. On 3<sup>rd</sup> January 2013, Honourable Barnaba Marrial Benjamin (at the time, the Minister of Information and Broadcasting) announced on state television that a number of suspects had been apprehended. Some eleven months later, the status of these suspects (presumed to be in pre-trial detention without having been brought before a court) is unknown. As more than one interviewee told us, there is a growing concern about the perceived lack of due process in this case.

A number of civil society groups, including the South Sudan Human Rights Society for Advocacy (SSHURSA) have advocated for an open and transparent investigation into Abraham’s murder,<sup>2</sup> seemingly without success. The South Sudan Human Rights Commission told us that it was unable to conduct a meaningful investigation whilst a criminal investigation remained ongoing. In November 2013, reliable sources confirmed to EHAHRDP that an investigation remains ongoing.

Abraham’s murder has had a chilling effect on journalists and the wider human rights community in South Sudan. As one human rights defender told EHAHRDP, the widespread perception is that Abraham was targeted for his political reporting, and *“lost his life for making these types of statements.”* Lawyer Dong Samuel Luak decided to leave South Sudan earlier this year after receiving similar threats against his life. As he told EHAHRDP in November 2013, *“after what happened to Isaiah Abraham, I thought, ‘better safe than sorry’.”*

1 Sudan Tribune, *“Sudan though has a case must give peace a chance”*, 27<sup>th</sup> November 2012, Retrieved 8<sup>th</sup> September 2013 from [http://www.sudantribune.com/spip.php?iframe&page=imprimable&id\\_article=44657](http://www.sudantribune.com/spip.php?iframe&page=imprimable&id_article=44657)

2 See South Sudan Human Rights Society for Advocacy, Quarterly Report on South Sudan (December 2012 to June 2013), July 8<sup>th</sup> 2013.

On 28<sup>th</sup> July 2013, two Ugandan journalists were arrested in Juba by security agents. Justin Dralaze of Reuters and Hilary Ayesigawere, a freelance journalist, were arrested for allegedly lacking appropriate press accreditation. They were subsequently detained for four days before being released.

In August 2013, City FM radio journalist Chris Opoka was subjected to arbitrary arrest, assault and detention, on the basis of his profession. Whilst travelling home from work at around 11pm, Opoka was stopped by the police and his vehicle searched. When the police officers saw his identification, they recognised him as a high profile and outspoken journalist. *"They said, 'oh, you're the journalist that reports on police brutality- let's give you something to report about'."* Opoka was pushed on the ground, beaten, and taken to a police station where he was detained overnight. In the morning, the Brigadier General met them, and they explained to him what had happened. Prior to being released without charge the following day, he was given 5 lashes, and had an 'X' shaved into his head by the police.

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Society for Advocacy, comments attributed in Voice of America, 'No news as Good News Radio Reopens in South Sudan', July 4<sup>th</sup> 2013, Retrieved 8<sup>th</sup> July 2013 from <http://www.voanews.com/content/good-news-radio-reopens-lakes-state/1695438.html>

## 6. Legal Framework

By any standard, South Sudan's legal system is highly complex. There are more than sixty tribal, non-state legal systems that often interact in tension and conflict with statutory mechanisms. Customary laws exist in a largely non-codified state, with considerable regional variation. In spite of a growing body of statutory law, customary laws are widely applied across large parts of the country. A number of civil society organisations are engaged in community education initiatives in an attempt to reconcile the two systems, but these processes are inherently complex and long-term. The Institute for the Promotion of Civil Society (IPCS) runs an 'Access to Justice' initiative, in which attempts are being made to forge a structured link between customary and statutory courts.<sup>17</sup>

Whilst it is beyond the scope of this report to

17 See also, "Falling through the cracks: Reflections on customary law and the imprisonment of women in South Sudan", Strategic Institute for Women in the Horn of Africa (SIHA), December 2012

detail the myriad complexities of South Sudan's legal system, EHAHRDP echoes the sentiments expressed to us by one European ambassador: "there needs to be a discussion about how all these systems fit together." In the following section, EHAHRDP limits the scope of its analysis to highlighting the elements of South Sudan's legal system that adversely affect the work of human rights defenders, and further, that are within the power of the current government to remedy.

### Constitution

The core legal framework governing human rights in South Sudan is the 2011 Transitional Constitution. The Transitional Constitution recognises, inter alia, both the Transitional Constitution itself, and the 'customs and traditions of the people'<sup>18</sup> as primary sources of legislation. The Bill of Rights, codifying a commendable

18 The Transitional Constitution of the Republic of South Sudan, sections 5(a) and (b)



Photo: UNDP

number of guaranteed fundamental freedoms and rights is set out in sections 9-34 of the Transitional Constitution.

A number of criticisms have been raised regarding elements of the Transitional Constitution, notably in relation to an absence of appropriate procedures for elections, and an unclear separation of powers between the different branches of government.<sup>19</sup> Many of the human rights defenders interviewed for this report (and particularly those with a legal background) suggested that lasting improvements to their operating environment can only be achieved by way of a permanent constitution. As lawyer Dong Samuel Luak told us,

*“The entry point for change is the Constitution. What has created so many problems is the transitional constitution. The international community needs to make sure that government comes up with a people driven constitution that is accepted by the people of South Sudan.”*

The process towards a permanent constitution is ongoing, and progress remains slow. In February 2013, the deadline for completion of the draft constitution was extended to 31<sup>st</sup> December 2014, indicating that there may not be a permanent constitution in place before the expected 2015 elections.

### **Voluntary and Humanitarian Non-Governmental Organizations Bill**

The most overt and immediately pressing legislative threat to human rights defenders in South Sudan comes via a proposed law, the *Voluntary and Humanitarian Non-Governmental Organizations Bill* (henceforth the ‘VHO Bill’), that seeks to regulate the activities of NGOs and fundamentally reformulate their relationship with state.

NGOs in South Sudan are currently regulated

<sup>19</sup> For an insightful analysis on South Sudan’s Transitional Constitution, see Stephen Pande (Justice Africa), “An Analysis of the Transitional Constitution of South Sudan in regard to Good Practices of Governance, 23<sup>rd</sup> April 2012, Retrieved 21<sup>st</sup> October 2013 from <http://www.justiceafrica.org/2012/06/22/an-analysis-of-the-transitional-constitution-of-south-sudan-in-regard-to-good-practices-of-governance-by-stephen-pande/>

by the NGO Act 2003, although at the time of writing in November 2013, this act looks set to be imminently repealed and replaced by the VHO Bill. The draft law is currently awaiting its third and penultimate<sup>20</sup> parliamentary reading, in spite of widespread concerns from civil society that it will fundamentally curtail the activities of human rights and other civil society organisations, and place a disproportionate level of power in the hands of government officials.

In 2012, the VHO Bill was first introduced to parliament. In early 2013, twenty four South Sudanese civil society organisations came together under the umbrella of the ‘Civil Society Working Group on the VHO Bill’. In its first incarnation, the VHO Bill created considerable confusion about the very nature of the organisations it sought to regulate. It was unclear from the text of the Bill whether it sought jurisdiction over all civil society organisations, or whether the scope of the act merely applied to organisations providing humanitarian relief services.

The draft law defined permissible activities for voluntary and humanitarian organisations in extremely narrow terms- and excluded human rights activities from the definition. The draft law sought to create a ‘Non-Governmental Organizations Co-ordination Board’, comprised *inter alia* of the Director General of Internal Security and the Director of the Criminal Investigation Department, in addition to other government officials. The proposed degree of government oversight posed an obvious threat to the necessary operational independence of civil society organisations. Further, the VHO Bill codified a mandatory, burdensome, and annually renewable registration requirement, conflicting with the right to freedom of association guaranteed under section 25(1) of the Transitional Constitution.

On 24<sup>th</sup> May 2013, a public parliamentary hearing was held on the VHO Bill, at which the civil society working group was able to participate meaningfully and raise its concerns. The Bill subsequently underwent only very modest revisions prior to its second reading in parliament on 5<sup>th</sup> November 2013. In its second incarnation, the VHO Bill continues to place unwarranted restrictions on permissible activities, along

<sup>20</sup> For details on the procedure for presentation of bills, see Transitional Constitution of the Republic of South Sudan, ss. 84

with burdensome and impractical registration requirements.

In late November 2013, a further amended version of the VHO Bill was released in advance of its anticipated third parliamentary reading. One of the most alarming changes to the text is the requirement that voluntary and non-governmental organisations refrain from interfering with “national policies”,<sup>21</sup> a requirement that arguably prohibits *all* forms of public advocacy. On 25<sup>th</sup> November 2013, 169 civil society organisations signed a petition, calling for the Bill to be withdrawn.

The VHO Bill poses a very grave and imminent threat to human rights defenders in South Sudan. If passed in its current form, civil society organisations engaged in defending, monitoring and advocating for human rights may fall outside the scope of the law, posing a considerable danger to their legal status, and the protection mechanisms available to them under domestic law. In these circumstances, EHAHRDP considers it essential that the VHO Bill be withdrawn and radically redrafted, so as to respond to the pressing and valid concerns of South Sudanese civil society and to ensure that the text is in line with the provisions of the UN Declaration on Human Rights Defenders.

### **Media Laws**

South Sudan currently lacks any laws regulating the media, or providing a framework for access to information. Many of the journalists we interviewed for this report described the lack of a legal framework for the media as being a significant source of problems.

This lack of a codified legal framework within which to operate creates uncertainties for both journalists and the government. In the absence of laws codifying media freedom, including its legal limitations, journalists and editors have been subject to routine harassment, arrest and de facto censorship by state security officials. As one interviewee stated in 2010, *“there is a space for operating as a human rights defender, but if you exceed the limit you are dealt with. People self-censor, as these limits are not spelt out*

21 Section 6(f) of the Draft *Voluntary and Humanitarian Non-Governmental Organizations Bill* required in earlier drafts that voluntary and humanitarian organisations refrain from interference in the “internal affairs of the country”.

*anywhere.”*

Three draft laws, described by many of our interviewees collectively as ‘the media laws’, were being debated at the outset of the research for this report in 2010, and were introduced to the Council of Ministers in March 2012. The laws are not yet in force at the time of writing in November 2013.

After several years of impasse, the Media Authority Bill 2012, the Right of Access to Information Bill 2012, and the Broadcasting Corporation Bill 2012 were passed on 8<sup>th</sup> July 2013 by the South Sudan Legislative Assembly. To date, the laws have not been adopted, and at the time of writing have been returned to the assembly by the President for further changes.

The proposed Media Authority Bill 2012 would provide for the establishment of a regulatory body for the media, the ‘Media Authority’, with the stated purpose of “promoting an independent pluralistic media in the public interest”.<sup>22</sup> There are legitimate concerns that the appointment mechanisms set out in the bill do not currently provide sufficient safeguards against appointments to the Media Authority board being made along political lines.<sup>23</sup> Further, the President is granted wide ranging power to remove board members, and the Authority’s budget is subject to government approval.

The Broadcasting Corporation Bill 2012 provides for the establishment of a national public service broadcaster (the South Sudan Broadcasting Corporation), but does not guarantee its independence from the executive branch of government. Under the proposed Bill, the President and Minister of Information of Broadcasting are granted significant powers in the appointment and dismissal of board members.

The Right of Access to Information Bill 2012 seeks to formally codify the right to information as guaranteed under Article 32 of the Transitional Constitution. The Bill would create the ‘Information Commission’ to oversee the execution of the principles set out in the draft law, and sets out a number of relatively straightforward procedures regarding disclosure responsibilities and the protection of

22 Media Authority Bill (Draft), Article 3

23 See Article 19, “*South Sudan: Media Authority Bill- Legal Analysis*”, June 2012

whistleblowers. EHAHRDP understands that the proposed role of the Information Commissioner has proven contentious, and is one of the central reasons for the delay in passing the legislation.

International organisations have expressed concern that the draft laws fall short of international legal standards, and would allow an excess of government control over pre-existing and proposed media organisations.<sup>24</sup> In spite of this, there seems to be a widespread if occasionally begrudging acceptance that some form of legislative reform would be preferable to the current status-quo. Many of the journalists interviewed for this report expressed the view that the three draft laws have the potential to significantly reduce the risks and threats borne by journalists engaged in defending human rights, simply by codifying journalism's parameters. Some of our interviewees however, questioned the government's commitment in ensuring that the laws are actually passed. Alfred Taban of the Juba Monitor (who has been working closely with the Association for Media Development in South Sudan (AMDISS) on drafting an accompanying Code of Conduct to the laws) commented, *"the laws were passed in July, but it is now November. We feel there are people trying to slow down the process."*

EHAHRDP is concerned to note that the deficiencies in the draft laws have the potential to undermine their stated aims, but cautiously welcomes the move to potentially provide greater clarity and safeguards to journalists within South Sudan.

## **International Law**

South Sudan has ratified the African Charter on Human and Peoples' Rights and the African Union Convention Governing Specific Aspects of Refugee Problems in Africa, but is yet to ratify a number of the core international covenants on human rights.

In November 2013, South Sudan ratified the United Nations Convention on the Rights of the Child. In its voluntary pledge made when standing for election to the UN Human Rights Council in November 2013, South Sudan confirmed that its *"Council of Ministers has acceded to a package of treaties and submitted them to the Legislative Assembly for adoption"*.<sup>25</sup> These included the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, often known as the international bill of rights.

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24 See for example, International Press Institute, "Analysis: South Sudan's draft media law", 22<sup>nd</sup> October 2013, Retrieved 24<sup>th</sup> November 2013 from <http://www.freemedia.at/home/singleview/article/analysis-south-sudans-draft-media-law.html>

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25 Permanent Mission of the Republic of South Sudan to the United Nations New York, Voluntary Pledge: The Republic of South Sudan's Candidature for the UN Human Rights Council, November 2013

## 7. South Sudan Human Rights Commission

The South Sudan Human Rights Commission (SSHRC) was established following the 2005 Comprehensive Peace Agreement. Since that time, its establishment has been codified by the Human Rights Commission Act 2009, and its independence and myriad functions have been enshrined in the 2011 Transitional Constitution. The leadership of the SSHRC falls under the remit of the Chairperson, whilst day-to-day activities are managed by the executive director.

In 2008, a baseline survey regarding rights awareness found that 76% of people were not aware of the Commission, or of human rights in general.<sup>26</sup> The SSHRC's profile, functions and activities have grown significantly since that time. It now has a central role to fulfil in fostering a safe operating environment for human rights defenders, and for human rights more generally in South Sudan.

As described to us in 2011, and as guaranteed by the Transitional Constitution<sup>27</sup>, SSHRC is an independent body mandated to promote and protect human rights. It advises the government regarding reported human rights violations, and regarding international instruments. The functions of the Commission include, *inter alia*, monitoring the application and enforcement of the rights and freedoms enshrined in the Constitution, and the investigation of reported human rights violations.<sup>28</sup>

EHAHRDP is grateful to the Chairperson, Executive Director and other staff members of the Commission in meeting with us on several occasions over the course of this research, and for engaging in open and constructive dialogue with EHAHRDP about our concerns.

In July 2011, a Memorandum of Understanding was created between the SSHRC and national civil society organisation. At present, over 15 CSOs have signed the agreement.

When EHAHRDP met with the Commission in December 2010, its activities were (understandably) focused on monitoring the upcoming referendum.

On meeting again in 2011, the Commission acknowledged that it faced certain challenges in improving the capacity of its staff. The Commission's strategies at the time were described to us as raising awareness on human rights, including via human rights literature in educational literature, and lobbying government institutions for laws consistent with human rights norms. There was a recognition from the Commission that the security services were routinely involved in committing human rights violations, including torture, and that there was a need for human rights material to be included in security services training materials. The Commission affirmed the importance of human rights monitoring to its mandate.

When we met again in November 2013, the SSHRC was able to describe its current work plans, including limited human rights monitoring, complaints handling and investigation. Further SSHRC has been involved in the creation of a 'national human rights agenda'. This agenda, adopted in November 2012 by the Council of Ministers but yet to be finalised, involves an ambitious plan for human rights education, research, training, and lobbying government officials for human rights enabling legislation. As was commented by UN High Commissioner for Human Rights in June 2013, the agenda "*could prove a useful framework for the development of an integrated national and State-level plan for developing human rights-compliant legislation and the capacity of government, state and civil society entities to promote and protect human rights.*"<sup>29</sup> EHAHRDP understands that

<sup>29</sup> United Nations General Assembly, 'Progress of technical assistance and capacity-building for South Sudan in the field of human rights', A/HRC/23/31, 4<sup>th</sup> June 2013

<sup>26</sup> Interview with South Sudan Human Rights Commission staff member, 2011

<sup>27</sup> Transitional Constitution of the Republic of South Sudan, 2011, Chapter IV, ss. 145 (1). See also ss. 6 (2) Human Rights Commission Act 2009: "*The Commission shall be independent and impartial, and shall exercise its powers and perform its functions without fear or favour.*"

<sup>28</sup> Transitional Constitution of the Republic of South Sudan, 2011, Chapter IV, ss. 146 (1) (a) and (b)

SSHRC is currently working with a consultant on developing the agenda further.

Many human rights defenders, international NGOs, and members of the international community that we met with in 2013 bemoaned the commission's *de facto* lack of investigatory powers. *"The Human Rights Commission tries... [but] some people don't feel comfortable reporting to the Commission. Their investigating powers are zero."*

In 2010, Chris Opoka, a journalist at City FM in Juba, was subjected to harassment by police officers on the basis of his profession, and was arbitrarily detained overnight. *"I went to the Human Rights Commission to file a complaint. The lawyer said that the case would go nowhere. Three years later, there has been no further news from the HRC."*

The mandate and aspirations of the Human Rights Commission are extremely commendable. However, its central deficiency is that in spite of its pivotal importance to human rights defenders in South Sudan, it is inadequately funded. The human rights defenders we interviewed consistently said that the SSHRC's lack of funding was undermining its credibility. One European diplomatic that we met with stated candidly, *"The Human Rights Commission is not funded at all, and for that reason they have no real power."*

The Commission itself acknowledged that its lack of adequate financial resources was *"a very big problem"*. SSHRC told us its overall funding had recently fallen by approximately 50%, largely as a result of government cuts to its budget.

This is extremely disappointing, given the significant rises in funding to SSHRC from both central government and international partners in 2009 and 2010.<sup>30</sup> The Commission acknowledged the valuable support it receives from various UN agencies, including UNMISS,<sup>31</sup> but acknowledged that the overall decrease in its funding had impacted many of its plans. It is understandable that recent disruptions to South Sudan's income from oil revenue have had a knock-on impact on the funding available to the Commission. EHAHRDP hopes that the Government of South Sudan will be able to reinstate the growing levels of funding available to the SSHRC in 2009 and 2010. Additionally, EHAHRDP calls upon the international donor community to assist ensuring that the SSHRC is adequately financed to fulfil its essential mandate.

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30 South Sudan Human Rights Commission, 2012-2015 Strategic Plan, pp.18

31 The valuable support that UNMISS provides includes the provision of 'support-in-kind' via free transport in UN planes to parts of South Sudan inaccessible by road. Further details of the support provided by UNMISS to SSHRC and other institutions is covered later in this report.

## 8. Role of the International Community

### **Diplomatic Community**

Throughout the course of this research, EHAHRDP spoke with a number of representatives of the various diplomatic missions in South Sudan.

It is encouraging to note, firstly, that most of the embassies we met with were extremely knowledgeable and well versed in the issues facing human rights defenders in South Sudan. A number of the embassies represented in Juba had developed close working relationships with members of civil society, and most had developed either structured or informal mechanisms for engaging with human rights defenders.

One embassy political officer offered an astute assessment of the need for capacity building, and financial support to civil society organisations involved in human rights work.

*“There is a very real need for capacity building and training, especially in investigative journalism. A lot of the news is just made up. Training is also needed on campaigning, fundraising and networking. There are some very dedicated people working, but they have very limited resources.”*

### **Compact**

South Sudan is anticipated to sign a ‘New Deal Compact’ with donors on 3<sup>rd</sup> December 2013, as part of the ‘New Deal for Engagement in Fragile States’ initiative of the G7+ group of countries. The Compact is expected to set out ten state building benchmarks for the government, along with five for donors.

It is encouraging to note, including from our recent engagement with diplomatic missions in Juba, that human rights has emerged as a core priority from the extensive consultation exercise, along with access to justice and civilian protection. The protection of human rights defenders should be treated a central component of South Sudan’s stated commitment to human rights under the Compact.

### **UN Human Rights Council**

Since independence, the UN Human Rights Council (HRC) has adopted a number of resolutions regarding South Sudan, in September 2011, September 2012 and most recently in June 2013, requesting the Office of the High Commissioner for Human Rights to provide technical assistance and capacity building in South Sudan. Resolution 23/24 of June 2013 contains a welcome call on the Government “to investigate the alleged human rights violations by security forces against the civilians and to bring the perpetrators to justice.”

However, the HRC resolutions to date have failed to adequately reflect the extent of the human rights violations in South Sudan or make sufficiently concrete recommendations for improvements, including not specifically calling for action to address attacks and harassment of civil society, human rights defenders and journalists.

Given the serious concerns expressed by the High Commissioner for Human Rights in her latest report to the Council on the human rights situation in South Sudan, Council members should ensure that future resolutions include increased monitoring and reporting by the UNMISS Human Rights Division as well as a dedicated follow-up mechanism.<sup>32</sup>

In November 2013, South Sudan stood as a candidate for election to the Human Rights Council. While ultimately unsuccessful, EHAHRDP hopes that South Sudan’s candidacy reflects a commitment to engage constructively with the Council, and to allow South Sudanese human rights defenders to also freely engage with the UN human rights mechanisms.

<sup>32</sup> Report of the United Nations High Commissioner of Human Rights on the progress of technical assistance and capacity-building for South Sudan in the field of human rights, A/HRC/23/31, [http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-31\\_en.pdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-31_en.pdf)

## **United Nations Mission in South Sudan (UNMISS)**

The United Nations Mission in South Sudan (UNMISS) was established in 2011 by the United Nations Security Council,<sup>33</sup> and has a substantial physical and political presence in South Sudan.

The Human Rights Division of UNMISS is focussed around reporting and analysis on human rights issues, and capacity building of civil society and government institutions, including substantial support to South Sudan Human Rights Commission.

The activities and achievements of the Human Rights Division are commendable, and a number of the human rights defenders that we met with expressed gratitude for its extensive support to civil society. In 2011, UNMISS initiated and funded the Human Rights Forum, a shared enterprise between civil society and the South Sudan Human Rights Commission.

In addition, UNMISS has organised several human rights trainings for the security forces and judges, and worked with traditional courts to enhance respect for human rights in the application of customary law.<sup>34</sup>

However, UNMISS has also faced challenges and obstacles to its human rights activities. In November 2012, a human rights officer working with UNMISS was expelled from South Sudan following the publication of a report on atrocities carried out by the army in Jonglei state. After being declared 'persona non grata' by the government, the officer was expelled from the country.<sup>35</sup> More recently, the United Nations Secretary General noted 67 cases of harassment, threats, physical assault, arrest and detention of United Nations staff in South Sudan between 7<sup>th</sup> May and 5<sup>th</sup> November 2013,

including an extremely serious assault against a female international civilian staff member in October 2013.<sup>36</sup>

A number of the human rights defenders that we interviewed in November 2013 expressed concern about the severity of the attacks against UNMISS staff. The perception among some was that the vulnerability of UNMISS to physical attacks sent a concerning signal to civil society members about their own safety. It is encouraging to note the UN Secretary General's strongly worded comments on these attacks in his recent report to the Security Council. It is vital that United Nations representatives speak out at the highest level to condemn all such incidents, in order to protect its staff, and to protect the space for UNMISS to report on human rights issues in South Sudan.

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33 See UN Security Council Resolution S/RES/1996 (8<sup>th</sup> July 2011)

34 For a more complete list of UNMISS Human Rights Division's activities and achievements, see 'UNMISS, Human Rights Division, 'What we have done', Retrieved 24<sup>th</sup> November 2013 from <http://unmiss.unmissions.org/Default.aspx?tabid=5447&language=en-US>

35 See New York Times, "South Sudan expels a U.N. Rights Officer", 5<sup>th</sup> November 2012; Al Jazeera, "'Persona non grata' in South Sudan", 8<sup>th</sup> November 2012

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36 Report of the Secretary General on South Sudan, S/2013/651, 8<sup>th</sup> November 2013, Paragraph 76

## 9. 2015 Elections

As mentioned at the outset of this report, South Sudan stands at a pivotal point and EHAHRDP has growing concerns about the safety of human rights defenders as the country edges closer towards national elections in 2015.

The forthcoming elections will prove an opportunity for the SPLM to further establish its legitimacy by holding free, fair and democratic elections. Issues of electoral fairness, voter education and participation supersede partisan politics, and it is essential that the many human rights defenders who are likely to be working on such issues over the next two years be protected from all forms of attacks, threats and intimidation. However, as one human rights defender told us, some human rights defenders are afraid about what the election might hold for them. *“In the next year, things will get very critical. There are sensitive elections coming up, and issues around the former vice president. It*

*is quite a sensitive time.”* Another civil society organisation commented on the 2015 elections: *“the political elites will not take it lightly. There is no freedom of media, which will make it a very challenging time.”*

The UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association recently expressed deep concern about increasing human rights violations being committed in several parts of the world in the context of elections against those seeking to exercise these rights, and *“which indelibly mar such elections”* and presented a number of concrete recommendations to States to ensure that *everyone* enjoys the rights to freedom of peaceful assembly and of association in times of elections.<sup>37</sup>

<sup>37</sup> Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, UN General Assembly, 7 August 2013, [http://www.ohchr.org/Documents/Issues/FAssociation/A\\_68\\_299\\_en.pdf](http://www.ohchr.org/Documents/Issues/FAssociation/A_68_299_en.pdf)



Photo: UNDP

# 10. Conclusions

*“How has it changed for human rights defenders? When I first came to South Sudan, there was no Biel [Boutros Biel of SSHURSA], no Edmund [Yakani of CEPO]. All the big NGOs were service providers and effectively part of government service delivery. They were part of the power structure of the time. So, it’s positive that this has changed. There was no identifiable human rights community in 2010. Now it’s there, but it’s fledgling... and overstretched. There is no money in human rights, and human rights organisations on the ground are frequently distracted by other tasks set by donors.”<sup>38</sup>*

*“The government... needs to make clear that it supports human rights, that it will protect them and not abuse them. It needs to strengthen its laws, but also make clear to security forces that they need to protect civilians, not attack them. The laws governing the national security service should be discussed openly in the public, not behind closed doors.”<sup>39</sup>*

Since 2010, as human rights defenders in South Sudan have grown in number, expertise, and public profile, so too have the risks. Over the course of its research, EHAHRDP has found that human rights defenders are routinely subjected to intimidation, harassment, and threats from state security forces, in many cases for simply asking questions or seeking the truth. The frequency and severity of these attacks has grown progressively worse over the course of the last three years, and journalists have been most overtly targeted.

Human rights defenders working within non-governmental organisations are now particularly vulnerable, as a result of the *Voluntary and Humanitarian Non-Governmental Organizations Bill*. In its current form at the time of this writing, the draft legislation would place draconian restrictions on freedom of assembly, and be incompatible with the international human rights instruments that South Sudan has publicly pledged to sign and ratify.

The government of South Sudan has made considerable progress since independence, and moreover, has publicly affirmed its commitment to human rights. In May 2012, President Kiir confirmed to UN High Commissioner for Human Rights Navi Pillay the government’s commitment to human rights.<sup>40</sup> However, there is a need for the government to move beyond rhetoric, and take visible and decisive action to ensure real human rights improvements, including for the protection of its human rights defenders.

There needs to be, in short, a fundamental re-imagining of the relationship between human rights defenders and the government. The government must recognise the vital position that human rights defenders have in nation-building, and developing the unique potential of South Sudan. It is the responsibility of the government to take the lead on this.

In the final section of this report, EHAHRDP sets out a number of concrete recommendations to the Government of South Sudan and its international partners. We hope that these recommendations can be used to improve the operating environment for human rights defenders, and ensure their safety.

38 Interview, November 2013

39 CNN World, Biel Boutros Biel, “Why a UN rights council seat could be good for South Sudan”, 11<sup>th</sup> November 2013, Retrieved 27<sup>th</sup> November 2013 from <https://www.google.com/search?client=ubuntu&channel=fs&q=south+sudan+human+rights+council’&ie=utf-8&oe=utf-8#channel=fs&q=south+sudan+human+rights+council+biel>

40 Office of the High Commissioner for Human Rights, “Pillay welcomes South Sudan commitment to human rights, but says much still to be done in world’s newest state”, 11<sup>th</sup> May 2012, Retrieved 27<sup>th</sup> November 2013 from <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12148&LangID=E>

# 11. Recommendations

In order to improve the working environment for human rights defenders in South Sudan, so that they may safely and effectively carry out their activities, EHAHRDP offers the following recommendations for action.

## **To the Government of South Sudan:**

- Immediately take steps to ensure that all its state agencies, including the SPLA and all branches of its security apparatus, cease all intimidation, harassment and attacks against human rights defenders;
- Commit to withdrawing from parliament the *Voluntary and Humanitarian Non-Governmental Organizations Bill*, and undertake to redraft the law to bring it in line with international standards, and to acknowledge the serious concerns raised by civil society;
- Ensure that amendments to draft legislation regulating the media comply with international standards, serve to genuinely protect the sanctity and necessary independence of the media, and are urgently sent to parliament for its consideration;
- Ensure transparent and thorough investigations into all reported threats or attacks against human rights defenders, and commit to hold perpetrators of such threats or attacks accountable in accordance with international legal standards;
- Continue to work towards a permanent, progressive, and people-centred Constitution, that recognises *inter alia* the primacy of human rights, the rule of law, and the separation of and limitations to state powers.

## **To the Parliament of South Sudan:**

- Ensure that legislation protects the rights and freedoms of human rights defenders and the media, and reject any proposals that fail to meet international standards;
- Adopt the necessary legislation to confirm South Sudan's accession to key international and regional human rights instruments.

## **To Donors and Development Partners:**

- Continue and expand direct financial and technical support to human rights defenders working across all states of South Sudan;
- Recognise the acute structural limitations of printed media in South Sudan, and expand financial, practical and technical assistance to journalists, media outlets, and editors;
- Continue to support the nation-building needs of the Republic of South Sudan with financial and technical support, and to ensure that such support is made contingent upon the state meeting achievable and measurable human rights commitments- including a commitment to protect human rights defenders;
- Recognise the important role of the South Sudan Human Rights Commission, and commit to providing it with direct financial and technical support to enable it to fulfil its mandate;
- Publicly recognise that upcoming national elections, expected in 2015, represent both an opportunity and a potentially enhanced risk to South Sudanese human rights defenders, and ensure continued engagement with the government of South Sudan and the international community to ensure enhanced protection for human rights defenders working on issues relating to the election.

***To the United Nations Security Council:***

- Strengthen the mandate of the Human Rights Division of UNMISS, and provide the necessary funding, security, and other resources so as to be able to strengthen its human rights monitoring, investigation, verification, and reporting capacities.

***To the United Nations Human Rights Council:***

- Ensure that future resolutions adopted on South Sudan at the Human Rights Council reflect the reality of the human rights situation in the country, recognising the challenges that exist and recommending concrete improvements, including increased monitoring and reporting by the UNMISS Human Rights Division.

***To South Sudanese Human Rights Defenders***

- Maximise efforts to strengthen networks of human rights defenders in the country to mutually strengthen each others' work.

***To the United Nations Mission in South Sudan (UNMISS):***

- Continue and where possible expand its valuable work in monitoring, documenting and reporting on human rights issues across South Sudan;
- Continue and where possible expand its extensive capacity building and training activities, engagement and support of the South Sudan Human Rights Commission and the South Sudan Human Rights Forum;
- Raise awareness of the United Nations Plan of Action on Safety of Journalists and the Issue of Impunity and prioritise implementing activities across South Sudan, in cooperation with media, civil society and government stakeholders.





The East and Horn of Africa Human Rights Defenders Project (EHAHRDP) seeks to strengthen the work of human rights defenders (HRDs) throughout the sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights.

EHAHRDP is the secretariat of EHAHRD-Net, a network of over 75 human rights organizations in the eleven countries of the sub-region: Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania and Uganda.



East and Horn of Africa Human Rights Defenders Project  
Human Rights House, Plot 1853, Lulume Rd., Nsambya  
P.O Box 70356 Kampala Uganda  
Phone: +256-312-256-820  
Fax: +256-312-256-822  
Email: [program@defenddefenders.org](mailto:program@defenddefenders.org), [hshire@yorku.ca](mailto:hshire@yorku.ca)  
Web : <http://www.defenddefenders.org>



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