

"THIS IS OUR FREEDOM. THESE ARE OUR RIGHTS."

Human rights defenders in
South Sudan since July 2016



DEFENDDEFENDERS

East and Horn of Africa Human Rights Defenders Project

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Published April 2018

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"This is our freedom. These are our rights."
Human rights defenders in South Sudan since July 2016

"Unless people can speak out, nothing will change"

- *South Sudanese HRD, Juba, April 2018*

"We must stay in solidarity with our populations in South Sudan. If we do not join hands when they come for him, I will be next! One by one we will be finished"

- *South Sudanese HRD, Juba, April 2018*

"If you don't have any opponents, you're not doing anything good [...] We're not anti-government. We are anti-anyone who is against peace"

- *South Sudanese HRD, Juba, April 2018*

Table of Contents

Acronyms	7
Foreword	8
About DefendDefenders	9
Executive Summary	10
Methodology	11
Background	12
Crisis & Conflict: Cracking Down on Civil Society	16
• A Dangerous Working Environment	17
• The Rural / Urban Divide	18
• Media, Journalists, and Freedom of Information	18
• Documenting Evidence for the Hybrid Court	20
• Existing Protection Mechanisms	20
Conclusion	21
Recommendations	22



Acronyms

ARCSS	Agreement on the Resolution of the Conflict in South Sudan
AU	African Union
AUC	African Union Commission
CBO	Community-based Organisation
CSO	Civil Society Organisation
CoH	UN Commission on Human Rights on South Sudan
CTSAMM	Ceasefire and Transitional Security Arrangements Monitoring Mechanism
HCSS	Hybrid Court for South Sudan
HLRF	High Level Revitalization Forum
HRD	Human Rights Defender
IGAD	Intergovernmental Authority on Development
JMEC	Joint Monitoring and Evaluation Commission
NGO	Non-Governmental Organisation
NSS	National Security Service
OCHA	Office for the Coordination of Humanitarian Affairs
SGBV	Sexual and Gender-based Violence
SPLM	Sudan People's Liberation Movement
SPLM-IO	Sudan People's Liberation Movement-in-Opposition
TGoNU	Transitional Government of National Unity
UN	United Nations
UN HRC	United Nations Human Rights Council
UNMISS	United Nations Mission in South Sudan

Foreword

Much has changed in South Sudan since we visited just before the civil war erupted in 2013. In those days, we saw a society brimming with possibilities, a populace unified in their long quest for self-determination, and a fledgling civil society looking to right the wrongs of the past and finally bring together a nation with dreams of a brighter future. What we have seen since is nothing short of tragedy all too familiar in the East and Horn of Africa sub-region. In many ways, the civil war in South Sudan has showed the willingness of both government and opposition forces to consolidate power at the expense of civil liberties, subjecting civilians to grave human rights violations in the process.

Since our last report on South Sudan in 2014, civic space has come under attack from all sides. Civil society organisations (CSOs), non-governmental organisations (NGOs), and human rights defenders (HRDs) of all stripes have all become targets of a national government and security apparatus bent on asserting control over of all spheres of public life. Journalists and media professionals speaking truth to power have been restricted and silenced in the name of security and stability. The very right of citizens to assemble in peaceful demonstrations has also been curtailed, leading to an environment in which fear and anxiety have stifled attempts at meaningful progress and dialogue. And yet, we see hope in the endless strength, perseverance, and optimism of the South Sudanese people.

In these times of instability and uncertainty, it is imperative for HRDs to be able to operate freely in the country, without fear of harassment or reprisals for their work. I believe that any talks of peace or reconciliation must be supported by a strong civil society voice that can speak on behalf of the population. The Government of South Sudan must recognise the legitimacy of these voices, and the weight with which they speak, rather than seeking to silence them for their own gain. As civil society, the need for unification cannot be understated: while we may be vulnerable individually, together we are stronger than we know.

We cannot predict when the people of South Sudan will finally know lasting peace, but we can reiterate our commitment to supporting HRDs to continue their vital work in the knowledge that they are never alone. It is through this unified strength that we can accomplish our shared goals, and bring forward a society where universal human rights are respected and upheld. We stand with all the people of South Sudan when we say that peace and justice are always worth fighting for, and we will not give up this fight.

Hassan Shire



**Executive Director of DefendDefenders
Chairperson of the Pan-African Human Rights Defenders Network**

April 2018

About DefendDefenders

Established in 2005, DefendDefenders (the East and Horn of Africa Human Rights Defenders Project) seeks to strengthen the work of HRDs throughout the region by reducing their vulnerability to the risk of persecution by enhancing their capacity to effectively defend human rights. DefendDefenders focuses its work on Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania, and Uganda.

DefendDefenders acts as the secretariat of the East and Horn of Africa Human Rights Defenders Network, which represents more than 78 members across the sub-region, 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.

DefendDefenders also serves as the secretariat of the Pan-African Human Rights Defenders Network (PAHRDN). The network 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 sub-regional networks forming the PAHRDN are: the North Africa Human Rights Defenders Network (hosted by the Cairo Institute for Human Rights Studies in Tunis), the West African Human Rights Defenders Network (Lomé, 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 the East and Horn of Africa Human Rights Defenders Network (hosted by DefendDefenders, Kampala, Uganda). PAHRDN is aimed at coordinating activities in the areas of protection, capacity building, and advocacy across the African continent.

Executive Summary

South Sudan has been in the grips of a violent civil war since 2013, which has taken on an increasingly ethnic dimension, with massive civilian displacement, rampant human rights violations, and possible crimes against humanity and war crimes committed by both government and opposition forces.

Since the July 2016 crisis erupted in Juba and reignited the civil war, civic space has increasingly shrunk, and government clampdowns on HRDs, journalists, and civil society have forced many to flee or significantly limit their activities. HRDs still operating in the country risk harassment, threats, violence, arbitrary arrest and incommunicado detention, and are sometimes denied due process.

The government has used the National Security Service (NSS) to crack down on civil society, limiting free expression, and creating an environment of fear where HRDs cannot operate freely. Public gatherings and meetings must be registered and approved by the NSS in advance, and many HRDs report government attempts to monitor, censor, and infiltrate their organisations and networks. New bureaucratic impediments like mandatory registration under the NGO Act (2016) have also led to fears of targeting or deregistration, even for legitimate activities.

Overall insecurity in the form of harassment, extortion, and threats of violence by both state and non-state actors have been major challenges for HRDs, especially in Juba. Road insecurity and banditry have also negatively affected the ability of larger CSOs to conduct activities outside of the capital, leading to a divide between organisations operating in Juba and those based in rural areas. HRDs and community-based organisations (CBOs) operating in rural contexts have more influence at the local level, yet can lack operational capacity, making them vulnerable

to harassment from sub-national authorities.

Press freedom has all but been eradicated in the country, leading to the closure of media outlets and forcing many journalists to leave the profession altogether. State-sanctioned censorship and self-censorship among media professionals are major challenges – fear of retribution also makes many sources unwilling to speak on the record. The proliferation of online hate speech and a limited communication infrastructure also limit free expression in the country.

The government has yet to take final action toward establishing and operationalising the Hybrid Court for South Sudan (HCSS) mandated under Chapter 5 of the 2015 Peace Agreement, which is meant to formally investigate and prosecute criminal responsibility for violations of international law and applicable South Sudanese law committed from 15 December 2013 through the end of the transitional period. While several CSOs have begun the process of documenting and preserving evidence for a future HCSS, there are concerns over their ability to effectively document and conserve evidence at a level necessary for prosecution, as well as their capacity to safeguard this information and protect their sources.

Protection mechanisms for HRDs in South Sudan are currently inadequate, due to the complex security situation in the country and the practical challenges in making these mechanisms available to those in need. To mitigate these risks, HRDs have explored informal strategies like cultivating relationships with duty bearers, prominent stakeholders in government, or with diplomatic missions willing to advocate on their behalf. However, these strategies have sometimes fed into the harmful narratives of political or foreign influence on civil society.



Methodology

This report is a combination of desk research as well as interviews with more than 20 HRDs and other key stakeholders were consulted – all interviews were conducted in Juba in early April 2018. Key limitations include the inability of the team to conduct ground research outside of the capital, as well as a lack of verified quantitative data regarding attacks against HRDs across the country. Claims not otherwise sourced are credited to the interviews conducted by DefendDefenders, making every effort to confirm these claims with multiple, individual, and independent sources.

The names and identifying markers of all sources have been deliberately omitted in order to ensure their safety and independence. We would like to express our heartfelt thanks to all the individuals who contributed their testimonies, insight, and analysis for this report.

Background

South Sudan, the world's youngest nation, is engulfed in one of the most violent, deadly, and protracted conflicts worldwide. Following a decades-long civil war, Southern Sudan became autonomous in 2005 and achieved full independence in 2011 following a referendum in which 98.83 per cent of the population voted in favour of self-determination.¹ Despite broad unilateral support from the international community, as well as various international agencies including the United Nations (UN) and Intergovernmental Authority on Development (IGAD), peace was short lived. In December 2013, just 28 months after the birth of the nation, President Salva Kiir accused First Vice President Riek Machar of an attempted coup and abruptly dismissed him, igniting a civil war. Kiir, an ethnic Dinka, took control of the Sudan People's Liberation Movement (SPLM), while Machar, an ethnic Nuer, founded the Sudan People's Liberation Movement-in-Opposition (SPLM-IO).

South Sudan has 64 distinct ethnic groups, and Machar's initial appointment as Vice President was seen as a means to establish a unified government where the two dominant tribes shared power, making his sacking a catalyst for increased tensions. After his dismissal, the conflict took on an increasingly ethnic dimension, with mass atrocities committed by both factions as well as other splinter groups,² including the targeted rape and killings of civilians based on tribal affiliation, looting, and the destruction of property.³ In February

2018, the UN Commission on Human Rights in South Sudan (CoH) concluded that the "ethnic dimension has led to the dehumanisation of the other in a battle of 'them against us' for land, resources and control," and that some of its findings pointed to evidence of persecution on ethnic grounds as crimes against humanity.⁴

A first IGAD-brokered peace deal was reached in January 2014, but did little to end the fighting. A more comprehensive IGAD pact was signed in August 2015, the terms of which were formally laid out in the Agreement on the Resolution of the Conflict in South Sudan (ARCSS),⁵ establishing the Transitional Government of National Unity (TGoNU) and the Joint Monitoring and Evaluation Commission (JMEC) to oversee its implementation. Yet, from the start, the peace agreement was tenuous at best, and both Kiir and Machar publicly expressed reservations regarding its implementation and sustainability.⁶ Both parties signed the agreement only after threats of new sanctions by the UN Security Council, including an arms embargo, and targeted measures against individuals linked to the government and opposition forces.⁷

The reinstatement of Machar as Vice President

4 UN HRC, "Report of the Commission on Human Rights in South Sudan," 23 February 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_37_71_0.pdf, p.17.

5 IGAD, "Agreement on the Resolution of the Conflict in the Republic of South Sudan," 15 August 2015, https://unmiss.unmissions.org/sites/default/files/final_proposed_compromise_agreement_for_south_sudan_conflict.pdf.

6 African Centre for the Constructive Resolution of Disputes, "Conflict Resurgence and the Agreement on the Resolution of the Conflict in the Republic of South Sudan," 19 October 2016, <http://www.accord.org.za/conflict-trends/conflict-resurgence-agreement-resolution-conflict-republic-south-sudan/>.

7 United Nations, "Security Council, Adopting Resolution 2206 (2015), Lays Groundwork for Targeted Sanctions in South Sudan Should Peace Deal Fail," 3 March 2015, <https://www.un.org/press/en/2015/sc1805.doc.htm>.

1 Southern Sudan Referendum Commission, "Southern Sudan Referendum Final Results Report," 7 February 2011, http://southernsudan2011.com/sites/default/files/Final_Results_Report_20110206_1512.pdf.

2 Human Rights Watch, "South Sudan: Ethnic Targeting, Widespread Killings," 16 January 2014, <https://www.hrw.org/news/2014/01/16/south-sudan-ethnic-targeting-widespread-killings>.

3 AU Commission of Inquiry on South Sudan, "Final Report of the African Union Commission of Inquiry on South Sudan," 15 October 2014, <http://www.peaceau.org/uploads/auciss.final.report.pdf#sthash.wYcKybsw.dpuf>.



and reintegration of his forces into the national army, both stipulated in the peace agreement, failed to seriously address overarching issues of power sharing between the two rivals. These tensions were further exacerbated when Kiir's government unilaterally amended the Transitional Constitution in December 2015 to reorganise the country's 10 States into 28 new ones and install new governors without consulting the SPLM-IO – a move the opposition declared a violation of the peace agreement.⁸

Machar returned to Juba from exile and resumed the vice presidency in April 2016. After two minor altercations left seven soldiers dead, an engagement between the bodyguards of Kiir and Machar on 8 July 2016 sparked fierce fighting across Juba, killing more than 300 people and reigniting the civil war. Machar fled the capital, was again sacked on 23 July 2016, and replaced with Taban Deng Gai, dividing opposition forces between contestants for SPLM-IO leadership. More armed factions and sectarian militias emerged at this point, occupying small stretches of territory and terrorising civilian populations that had not already fled.⁹

Violence has become especially prevalent in former Unity State and Equatoria regions.¹⁰ Sexual and gender-based violence (SGBV) and rape as a weapon of war have also been widely documented. The Ceasefire and Transitional Security Arrangements Monitoring Mechanism (CTSAMM) identified 154 reported cases of SGBV committed by soldiers between February and December 2017 alone.¹¹ While the South

8 The Stimson Center, "The 28 State System in South Sudan," 9 August 2016, https://www.stimson.org/sites/default/files/file-attachments/Stimson_StatesBriefingNote_9Aug16.pdf.

9 Heidelberg Institute for International Conflict Research, "Conflict Barometer: 2017," January 2018, <https://hiik.de/conflict-barometer/current-version/?lang=en>.

10 Human Rights Watch, "South Sudan: Warring Parties Break Promises on Child Soldiers," 5 February 2018, <https://www.hrw.org/news/2018/02/05/south-sudan-warring-parties-break-promises-child-soldiers>.

11 Ceasefire and Transitional Security Arrangements Monitoring Mechanism, "CTSAMM Report 2018/03 – SGBV in Central Equatoria," 15 January 2018, <http://ctsamm.org/wp-content/uploads/2018/01/CTSAMM-REPORT-201803-SGBV-IN-CENTRAL-EQUATORIA.pdf>.

Sudanese government signed a ceasefire with rebel groups on 21 December 2017,¹² at least five incidents of violations were quickly reported, for which both government and rebel forces were blamed.¹³

The TGoNU has nominally sought to end the violence through ARCSS and the launch of a National Dialogue, yet neither of these mechanisms have succeeded in ending the fighting. In October 2017, IGAD announced renewed efforts to revive the 2015 Peace Agreement through the High Level Revitalization Forum (HLRF), but the process remains fraught with difficulties.

The National Dialogue was officially launched on 22 May 2017 with the intention of creating grassroots forums where government institutions, opposition parties, citizens, religious leaders, CSOs, and other stakeholders could peacefully discuss reconciliation efforts. In June 2017, Kiir relinquished his role as "patron" of the Dialogue, seen as a positive step by many towards increasing its independence and transparency.¹⁴ However, many opposition groups have not yet committed to participate in the Dialogue, and concerns over effective implementation of its recommendations remain as long as the conflict continues.¹⁵

The HCSS offers an avenue for accountability, but the the government's Memorandum of Understanding with the African Union (AU) has yet to be signed.¹⁶ The ARCSS-mandated

12 IGAD, "Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access: Republic of South Sudan," signed 21 December 2017, <http://jmecsouthsudan.org/index.php/reports/igad-hlrf-agreements/70-igad-hlrf-agreement-on-cessation-of-hostilities/file>.

13 Voice of America, "South Sudan's Ceasefire Broken by Both Sides, Monitors Say," 16 January 2018, <https://www.voanews.com/a/south-sudan-cease-fire/4210001.html>.

14 Voice of America, "President No Longer Runs South Sudan National Dialogue," 1 June 2017, <https://www.voanews.com/a/president-no-longer-runs-south-sudan-national-dialogue/3883157.html>.

15 South Sudan National Dialogue, "How National Dialogue Works," <https://www.ssnationaldialogue.org/how-national-dialogue-works/>.

16 Reuters, "Justice for atrocities in South Sudan just a signature away: U.N. investigator," 13 March 2018, <https://www.reuters.com/article/us-southsudan-un/>

court is to be established by the African Union Commission (AUC) to formally investigate and prosecute criminal responsibility for atrocity crimes¹⁷ and other serious crimes under international and South Sudanese law committed from 15 December 2013 through the end of the transitional period. Despite this essential role toward ending impunity and future violation, the HCSS has yet to be formally established or become operational – as per the 2015 Peace Agreement, this responsibility ultimately falls to the AUC, but the Government of South Sudan continues to stall the process.

Pending the establishment of the HCSS, serious concerns about the destruction of evidence have prompted other initiatives. UN HRC resolution 31/20¹⁸ established the UN Commission on Human Rights in South Sudan (CoH) in March 2016, which was subsequently renewed twice, until March 2019.¹⁹ The mandate included the collection, documentation, and preservation of evidence, and making that information available to all transitional justice mechanisms.²⁰ In February 2018, the CoH announced it had identified more than forty senior military officials who may bear individual responsibility for war crimes and crimes against humanity.²¹

[justice-for-atrocities-in-south-sudan-just-a-signature-away-u-n-investigator-idUSKCN1GP2J6/](#)

17 Genocide, Crimes Against Humanity, and War Crimes.

18 UN HRC, “Resolution adopted by the Human Rights Council on 23 March 2016,” 23 March 2016, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_hrc_res_31_20.pdf.

19 OHCHR, “Human Rights Council extends mandates on Democratic People’s Republic of Korea, Syria, Iran, South Sudan and Myanmar,” 23 March 2018, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22895&LangID=E>.

20 UN HRC, “Commission on Human Rights in South Sudan,” <http://www.ohchr.org/EN/HRBodies/HRC/CoHSouthSudan/Pages/Index.aspx>.

21 UN HRC, “UN Human Rights Commission collects evidence to hold more than 40 South Sudanese officials accountable for war crimes and crimes against humanity,” 23 February 2017, <http://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=22691&LangID=E>.

In December 2017, the UN Security Council adopted Resolution 2392 (2017), extending the mandate of the United Nations Mission in South Sudan (UNMISS), in part due to the ongoing fragility of the state and unfolding humanitarian catastrophe.²² In light of the continued violence, the United States imposed an unilateral arms embargo in February 2018.²³ According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), 4 million people have been uprooted since the start of the conflict in 2013, including over 1.9 million internally displaced people as of 31 December 2017.²⁴ According to the Council on Foreign Relations’ Global Conflict Tracker, more than 50,000 have been killed since December 2013, although most death counts remain rough estimates that do not fully account for fatalities related to famine and disease.²⁵

The severity of the humanitarian crisis precipitated by the conflict has shifted focus away from human right-based projects to emergency humanitarian aid, especially with regards to limited donor funding. The UN formally declared a famine in parts of South Sudan in February 2017,²⁶ and 11 months later warned of another looming famine in the country,²⁷ with an estimated 5.1 million people, nearly half the population, expected to face acute food insecurity between February and March 2018.²⁸

22 United Nations, “Adopting Resolution 2392 (2017), Security Council Grants Mandate Extension for United Nations Mission in South Sudan, Pending Review of Operations,” 14 December 2017, <https://www.un.org/press/en/2017/sc13119.doc.htm>.

23 United Nations, “Joint Statement on Situation in South Sudan by Chairperson of African Union Commission, United Nations Secretary-General,” 12 January 2018, <https://www.un.org/press/en/2018/sg2241.doc.htm>.

24 UN OCHA, “South Sudan: Key Figures,” 31 December 2017, <http://www.unocha.org/south-sudan>.

25 Council on Foreign Relations, “Global Conflict Tracker: Civil War in South Sudan,” Updated 2 March 2018, <https://www.cfr.org/interactives/global-conflict-tracker#!/conflict/civil-war-in-south-sudan>.

26 UN News, “Famine declared in region of South Sudan – UN,” 20 February 2017, <https://news.un.org/en/story/2018/01/1001121>.

27 UN News, “South Sudan: Ceasefire violations, hostile propaganda undercut regional peace push, Security Council told,” 24 January 2018, <https://news.un.org/en/story/2018/01/1001121>.

28 Integrated Food Security Phase Classification,



The rollout and distribution of emergency aid has been severely hampered by the conflict: according to the UN OCHA, 28 aid workers were killed in South Sudan in 2017, with 1,159 humanitarian access incidents that same year – a significant increase compared to 908 in 2016. Incidents included violence against humanitarian personnel and assets, including the targeting of aid workers through robbery, looting, threats, and harassment. At least 95 aid workers have been killed since the crisis began in December 2013.²⁹

"Hostility for 50 years gets your acclimated to a new form of normal. So when someone violates your rights, it doesn't seem like something out of the ordinary. This is an environment where violations rarely have consequences."

– South Sudanese HRD, Juba, April 2018

A dire lack of free expression and a downward trend in media freedom have only deepened the effects of the conflict, not only for journalists, but also the population at large who often lack access to vital information. Journalists face extremely precarious working conditions and are regularly targeted through censorship, intimidation, harassment, arbitrary detention, torture, and extra-judicial killings.³⁰ Between July 2016 and December 2017 alone, the Human Rights Division of UNMISS confirmed 60 allegations of violations of the legitimate exercise of the right to freedom of expression, affecting at least 102 victims.³¹

"IPC in South Sudan," 9 November 2017, <https://reliefweb.int/report/south-sudan/south-sudan-food-insecurity-situation-still-dire-and-widespread-ipc-alert-issue-9>.

²⁹ OCHA, "Humanitarian Bulletin South Sudan," 18 January 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/SS_180118_OCHA_SouthSudan_Humanitarian_Bulletin01.pdf.

³⁰ DefendDefenders, "Don't Shoot the Messenger!: Journalists as Human Rights Defenders in the East and Horn of Africa," October 2017, <https://www.defenddefenders.org/wp-content/uploads/2017/11/DontShootTheMessenger.pdf>.

³¹ OHCHR, "Report on the Right to Freedom of Opinion and Expression in South Sudan Since the July

Attacks on freedom of association, and hostility toward HRDs and CSOs continue to be major factors in the conflict. In 2016, the government passed two pieces of legislation to govern civil society: the Non-Governmental Organizations (NGO) Act³² and the Relief and Rehabilitation Act, which include restrictive provisions and costly registration fees for NGOs, and give government organs the power to "supervise, monitor and evaluate the activities of NGOs."³³

In its two previous reports on South Sudan in 2013³⁴ and 2014,³⁵ DefendDefenders highlighted the routine harassment and intimidation of HRDs in the country by state security organs. These included threats from the NSS, travel bans on, and reprisals against, HRDs, arbitrary arrests and detentions, kidnappings, and, in one case, extra-judicial killing. These tactics significantly hampered civil society efforts to monitor and document human rights abuses.

This report is a continuation of DefendDefenders' efforts to highlight the ongoing challenges facing HRDs in South Sudan, and provide concrete recommendations for a way forward.

2016 Crisis," February 2018, http://www.ohchr.org/Documents/Countries/SS/UNMISS-OHCHR_Freedom_of_Expression.pdf.

³² "Non-Governmental Organizations Act," 10 February 2016, <http://www.icnl.org/research/library/files/South%20Sudan/NGOBILL.pdf>.

³³ Emphasis on Section 11(a), "Relief and Rehabilitation Act," 10 February 2016, <http://www.icnl.org/research/library/files/South%20Sudan/RCCBILL.pdf>.

³⁴ DefendDefenders, "Change will not come until we talk about reality: The Closing Space for Human Rights Defenders in South Sudan" December 2013, <http://www.defenddefenders.org/wp-content/uploads/2011/11/South-Sudan-WEB.pdf>.

³⁵ DefendDefenders, "For Us, Silence Is Not An Option: Human Rights Defenders and the South Sudan Civil War" (December 2014), <http://www.defenddefenders.org/wp-content/uploads/2014/12/South-Sudan-2014-Report.pdf>.

Crisis & Conflict: Cracking Down on Civil Society

Since the civil war resumed in July 2016, the political chaos and reduction in security has created an environment where the government has increasingly sought to limit civic space and crack down on HRDs, especially South Sudanese nationals. CSOs and HRDs operating in the country are often viewed with suspicion or erroneously branded as opposition supporters contributing to ongoing instability. This environment has forced many HRDs to flee or significantly curtail their activities. Additionally, many international NGOs operating in the country have moved their permanent staff to safer locations like Nairobi (Kenya) or Kampala (Uganda), while others have closed down or laid off staff as the peace process has stagnated.

All persons interviewed for this report pointed to the NSS as the main culprit of violations against HRDs and CSOs. This state security apparatus is able to act with impunity, largely outside its formal structures for oversight. The combination of extra-judicial threats and legislative restrictions are major struggles for civil society. HRDs interviewed for this report describe an environment in which the NSS have increasingly sought to restrict legitimate human rights work, including civilian activism, and the documentation of human rights violations that continue to be committed by both state and non-state actors. A generally weak rule of law contributes to a state in which HRDs can be arbitrarily arrested and detained *incommunicado*, and are regularly denied due process. Weak rule of law and limited oversight also allows individual officials to use state resources, including the military, to retaliate against HRDs when their private interests are threatened. Impediments on travel outside of Juba, such as checkpoints and requirements for official documentation, have been major obstacles to supporting civil society outside the capital.

In February 2016, the government passed the NGO Act,³⁶ which established the legal framework for NGOs operating in the country. Of particular note, Section 9(c) prevents an NGO from operating “unless it has been duly registered with the Commission,” while Article 15 criminalises carrying out activities without a certificate, punishable by a fine or up to three years in prison, or both. This registration has given security forces a comprehensive list of civil society operating in the country, and sources interviewed for this report claim they have used this information to more effectively target and monitor their activities.

This contentious registration component has presented civil society with a dilemma: whether to formally register their organisations and risk further targeting, or forego the process and risk being held criminally liable for their activities. The costs associated with registration are unclear, but even small fees can be a major burden for grassroots NGOs or CBOs – the particular challenges faced by rural organisations will be explored later in this report. The Registrar also maintains the ability to not renew NGO registration, or deregister them altogether, notably, under Section 12, if an NGO is involved with “tribal and political differences in the country.”

The NSS frequently restricts large meetings in public places, and civil society gatherings are often organised in hotels which are required to register the meetings with intelligence services. In instances where the NSS does allow a meeting, they have at times demanded permission to attend in person or participate directly – sources in South Sudan allege that the NSS maintains a presence in major hotels. This has led many CSOs to hold smaller meetings in private offices, or refrain from holding larger conventions, workshops, or trainings

36 “Non-Governmental Organizations Act,” 10 February 2016, <http://www.icnl.org/research/library/files/South%20Sudan/NGOBILL.pdf>.



altogether. Many HRDs also voiced concerns that government agents were attempting to directly infiltrate CSOs in order to better monitor their activities or gain access to their contacts, though this is difficult to confirm.

Fears of government surveillance and infiltration have forced civil society to explore alternative strategies where members or staff must be recommended or vouched for by another. This significantly limits larger advocacy efforts like public campaigns or even press releases, leading to more private advocacy such as analysis, information sharing, and diplomatic channels. This anxiety has also spread to citizens, who fear to engage in activities, preventing them from active participation in civil society and further insulating CSOs from communities they intend to serve.

This fear also extends to HRDs who have fled the country and attempt to continue their work from exile, especially in the sub-region. HRDs in Kampala and Nairobi have reported threats made against them by what they allege are NSS agents. The enforced disappearance of human rights lawyer Dong Samuel Luak and prominent SPLM-IO member Aggrey Idri in Nairobi in January 2017, and their suspected deportation to South Sudan,³⁷ have further raised these fears.

A Dangerous Working Environment

An overall lack of personal and organisational security, stemming from both state and non-state actors, has had a significant impact on the proper functioning of civil society operating in South Sudan. Sources interviewed for this report described a state of impunity for attacks against HRDs. As previously noted, the OCHA has recorded a significant increase in humanitarian access incidents in 2017, such as violence against humanitarian personnel and assets, and the targeting of aid workers through robbery, looting, threats, and harassment.³⁸

37 Amnesty International, "South Sudan: A Year On, Two Men's Whereabouts Unknown," 24 January 2018, <https://www.amnesty.org/en/latest/news/2018/01/south-sudan-a-year-on-two-mens-whereabouts-unknown/>.

38 OCHA, "Humanitarian Bulletin South Sudan," 18 January 2018, https://reliefweb.int/sites/reliefweb.int/files/resources/SS_180118_OCHA_SouthSudan.

Street crime has also been a challenge to the proper functioning of civil society, especially in Juba. NGOs have been targeted by security forces, or criminals posing as such, for hard currency – they are sometimes accused of exchanging money on the black market, or simply extorted for bribes. Several sources interviewed for this report described an environment where HRDs and NGO workers were often mugged or attacked for their valuables, including phones and laptops that may contain sensitive information, and described how these incidents often go unreported. A generally weak rule of law in the country has contributed to this overall state of insecurity.

"Now the best way has been to simply silence, that way no one can come out and talk about the torture or the violations. Now you just disappear or turn up dead."

– South Sudanese HRD, Juba, April 2018

The economic situation in South Sudan has declined considerably since 2013. Urban poverty increased from 49 per cent in 2015 to 70 per cent in 2016,³⁹ and inflation peaked at 550 per cent in September 2016, though this had decelerated to 102 per cent by September 2017.⁴⁰ Therefore, it is unclear whether these attacks indicate a wider pattern of state-sanctioned harassment, or are merely a function of economic desperation. Regardless, risk management has become a part of the daily work regiment of CSOs operating in the country, tying up valuable time and resources. Road insecurity and banditry have barred many organisations from travelling to rural areas most affected by ongoing violence. Travelling by road to areas outside of Juba [Humanitarian Bulletin01.pdf](#).

39 World Bank, "Taming the Tides of High Inflation in South Sudan," 28 November 2017, <http://blogs.worldbank.org/african/taming-the-tides-of-high-inflation-in-south-sudan>.

40 The Republic of South Sudan, National Bureau of Statistics, "Consumer Price Index for South Sudan September 2017," 2 November 2017, <http://www.ssnbss.org/node/80>.

remains dangerous, and while domestic flights are available, they remain a costly burden for smaller organisations.

The Rural / Urban Divide

There appears to be a divide, or at the very least a lack of strong linkages, between CSOs and HRDs operating in Juba, and those operating in rural areas where civil society appears to be less formally structured, with a more prominent role for church networks and faith-based organisations.

Most international NGOs are based in Juba, limiting many of their main activities and presence to the capital, while the bulk of the ongoing violence takes place in rural areas or smaller urban centres. Organisations in Juba also have a better chance to interact with high-level duty bearers, yet their location also exposes them to targeting and surveillance as the NSS has a larger presence in the city.

In contrast, smaller grassroots organisations and churches are community-based and have more influence at the local level where they are better aware of local contexts but face challenges due to lack of resources and overall capacity. These are also more vulnerable to local authorities who can harass or threaten them with impunity – these violations are difficult to monitor, and there is no reliable infrastructure in place for incident reporting.

A lack of centralised government control allows for greater independence for regional and local officials, leading to a discrepancy in overall working conditions. Furthermore, as per Section 11(2) of the NGO Act, even CBOs must be registered in the state or county where they operate, adding another layer of bureaucratic impediment to their work, and opening the possibility that CBOs registered nationally can be still be blocked from operating at the sub-national level.

There are currently no comprehensive studies or statistics that examine to what degree HRDs operating within these contexts are more vulnerable than those in urban settings. However, civil society, especially in rural areas,

offer a noteworthy opportunity for dialogue, reconciliation, and the establishment of stability in communities affected by ethnic strife during the course of the civil war. Churches and faith-based organisations in particular can build on traditional power structures and methods of conflict resolution that are difficult for others to effectively tap into. Therefore, their proper functioning and networking within a broader civil society framework in South Sudan should be of paramount importance to larger organisations struggling to access rural areas. There is a need for national civil society networks to map and incorporate these organisations so as to more effectively verify information and monitor events occurring in areas that lack scrutiny by the international community.

Media, Journalists, and Freedom of Information

Freedom of expression has been increasingly limited since the civil war began in 2013. The situation for journalists has worsened since the July 2016 crisis, leading to the closure of media outlets, and forcing some media professionals to leave the profession altogether. Since the war began, journalists have been victims of harassment, enforced disappearances, and extrajudicial executions, perpetrated with impunity.⁴¹ HRDs interviewed for this report indicated that the exposed position of critical journalists often puts them at even greater risk than other civil society actors. While this repression of free expression takes many forms, it can be surmised into two main categories: state-sponsored censorship and self-censorship practiced among journalists.

The Broadcasting Corporation Bill, Right of Access to Information Bill, and Media Authority Bill, all signed in 2014, establish the national framework for access to information, public service broadcasting, and media regulation. However, since 2016, the Media Authority has taken a more active role in restricting the work of journalists operating in the country, and

⁴¹ DefendDefenders, “Don’t Shoot the Messenger!: Journalists as Human Rights Defenders in the East and Horn of Africa,” October 2017, <https://www.defenddefenders.org/wp-content/uploads/2017/11/DontShootTheMessenger.pdf>.



holds authority over the registration of media houses.

"At the end of the day they will get you. They will get you online. They will get you if you print. And now the media authority is registering every journalist – in case of anything they will cooperate with the national security."

– South Sudanese Journalist, Juba, April 2018

The Media Authority has used this power to enforce the licensed registration of all press associations in November 2017,⁴² and suspended a UNMISS-operated radio station for failing to comply with national media laws in March 2018.⁴³ Security organs like the NSS are also used to censor independent media, with authorities sometimes imposing pre-coverage oversight in order to review content before it is broadcast or printed.⁴⁴ In August 2016, NSS agents prevented the publication of an entire print run of the Nation Mirror, forcing the newspaper to suspend printing or risk confiscation, allegedly over a story about the escape of opposition leader Machar.⁴⁵

These factors have led some journalists to refrain from covering controversial stories, or printing them anonymously without a by-line. Sources interviewed for this report noted fears that publishing a sensitive story could result in deregistration or revoking of licenses, leading

42 Reuters, "South Sudan media regulator bans press groups, raising censorship fears," 1 November 2017, <https://www.reuters.com/article/us-southsudan-media/south-sudan-media-regulator-bans-press-groups-raising-censorship-fears-idUSKBN1D1566>.

43 Reuters, "South Sudan's media regulator suspends U.N.-owned radio," 9 March 2017, <https://www.reuters.com/article/us-southsudan-media/south-sudans-media-regulator-suspends-u-n-owned-radio-idUSKCN1GL25Q>.

44 DefendDefenders, "Don't Shoot the Messenger!: Journalists as Human Rights Defenders in the East and Horn of Africa," October 2017, <https://www.defenddefenders.org/wp-content/uploads/2017/11/DontShootTheMessenger.pdf>.

45 Radio Tamazuj, "Nation Mirror calls on authorities not to censor their work," 22 August 2016, <https://radiotamazuj.org/en/article/nation-mirror-calls-authorities-not-censor-their-work>.

some editors to shy away from controversial stories altogether, regardless of whether the information is in the public interest. This double-natured censorship has also affected the willingness of sources to speak on the record, allowing government to discredit legitimate reporting. Few formal protection mechanisms exist for journalists in South Sudan, and those that speak out against the government can run the risk of being arbitrarily branded as opposition supporters.

Online hate speech remains a serious factor in South Sudan. Between 7-20 November 2017 alone, 115 posts labelled as hate speech were recorded across a variety of online platforms like Facebook, Twitter, and YouTube – many of these were posted by South Sudanese in the diaspora community.⁴⁶ In a country where ethnic tensions remain high, even online posts can have real-world consequences which can further hamper attempts at peace and reconciliation. A lack of independent media and poor information structures have also contributed to the spread of so called "fake news," which can further inflame tensions.⁴⁷ However, this has presented advocates of free expression with a dilemma: while the government should take an active role in preventing hate speech in an environment where ethnic tensions are high, security forces have also abused this power to censor free speech under the pretext of curbing hateful rhetoric.

46 Peacetech Lab, "HATE SPEECH MONITORING AND

CONFLICT ANALYSIS IN SOUTH SUDAN: Report #8: November 7 – November 20, 2017," 22 November 2017, https://drive.google.com/file/d/1GhJGxQGEDFMV39Jm3QuVZs_YqZLjUotG/view.

47 Public Radio International, "Online fake news and hate speech are fueling tribal 'genocide' in South Sudan," 25 April 2017, <https://www.pri.org/stories/2017-04-25/online-fake-news-and-hate-speech-are-fueling-tribal-genocide-south-sudan>.

Documenting Evidence for the Hybrid Court

As noted above, despite repeated statements reaffirming its commitment to Chapter 5 of the ARCSS, the government has yet to take final action toward establishing the HCSS as an avenue to future accountability. Nevertheless, several CSOs have begun the process of documenting evidence of violations for the HCSS. A number of organisations have received some form of training toward this end.

However, concerns were raised about the ability of individual organisations to effectively document and conserve evidence at a level needed for prosecution, as well as their capacity to safeguard this information and protect their sources. A culture of distrust further hampers these efforts, with several HRDs reporting that victims were unwilling to cooperate, citing fear of future reprisal.

Discussing transitional justice and the HCSS remains a tense subject. With the government seemingly preferring the National Dialogue – which does not include an accountability component – as the preferred path toward peace, it is likely that civil society will play a key role in any proceedings. However, it is unclear if it has the current capacity to effectively do so.

Existing Protection Mechanisms

Protection mechanisms for HRDs in South Sudan are currently inadequate, both because of the size and complexity of the problems faced by civil society, as well as the practical challenges in making these mechanisms available to those in need. In order to mitigate risk, HRDs report that they have explored informal strategies, cultivating relationships with duty bearers or other prominent stakeholders in government, or with diplomatic missions who have been willing to advocate on their behalf. However, such strategies have at times proven ineffective, or even adverse as they feed into the narrative of civil society being associated with either the government, opposition, or foreign powers.



Conclusion

Although limited by the current context in South Sudan, all interviews conducted in the course of this research indicate a further decline in space for HRDs and civil society, particularly after the July 2016 crisis that reignited the civil war. HRDs face a multitude of challenges, ranging from targeted intimidation and attacks – most notably by the NSS – to general insecurity prevalent across the country.

The situation is further complicated by the lack of strong state institutions, giving greater power to sub-national duty bearers to take individual action against civil society. Years of civil war, and resulting lack of infrastructure and access to many areas, have created a divide between urban and rural HRDs, with the latter in particular finding themselves insufficiently supported and lacking access to protection mechanisms. Attacks against civil society are committed with impunity, and interviewees agree that a large number of such incidents go unreported.

HRDs have employed a range of coping strategies, but these are increasingly complicated by further extra-judicial and judicial restrictions on their operations. Civil society organisations often lack the capacity and knowledge to implement digital and physical safety measures to help them mitigate these risks.

As the warring parties proceed with the various peace initiatives, it is essential that civil society is allowed to actively engage in these processes. Absent the will by both government and opposition forces to aggressively pursue avenues of accountability, civil society will have an essential role in contributing to peace, stability, and reconciliation in South Sudan.

DefendDefenders' findings suggest that HRDs find themselves at a crossroad: authorities have not yet fully consolidated control and, through a combination of formal and informal strategies, HRDs can still operate with a degree of freedom. It is essential that civil society is supported in the form of improved emergency protection mechanisms, strong capacity-building initiatives, and international advocacy, before it loses its ability to help realise the promise of the world's youngest nation.

Recommendations

To diplomatic missions and development partners:

- Adopt the protection of HRDs as a foreign funding benchmark and a basic standard for foreign commitments on governmental funding;
- Operationalise the European Union Guidelines on Human Rights Defenders;
- Continue, expand, and, where relevant, reinstate direct financial and technical support to HRDs working across all states of South Sudan;
- Maintain contacts with, and provide visible recognition to, human rights defenders.

To the Intergovernmental Authority on Development:

- Continue to strongly encourage and facilitate civil society engagement during the High Level Revitization Forum.

To the United Nations Human Rights Council:

- Continue to support the mandate of the UN Commission on Human Rights in South Sudan to collect and preserve evidence of human rights violations with a view to enable future prosecutions and accountability.

To the African Union:

- Support the government of South Sudan to immediately establish and operationalise the Hybrid Court for South Sudan to insure transparent accountability for crimes committed during the civil war.

To the Transitional Government of National Unity

- Immediately take steps to ensure that its state agencies, including the National Security Service, cease all intimidation, harassment, and attacks against HRDs;
- Sign the Memorandum of Understanding to formally establish and operationalise the Hybrid Court for South Sudan to ensure transparent accountability for crimes committed during the civil war;
- Fully establish all other transitional justice mechanisms provided for in Chapter 5 of the Agreement on the Resolution of the Conflict in South Sudan;
- Allow and facilitate access to all locations and persons of interest to the UN Commission on Human Rights in South Sudan;
- Ratify International Human Rights Standards including the International Covenant on Civil and Political Rights and the International Convention for the Protection of all Persons from Enforced Disappearance;
- Ensure transparent and thorough investigations into all reported threats or attacks against HRDs, and commit to hold perpetrators of such threats or attacks accountable in accordance with international legal standards.

To South Sudanese civil society:

- Establish a reliable network of focal persons across South Sudan to facilitate more effective protection of human rights defenders;
- Strengthen linkages between rural and urban civil society;
- Continue engagement through human rights mechanisms, including the African Commission on Human and Peoples' Rights, UN Human Rights Council, and Universal Periodic Review;
- Lobby and support the UNMISS Human Rights Division to facilitate documentation of human rights violations, particularly against human rights defenders;
- Enhance the capacity of South Sudanese human rights defenders on physical and digital safety measures, including ongoing assistance and follow-up trainings, especially for those documenting human rights abuses.



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

DefendDefenders is the secretariat of EHAHRD-Net, a network of 78 human rights organisations in the eleven countries of the East and Horn of Africa sub-region: Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia (together with Somaliland), South Sudan, Sudan, Tanzania, and Uganda.

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