

# TARGETED BUT NOT DETERRED:

Human Rights Defenders Fighting for  
Justice and Peace in South Sudan



**DEFENDDEFENDERS**

East and Horn of Africa Human Rights Defenders Project

# Targeted But Not Deterred: Human Rights Defenders Fighting for Justice and Peace in South Sudan

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## **Targeted But Not Deterred:**

**Human Rights Defenders Fighting for Justice and Peace in South Sudan**

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“To the government, human rights are a threat, justice is a threat, accountability is a threat. They see these as foreign tools for collecting information. They see these as publicising public demands, in opposition to a group of people only interested in looting the country.”

- South Sudanese human rights defender

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“The state is no longer thinking about the older generation of activists; the state now fears the new wave of activists. These youth come with new energy, and the government is worried about what they’ve seen in Sudan, Algeria, and Tunisia. They fear that the youth will organise and topple the government.”

- South Sudanese human rights defender

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“How do you reconcile people who are not talking to each other? If people take ownership of this new peace process, they’ll finally be able to say what they need to say. We need to find ways to create more of these spaces.”

- South Sudanese human rights defender



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# Acronyms

ACHPR	African Commission on Human and Peoples' Rights
AU	African Union
CBO	Community-based organisation
CoHR	United Nations Commission on Human Rights in South Sudan
CRA	Compensation and Reparation Authority
CRSV	Conflict-related sexual violence
CSO	Civil society organisation
CTRH	Commission on Truth, Reconciliation and Healing
EU	European Union
HRC	United Nations Human Rights Council
HRD	Human rights defender
IGAD	Intergovernmental Authority on Development
IDP	Internally displaced person
MoU	Memorandum of Understanding
NSS	National Security Service
OHCHR	Office of the United Nations High Commissioner for Human Rights
POC	Protection of civilians
R-ARCSS	Revitalised Peace Agreement for Resolution of the Conflict in the Republic of South Sudan (Revitalised Peace Agreement)
SGBV	Sexual and gender-based violence
SPLA	Sudan People's Liberation Army
SPLM-IO	Sudan People's Liberation Movement-in-Opposition
CTSAMVM	Transitional Security Arrangements Monitoring and Verification Mechanism
UN	United Nations
UNSC	United Nations Security Council
UNMISS	United Nations Mission in South Sudan
VPN	Virtual private network



## About DefendDefenders

Established in 2005, DefendDefenders (East and Horn of Africa Human Rights Defenders Project) seeks to strengthen the work of HRDs throughout the subregion 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/Somaliland, South Sudan, Sudan, Tanzania, and Uganda.

DefendDefenders serves as the secretariat of the East and Horn of Africa Human Rights Defenders Network, which represents hundreds of members consisting of individual HRDs, human rights organisations, and national coalitions that envision a sub-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 AfricanDefenders (Pan-African Human Rights Defenders Network). AfricanDefenders aims to coordinate activities in the areas of protection, capacity building, and advocacy across the African continent, supporting the five sub-regional networks: the North Africa Human Rights Defenders Network (hosted by the Cairo Institute for Human Rights Studies in Tunis, Tunisia), the West African Human Rights Defenders Network (Lomé, Togo), the Southern Africa Human Rights Defenders Network (hosted by the International Commission of Jurists in 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 in Kampala, Uganda).



The world's youngest nation, South Sudan, has had enough of war. The political developments we witnessed in early 2020, with the swearing in of Vice-Presidents and the formation of a unity government, offer a basis for hope. However, despite the signing of a "revitalised" peace agreement in September 2018, fighting has continued in parts of the country. Furthermore, at the time of writing this foreword, intercommunal tensions and clashes threaten to increase in several areas.

This report comes at a critical juncture for South Sudan's civil society. South Sudanese human rights defenders (HRDs) are among the bravest I have met. Throughout the war, they have documented violations and abuses committed by all parties, advocated for regional and international actors to continue to prioritise resolution of the conflict, and supported victims and survivors in their quest for justice. They have done so at great personal risk.

Contrary to what one may think, since nationwide conflict has ceased, as this report shows, the space for HRDs and other independent actors in South Sudan has shrunk. It seems that the authorities have stepped up their repression of independent and critical voices, including those who monitor the implementation of the peace agreement.

The crackdown has targeted HRDs, but they are not deterred. They continue their work, often in difficult conditions, because they know that no lasting peace can be achieved without justice.

From Juba to the African Commission sessions in Banjul and the chamber of the Human Rights Council (HRC) in Geneva, DefendDefenders has never stopped reiterating this message: there can be no peace without justice. Without accountability for the grave violations committed in the country, respect for the human rights of its citizens, and strong institutions based on the rule of law, South Sudan will risk falling back into conflict.



Decisive action must be taken now to make backsliding impossible. Despite the negative developments documented in this report, we remain hopeful that national, regional, and international actors will join efforts to create and maintain an open civic space in which South Sudanese HRDs will be free to conduct their activities without fear and citizens will be able to claim their rights.

We hope that this report will contribute to documenting the situation, identifying challenges, and advocating for solutions. South Sudan deserves to open a new chapter for its people.

Yours sincerely,

Hassan Shire,  
Executive Director,  
DefendDefenders



# Methodology

This report is the culmination of monitoring efforts, South Sudan-focused advocacy, desk research, and field interviews conducted with 32 respondents in February 2020 in Juba, Wau, and the surrounding areas. Respondents include HRDs, members of civil society organisations (CSOs) and community-based organisations (CBOs), lawyers, media professionals, and diplomatic missions.

This research mission followed years of work on South Sudan, including research, advocacy, protection, and capacity building. In particular, in 2018, DefendDefenders published a report on the situation of HRDs in the country, “‘This Is Our Freedom. These Are Our Rights’: Human rights defenders in South Sudan since July 2016.”<sup>1</sup> At the African and international levels, DefendDefenders has conducted advocacy based on findings and analysis of the human rights situation, and challenges and needs of HRDs.<sup>2</sup>

While attempting to be as comprehensive as possible, this report has several limitations that must be clarified for its conclusions and recommendations to be understood in context. The findings attempt to identify broader trends and patterns in South Sudan, but are by no means exhaustive. The choice of physical research locations was based on the availability of sources in larger urban centres, weighed against budgetary and logistical limitations, as well as security assessments. The findings and needs assessment should be considered as baselines for other organisations looking to conduct more in-depth research on the situation in South Sudan, especially in areas not covered in this report.

Claims not otherwise sourced are credited to the interviews conducted by DefendDefenders, making every effort to verify information with multiple independent sources. The names and personally identifiable data of all sources have been omitted to ensure their safety and protection from reprisals in the form of legal and extrajudicial harassment, acts of intimidation, threats, and/or attacks from a range of actors. All interviewees were informed about the objectives of the research and format of this report and expressed informed consent to DefendDefenders, regarding the use of the information they provided. None received any form of financial compensation for their testimony.

We would like to express our heartfelt gratitude to all the individuals who contributed their testimonies, insights, and analyses for this report.

1 DefendDefenders, “‘This Is Our Freedom. These Are Our Rights’: Human rights defenders in South Sudan since July 2016,” 26 April 2018, <https://defenddefenders.org/this-is-our-freedom-these-are-our-rights-human-rights-defenders-in-south-sudan-since-july-2016/>, Accessed 23 April 2020.

2 For instance, in December 2016, DefendDefenders called for a special session of the UN Human Rights Council to ensure accountability for the crimes committed in the country (see “UNHRC Special Session on South Sudan: now is the time to act,” 14 December 2016, <https://defenddefenders.org/unhrc-special-session-south-sudan-now-time-act/>). At regular Council sessions, DefendDefenders advocated for meaningful resolutions (for instance, “No lasting peace without justice, UN rights council tells South Sudan,” 22 March 2019 <https://defenddefenders.org/no-lasting-peace-without-justice-un-rights-council-tells-south-sudan/>). At the African level, we pushed in particular for the establishment of the Hybrid Court for South Sudan: South Sudan: “A Way forward for the Hybrid Court,” 2 November 2016, <https://defenddefenders.org/south-sudan-way-forward-hybrid-court/>, Accessed 23 April 2020.



## Executive Summary

South Sudan remains embroiled in the one of the most complex and multi-faceted conflicts in the East and Horn of Africa sub-region, despite a tenuous ceasefire, a peace deal among major former warring parties, and a newly formed Transitional Government of National Unity (National Unity Government, or simply unity government).

A reduction in military hostilities, with the signing of the Revitalised Peace Agreement for Resolution of the Conflict in the Republic of South Sudan (R-ARCSS, or Revitalised Peace Agreement) in September 2018 has not translated into an opening of the democratic and civic space. Rather, sources consulted for this report unanimously reported that the operating space for CSOs and HRDs had shrunk since 2016, especially in the lead-up to the formation of the unity government. A pervasive culture of intimidation, abuse of power, and impunity have resulted in a restricted and divided civil society environment currently lacking the capacity to keep up with these negative trends. Many respondents pointed to the general insecurity and the National Security Service (NSS) as the main sources of restrictions to their ability to effectively carry out their activities and protect the rights to freedom of association, peaceful assembly, opinion and expression, and participation in public affairs.

Press freedom has been significantly restricted in South Sudan, and journalists throughout the country face daily threats from both state and non-state actors, in a media landscape where censorship, in many different forms, is a pervasive feature. These threats have led to increased fear and self-censorship, especially surrounding sensitive stories in the public interest.

Women HRDs (WHRDs) in South Sudan face intersectional threats and challenges related to their work, including sexual harassment, violence, stigmatisation and harassment, including online harassment, and a lack of representation in both government and CSO leadership roles.

A lack of access to justice is one of the dimensions of shrinking civic space in South Sudan, with the formal justice system plagued by patterns of arbitrary arrest, prolonged detention without due process, and poor prison conditions, all used to target HRDs. A reform of traditional justice mechanisms was frequently cited as a cost-effective means of embedding human rights principles into existing structures with a high degree of social capital in rural communities.

The need to prioritise accountability and operationalise transitional justice mechanisms, including the Hybrid Court for South Sudan, remains paramount. Issues surrounding accountability for human rights violations are central to civil society's involvement in the peace process, fostering space for inclusive dialogue and ensuring that perpetrators of grave violations and abuses are held to account. However, HRDs documenting atrocities have become targets of repression, describing a heightened sense of fear and apprehension in carrying out their work, as well as pessimism regarding the operationalisation of the Hybrid Court.

Finally, regarding HRDs, this report presents the complex challenges they face and a needs assessment and makes concrete recommendations to address them, based on feedback from respondents and other stakeholders.

This report is the culmination of monitoring efforts, reflections on South Sudan-related advocacy, desk research, and field interviews conducted with 32 respondents in February 2020 in Juba, Wau, and the surrounding areas. Respondents included HRDs, CSOs, CBOs, and diplomatic missions.

## Background

South Sudan remains embroiled in the one of the most complex and multi-faceted conflicts in the East and Horn of Africa sub-region. After decades of ethnic and political subjugation, armed rebellions, and systematic human rights abuses, in 2011 the people of southern Sudan voted overwhelmingly to secede from the Khartoum-based government and form an independent nation. This plebiscite was largely supported by the international community, notably the United Kingdom, Norway, and the United States of America (known together as the “Troika”), largely in response to the large-scale slaughter and civilian displacement brought on by the Second Sudanese Civil War (1983-2005). The Republic of South Sudan officially became independent on 9 July 2011, comprising the largely Christian southern regions of the formerly united Sudan, with its capital in Juba. After decades of bloodshed, the split was largely peaceful, and many exiled South Sudanese, including HRDs, returned to the country to work towards a new future. A fledgling civil society emerged in this period, with funding pouring in from abroad to stabilise and rebuild the world’s youngest, oil-rich nation. This long sought-after peace was, unfortunately, short lived.

The Sudan People’s Liberation Army (SPLA), the dominant military force during the liberation struggle, helmed the new government during its initial inception, with President General Salva Kiir as its first leader. This group initially formed as a patchwork of smaller ethnic militias that united against a common northern enemy during the civil war, bringing together previously antagonistic tribal groups and resistance movements from across the country. The initial power-sharing agreement saw President Kiir, an ethnic Dinka, supported by a host of Vice-Presidents representing different ethnic groups, including his main rival Dr. Riek Machar, an ethnic Nuer. Amid a larger power struggle, President Kiir accused Dr. Machar of plotting a coup and sacked him (and others in his cabinet) in December 2013, igniting a civil war that took on an increasingly ethno-political dimension. Grave violations of international humanitarian law and violations and abuses of international human rights law, including

deliberate attacks on civilians, starvation, the recruitment and use of child soldiers, mass displacement, and the use of sexual violence as a weapon of war with a “recognisable pattern of terror and subjugation,”<sup>3</sup> were hallmarks of fighting, fed by a proliferation of arms throughout the country.<sup>4</sup>

A tenuous peace was established in 2015, but on 8 July 2016, an ill-fated cabinet meeting at the presidential compound sparked a return to war as fighting spread across the capital in what became known as the “Juba Crisis.” In the weeks that followed, SPLA and rebel soldiers were accused of looting, rape, and deliberate attacks on civilians along ethnic lines that left thousands dead.<sup>5</sup> The torture and rape of foreign nationals, mostly aid workers, by soldiers at the Terrain Hotel drew widespread attention to South Sudan’s conflict and shone an international spotlight on the escalating violence.<sup>6</sup> Amid increasing international pressure and a deeply unstable economy, the Revitalised Peace Agreement was signed on 12 September 2018, bringing most warring parties back into the fold for renewed negotiations.

Despite the signing of the R-ARCSS, fighting has continued in parts of the country, particularly in the Lakes and Yei River States, and significant humanitarian and human rights issues remain unaddressed. According to the World Food Programme, more than 5.5 million South Sudanese could go hungry in 2020.<sup>7</sup> Millions remain internally displaced, and the millions of

3 United Nations Human Rights Council, “Report of the Commission on Human Rights in South Sudan” (advance edited version), 31 January 2020, UN Doc. A/HRC/43/56.

4 Turse, N., “Next Time They’ll Come to Count the Dead: War and Survival in South Sudan,” May 2016, Haymarket Books; 1 edition.

5 United Nations, “Killings, rapes in South Sudan continued ‘unabated’ after July 2016 violence, UN reports,” 16 January 2017, <https://www.un.org/africarenewal/news/killings-rapes-south-sudan-continued-unabated-after-july-2016-violence-un-reports>, Accessed 1 April 2020.

6 Foreign Policy, “The U.S. Helped Birth South Sudan. Now Americans Are Being Targeted by Its Troops,” 16 August 2016, <https://foreignpolicy.com/2016/08/16/the-u-s-helped-birth-south-sudan-now-americans-are-being-beaten-and-targeted-by-its-troops/>, Accessed 8 February 2020.

7 Devex, “South Sudan government strategizes to stave off potential famine,” 3 January 2020, <https://www.devex.com/news/south-sudan-government-strategizes-to-stave-off-potential-famine-96258>, Accessed 1 April 2020.



South Sudanese refugees living in neighbouring countries have not begun returning to the country, despite encouragement from host governments.<sup>8</sup> Former warring parties largely remain operational on the ground, as the process of cantonment lags behind the deadlines set out in the R-ARCSS, putting into question whether the ceasefire will be permanent.

On 20 February 2020, President Kiir and Dr. Machar agreed to form a National Unity Government, with the latter reinstated as First Vice-President, and a return to 10 administrative states based on independence-era boundaries.<sup>9</sup> However, disagreements remain with the Machar-led opposition Sudan People's Liberation Movement-in-Opposition (SPLM-IO) over three new administrative areas, in particular oil-rich Ruweng. On the same day, ahead of the 43<sup>rd</sup> session of the HRC, the Commission on Human Rights (CoHR) in South Sudan released its fourth report, detailing ongoing grave violations of international law, widescale corruption and its impact on the enjoyment of economic, social and cultural rights, and political competition fuelling human rights abuses and ethnic conflict.

The proposed creation of the aforementioned new administrative areas, completion of the process of disarmament, disassembly and cantonment of forces and fulfilment of other key provisions of Chapter II of the R-ARCSS, including ultimately the formation and joint training of unified forces, and protection for senior opposition leaders in Juba, remain significant areas of contention. Negotiations over similar issues led to the breakdown of the first Peace Agreement in 2016 by neglecting to adequately coalesce many fractured interests and competing stakeholders.

The UN Mission in South Sudan (UNMISS), UN's peace operation in the country, has remained operational since being established by the UN Security Council (UNSC) in July 2011, with a Chapter VII mandate to protect civilians, and both monitor and investigate human rights abuses.<sup>10</sup> In March 2020, the UNSC voted to

renew the UNMISS mandate and troop strength for another year, while also demanding that the Government of South Sudan cease obstructing UNMISS efforts and international and national humanitarian actors in their delivery of aid to civilians, and facilitate free movement for the Ceasefire and Transitional Security Arrangements Monitoring and Evaluation Commission.<sup>11</sup> Currently, UNMISS remains one of the few permanent groups documenting human rights violations in the country. However, it does not have a mandate to collect and preserve evidence, or to prosecute perpetrators and hold them accountable. Despite repeated pledges by South Sudan's Council of Ministers to approve the establishment of the Hybrid Court for South Sudan, as per Chapter V of the R-ARCSS, the Government is yet to sign a Memorandum of Understanding (MoU) with the African Union (AU) and to enact legislation to operationalise the Hybrid Court. The MoU can be signed immediately, together with the effective operationalisation of other transitional justice institutions.

The R-ARCSS remains a promising basis to improve human rights and build sustainable peace in the country as it addresses key issues such as governance reform, ceasefire and security arrangements, humanitarian assistance, resource management, transitional justice, and accountability in a comprehensive manner. However, from 2018 onward, as popular uprisings swept across Africa and challenged established political orders in Algeria and Sudan, leaders in South Sudan increasingly cracked down on grassroots efforts like the youth-led Red Card Movement to silence any criticism of the peace agreement implementation.<sup>12</sup> Moreover, serious human rights concerns remain unaddressed, notably an overall shrinking civic space characterised by significant curtailment of the rights to freedom of peaceful assembly, association, and expression and unaddressed issues surrounding accountability, peacebuilding and rehabilitation and healing, which continue to adversely impact the environment for HRDs and civil society in the country.

8 The East African, "Why South Sudanese refugees won't return home yet," 4 March 2020, <https://www.theeastafrican.co.ke/news/ea/Why-South-Sudanese-refugees-wont-return-home-yet/4552908-5478058-8115v3z/index.html>, Accessed 1 April 2020.

9 In 2017, President Kiir had unilaterally decided to create 32 regional states in a move that was largely regarded as an attempt at gerrymandering the country in favour of his government.

10 UNMISS, "Mandate," <https://unmiss.unmissions.org/mandate>, Accessed 9 February 2019.

11 United Nations, "Security Council Renews Mandate of United Nations Mission in South Sudan, Unanimously Adopting Resolution 2514 (2020)," 12 March 2020, <https://www.un.org/press/en/2020/sc14141.doc.htm>, Accessed 1 April 2020.

12 Amnesty International, "South Sudan: Authorities crackdown on critics in cross-border campaign of intimidation," 18 July 2019, <https://www.amnesty.org/en/latest/news/2019/07/south-sudan-authorities-crackdown-on-critics-in-cross-border-campaign-of-intimidation/>, Accessed 3 April 2020.



# A Human Rights Defenders in a Restricted Environment

## A shrinking civic space

A reduction in military clashes between government and SPLM-IO and rebel forces since September 2018 has not translated into an opening of the democratic and civic space in South Sudan,<sup>13</sup> and the country still ranks as 'Closed' in the CIVICUS Monitor, which tracks worldwide civic space at the national level.<sup>14</sup> Sources consulted for this research unanimously reported that the operating space for CSOs and HRDs had shrunk since 2016, especially in the lead-up to the formation of the unity government.

A pervasive culture of intimidation, abuse of power, and impunity have resulted in a restricted and divided civil society environment currently lacking the capacity to keep up with these trends. Impunity for violations has fuelled not only grievances, but inter-communal violence at the local level and the repetition of violations and abuses. This is especially worrying at this precarious juncture, when HRDs should be vocal in expanding civil society space and contributing to building resilience.

Civil society in South Sudan plays a critical role in human rights monitoring and reporting, peacebuilding, advocacy for accountability, and transitional justice in all its dimensions (truth-telling, reparations, the full rehabilitation of victims and survivors, building guarantees of non-recurrence, and ultimately reconciliation) and providing open forums where citizens can air grievances and forge a collective path forward. This is especially important given the ethnic dimension of South Sudan's conflict and political economy.

HRDs interviewed for this research noted that they were working under increasing pressure from security forces to refrain from any activities that may be construed as pushing for accountability for violations (and identification of perpetrators), human rights, or criticism of

the implementation of R-ARCSS provisions. This has significantly curtailed civil society's ability to be active in the security and peacebuilding process, including in monitoring transitional security arrangements (including cantonment of armed forces) and capacity building. These restrictions have sometimes strained relations with larger stakeholders in South Sudan, as CSOs need to implement donor-funded projects without compromising their own security.

Most respondents pointed to the NSS as the main, albeit not the only, source of restrictions to their ability to effectively promote and protect human rights, including the rights to freedom of association, peaceful assembly, expression, and participation in public affairs. Though mainly affecting CSOs and HRDs, this extends to virtually all independent voices, government critics, and political opponents, and continues with almost complete impunity for instances and patterns of surveillance, threats, harassment, attacks, arbitrary detention, torture, ill-treatment, and enforced disappearances. The NSS Act grants the agency broad powers of arrest, detention, search, seizure, and surveillance without adequate human rights safeguards. The Act includes provisions providing NSS immunity for human rights violations.<sup>15</sup>

HRDs interviewed for this report expressed worry that their phones were being monitored and their movements tracked, contributing to a general malaise and sense of fear and self-censorship among activists.

The NSS' de facto prior authorisation regime regarding civil society events, has effectively stifled the ability of HRDs to conduct workshops, trainings, documentation efforts, and peacebuilding endeavours.<sup>16</sup> In practice, CSOs conducting any activity, from private meetings

13 Human Rights Watch, "World Report 2020: South Sudan," February 2020, <https://www.hrw.org/world-report/2020/country-chapters/south-sudan>, Accessed 31 March 2020.

14 CIVICUS Monitor, "South Sudan," <https://monitor.civicus.org/country/south-sudan/>, Accessed 2 April 2020.

15 Human Rights Watch, "South Sudan: Reform Abusive Security Agency; Restrict Powers, Free Detainees, Hold Violators to Account," 19 February 2020, <https://www.hrw.org/news/2020/02/19/south-sudan-reform-abusive-security-agency>, Accessed 9 April 2020.

16 Amnesty International, "South Sudan: Amnesty International Urges South Sudan to Rein in the National Security Service and Respect Rights to Freedom of Expression and Peaceful Assembly," 16 September 2019, <https://www.amnesty.org/en/documents/afr65/1050/2019/en/>, Accessed 3 April 2020.



to public demonstrations, must first seek the approval of security forces, who may interfere with the event's agenda, and often demand that an NSS representative attend. These undue interferences in the exercise of the rights to freedom of peaceful assembly and association have created an environment in which HRDs cannot hold meetings freely, especially as the NSS often demands to see participant lists in advance, including staff in the field. This compromised their security and sends a chilling message to independent and critical voices. Several interviewees reported having to pay hefty bribes to security officials in order to get clearance for their events. One noted that "most CSOs deal with this. We are forced to pay, and we don't have a budget for that."<sup>17</sup> This also severely curtails discussions and networking at events monitored by the NSS, feeding suspicion and self-censorship and stifling the space for critical analysis.

"Civil society is fractured. People go quiet and don't want to stick their head out; those that do lose their head. Do we continue engaging in the reform agenda, or go silent? How do we continue operating in the remaining space?"<sup>18</sup>

Intimidation, harassment, arrests, arbitrary detentions, enforced disappearances, and even extra-judicial killings were cited as other tactics used to silence HRDs. This climate has affected even those working on smaller, less "political" community projects focused on livelihoods and food security. General insecurity, especially in the Lakes and Yei River States, continues to contribute to a lack of visibility for human rights abuses committed in rural areas, where sexual and gender-based violence (SGBV) continues to be perpetrated with impunity and survivors' lack of access to effective remedies.

It must therefore be highlighted that an overall reduction in armed conflict has not led to an opening of civic space at the national level – to the contrary. This increases the possibility of a return to violence, especially at the local level. Inter-communal grievances and tensions have not been addressed by the formation of the National Unity Government, and the R-ARCSS has done little to alleviate these concerns.

17 DefendDefenders interview, South Sudan, February 2020.  
18 Ibid.

The last report of the CoHR highlights that localised violence and inter-communal conflicts are fuelled by the country's political economy, including national-scale struggles for power and control over resources between high-level officials, and widespread circulation of arms.<sup>19</sup> Thus far, civil society in South Sudan has failed to present a unified front in response to these grave threats and violations. Government and other senior officials in South Sudan have capitalised on this lack of cohesion and increasingly portrayed human rights as a "Western import." This has fuelled insecurity and threatened to alienate CSOs from the communities and people they serve. One HRD in particular highlighted that "because civil society were divided, they were weak and could not present a unified front."<sup>20</sup> Organisations were shuttered in response, or limited their activities, which indicates a wider culture of fear and self-censorship, fed by misinformation. This has further fuelled ethnic polarisation and decreased civic engagement and civil society integration efforts. This was especially pronounced during the post-2016 violence. One HRD noted that "trust was very low, and everyone was suspicious of motivations, judging other groups not by their projects, but who they were and what ethnic group they belonged to."<sup>21</sup>

"Whoever criticizes an official can be arrested at any time, and whether by the NSS or military intelligence officers. When it comes to freedom of expression, a lot still needs to be done."<sup>22</sup>

### Freedom of opinion and expression and journalists under threat

Press freedom has been significantly restricted in South Sudan. The closure of media outlets, arrests and arbitrary detentions of media professionals, and journalists leaving the profession altogether have been reported.<sup>23</sup> Six journalists have been killed in South Sudan

19 UN Human Rights Council, "Report of the Commission on Human Rights in South Sudan," op. cit.  
20 DefendDefenders interview, South Sudan, February 2020.  
21 Ibid.  
22 Ibid.  
23 Ethical Journalism Network, "Impunity and intimidation: The muzzling of independent journalism in South Sudan," June 2018, <https://ethicaljournalismnetwork.org/resources/publications/saving-the-news/south-sudan>, Accessed 1 April 2020.



since fighting broke out in 2013, and the country has continuously ranked among the world's worst violators of press freedom.<sup>24</sup> Journalists throughout the country face daily threats from both state and non-state actors, and censorship in different forms remains a pervasive feature of this media landscape.<sup>25</sup> Topics in the public interest, such as implementation of the R-ARCSS, transitional security arrangements, the number and boundaries of regional states, accountability, corruption, and conflict-related sexual violence (CRSV) and SGBV were cited as topics which journalists could not freely cover without fearing repercussions, including risks for their physical integrity. As one journalist recounted: "We will do the stories, but at the end of the day you can lose your life for one story. They tell us that media's job is to promote peace, and nothing else."<sup>26</sup>

"We South Sudanese need to fight for freedom of the press first. This is where human rights can be implemented. If citizens are free to express their feelings, the government and other bodies will hear. But now, we don't have those opportunities; if you speak, you are under threat."<sup>27</sup>

Journalists and media professionals interviewed for this report also pointed to the NSS as the main source of violations. They cited deliberate stifling of independent media through a system of intimidation, surveillance, threats, and overt censorship of content deemed subversive. Journalists, and more often editors, are frequently threatened by security forces, arbitrarily detained, and harassed, including through trumped-up charges. This has led many to censor their own work or refrain from covering sensitive topics altogether. Journalists and press freedom advocates consulted for this research all reported that NSS agents retain a permanent presence at major printing presses

24 Committee to Protect Journalists, "Getting Away with Murder; 2019 Global Impunity Index," 29 October 2019, <https://cpj.org/reports/2019/10/getting-away-with-murder-killed-justice.php>, Accessed 1 April 2020. In Reporters Without Borders' (RSF) last World Press Freedom Index (2019), South Sudan was ranked 139<sup>th</sup> out of 180 countries. RSF noted that "harassment, arbitrary detention, torture or execution-style murder is the price that journalists pay for not censoring themselves." See <https://rsf.org/en/south-sudan>, Accessed 5 April 2020.

25 Al Jazeera, "Being a journalist in South Sudan," 18 December 2018, <https://www.aljazeera.com/news/2018/12/journalist-south-sudan-181214094915498.html>, Accessed 1 April 2020.

26 DefendDefenders interview, South Sudan, February 2020.

27 Ibid.

in Juba, and routinely pressure editors to remove articles they deem controversial ahead of publication, though this claim could not be independently verified. In at least one instance, an editor reported that one of their stories was not only removed, but replaced entirely with a pre-written script. They noted that "newspapers are not talking about this, and the editors are keeping quiet."<sup>28</sup>

"Things have totally changed. The media regulator is contributing to the fall of media freedom and freedom of expression in South Sudan, rather than working to improve the situation."<sup>29</sup>

The South Sudan Media Authority was also cited by most respondents as being directly involved, or at least acquiescent, in the stifling of independent voices in South Sudan. This authority, established in 2016, is meant to act as an independent body to oversee broadcast content and deal with complaints, as well as to protect the right of access to public information. However, in practice, it has increasingly been regarded as an official arm of the government's efforts to silence independent coverage, and it has increasingly used its authority to suppress content deemed subversive. For instance, in March 2019, the Media Authority briefly suspended the UNMISS-operated radio station, Radio Miraya, for failing to comply with media laws. Soon after, one of the radio station's reporters was arrested.<sup>30</sup> In January 2019, the Media Authority ordered privately-owned newspapers to refrain from covering protests in neighbouring Sudan so as not to upset the delicate political balance in South Sudan.<sup>31</sup> As the Media Authority has the power to issue broadcast licenses and credentials for journalists, it can shut down communication channels with little chance of remedy. In regards to the NSS and the Media Authority, one journalist noted that "these two giants together are making our problems worse."<sup>32</sup>

28 Ibid.

29 Ibid.

30 CEPO, "A journalist working for Radio Miraya was arrested in Juba," 29 May 2018, <http://cepo-southsudan.org/incident-report/journalist-working-radio-miraya-was-arrested-juba-2952018>, Accessed 3 April 2020.

31 CPJ, "South Sudanese media regulator bars newspaper from covering Sudan crisis," 18 January 2019, <https://cpj.org/2019/01/south-sudanese-media-regulator-bars-newspaper-from.php>, Accessed 3 April 2020.

32 DefendDefenders interview, South Sudan, February 2020.





“They have the power to silence us now, because they are the ones that license us. I advocated to not register altogether. Once we register, they have power over us.”<sup>33</sup>

Several major news outlets and blogs, such as Radio Tamazuj, remain blocked in the country. Citizens cannot access them without a Virtual Private Network (VPN), which can be challenging to use given South Sudan’s strained Internet network.<sup>34</sup>

International outlets have also faced obstacles, with licenses and press credentials revoked in response to sensitive stories.<sup>35</sup> One foreign correspondent, Christopher Allen, was killed in a skirmish in August 2017. Allen’s body was stripped naked and photos were posted on social media. No one has been held accountable for his death.<sup>36</sup> This has had a chilling effect for journalists and limited information, for most citizens, to government-affiliated sources, critically understaffed local radio stations, and social media channels.

Fear of reprisals also makes many sources unwilling to speak to journalists on the record, especially those who have no guarantee of safety if they blow the whistle on human rights abuses. One HRD working with a grassroots peacebuilding programme in Wau State highlighted that “we cannot go the media as we used to, as that will endanger the whole organisation.”<sup>37</sup> Restrictions on their movement also limited journalists’ access to camps for internally displaced persons (IDPs) and protection of civilians (POC) sites, where they may be able to ascertain conditions and act as a liaison between displaced communities and national-level advocacy efforts. This has contributed to a widening information gap between journalists and CSOs, though their cooperation is as imperative as it is mutually beneficial in the current environment.

33 Ibid.

34 Committee to Protect Journalists, “South Sudan authorities block access to at least four media websites,” 20 July 2017, <https://cpj.org/2017/07/south-sudan-authorities-blockaccess-to-at-least-f.php>, Accessed 31 March 2020.

35 RSF, “South Sudan expels another journalist, second in two weeks,” 7 November 2019, <https://rsf.org/en/news/south-sudan-expels-another-journalist-second-two-weeks>, Accessed 2 April 2020.

36 The Guardian, “Why death of war reporter Christopher Allen must be made visible,” 29 September 2019, <https://www.theguardian.com/media/2019/sep/29/why-death-of-war-reporter-christopher-allen-must-be-made-visible>, Accessed 1 April 2020.

37 DefendDefenders interview, South Sudan, February 2020.

“I’m not sure journalists know how to survive in this environment. But when I was arrested, it was the civil society organisations that helped me.”<sup>38</sup>

A lack of access to quality equipment and other professional tools remains a major barrier for journalists operating in the country. Moreover, the destruction of content and equipment by security forces is common, with one journalist recalling how “we used to delete all the pictures from our phones at the end of the day, because if they find you with a picture of a politician, they can use it against you.”<sup>39</sup> These challenges are exacerbated by poor telecommunications infrastructure throughout the country. One HRD stressed the difficulty of keeping track of journalists throughout the day: “I tell colleagues that if I’m going to the field and if I’m not back in five hours, something has happened.”<sup>40</sup> Furthermore, journalists and activists reported being targeted for online posts on their personal social media accounts. As one journalist noted: “now they know your name, your office, and your house. People post all this information on social media, so they don’t need to track you anymore.”<sup>41</sup>

Journalists interviewed for this report said that they feared advocating on behalf of other media professionals who were arrested, disappeared, or even killed, since it would make them a target in turn. CSOs sometimes take on this advocacy role,<sup>42</sup> but there remains a critically low level of interaction between media professionals and other civil society actors. One journalist highlighted that “if I hear that my colleague was arrested, as a journalist, I know I am next. So, I go silent.”<sup>43</sup>

“If people are not informed, there will be no security. If I am not well informed, how can I ensure the security of others? The media is the only thing that can change the country for the better.”<sup>44</sup>

38 Ibid.

39 Ibid.

40 Ibid.

41 Ibid.

42 VOA, “Rights Groups Defend AP Reporter Forced to Leave South Sudan,” 13 November 2019, <https://www.voanews.com/africa/rights-groups-defend-ap-reporter-forced-leave-south-sudan>, Accessed 1 April 2019.

43 DefendDefenders interview, South Sudan, February 2020.

44 Ibid.



## Women human rights defenders

As in other countries, especially in conflict and post-conflict situations, WHRDs in South Sudan face intersectional threats and challenges in relation to their human rights activities.<sup>45</sup> WHRDs consulted for this research reported facing sexual harassment in the course of their work, including online harassment and bullying, difficulties in accessing government officials for meetings, and patterns of gender-specific threats and intimidation. Others noted how women often had their families threatened, as a way of specifically targeting female activists. Thus far, the peace agreement has not contributed to alleviating these barriers,<sup>46</sup> despite a growing number of women-led peace initiatives and peaceful public demonstrations.<sup>47</sup>

“Most of the cultures of South Sudan do not traditionally grant rights to women. These women often do not know that they have rights equal to men.”<sup>48</sup>

Despite Section 1.1.4 of the R-ARCSS explicitly providing for an increased representation of women (35 percent) in the executive and transitional justice institutions and allocated seats in post-agreement institutions and mechanisms, and despite repeated calls from civil society actors, the quota remains unmet.<sup>49</sup> CSOs also overwhelmingly lack women in leadership positions, despite them being prominent and visible members of most organisations. One WHRD noted how “there is a traditional belief in South Sudan that women

should not raise their issues in public.”<sup>50</sup>

Patriarchal norms and gender stereotypes permeate the public and private spheres, and WHRDs conducting advocacy work around child, early and forced marriage, SGBV, land ownership, and women participation in politics face pushbacks. CRSV, often committed with complete impunity, has been a hallmark of the conflict in South Sudan since 2013. Even in POCs and IDP camps, and around a number of cantonment sites, women and girls continue to be at risk of abduction, sexual harassment, violence, and rape. Ongoing insecurity is a major factor. One WHRD highlighted that women bore the brunt of the conflict: “women and children are always the first victims, and with no reporting mechanisms to adequately document what they went through.”<sup>51</sup>

“If there is a problem, and you want to raise this problem, as a woman they will threaten you. At the same time, you have a right to be asking questions.”<sup>52</sup>

Women documenting human rights abuses, especially CRSV and SGBV, face significant challenges and threats in relation to their work.<sup>53</sup> Given societal attitudes and the prevalence of gender stereotypes in South Sudan, WHRDs play a critical role in documenting these violations, as they may have better access to survivors. WHRDs consulted for this report lamented that while some police stations did have an SGBV-specific desk for reporting, these were often staffed by men. This goes against best investigative, gender-sensitive practice and makes survivors reticent to recount abuse and seek justice, all the more since the risk of being re-traumatized is high. One WHRD highlighted how: “Women don’t report because of stigma, or maybe they’ve just lost hope in the system.”<sup>54</sup> Lawyers can also be reluctant to take on these sensitive cases. An overall lack of access to justice contributed to ongoing violations and an overall lack of accountability at both the local and national levels.

45 See the report DefendDefenders published in late 2018, “To Them, We’re Not Even Human’: Marginalised Human Rights Defenders in Uganda, Kenya, and Tanzania,” 3 December 2018, <https://defenddefenders.org/to-them-were-not-even-human-marginalised-human-rights-defenders-in-uganda-kenya-and-tanzania/>, Accessed 23 April 2020. Part 2 addresses the situation of women human rights defenders. In South Sudan, some of the challenges documented in this report are even more significant, in particular because of the security situation and ongoing intercommunal tensions, clashes, and fighting.

46 United Nations, “Sexual Violence Persists in South Sudan Despite Recent Political Strides, Top United Nations Official Says while Briefing Security Council,” 8 March 2019, <https://www.un.org/press/en/2019/sc13732.doc.htm>, Accessed 3 April 2020.

47 Radio Tamazuj, “South Sudanese woman march silently to demand peace,” 10 December 2017, <https://radiotamazuj.org/en/news/article/south-sudanese-woman-match-silently-to-demand-peace>, Accessed 4 April 2020.

48 DefendDefenders interview, South Sudan, February 2020.

49 Oxfam, “Born to Lead: Recommendations on increasing women’s participation in South Sudan’s peace process,” January 2020, <https://reliefweb.int/sites/reliefweb.int/files/resources/bp-south-sudan-women-peace-processes-300120-en.pdf>, Accessed 3 April 2020.

50 DefendDefenders interview, South Sudan, February 2020.

51 Ibid.

52 Ibid.

53 Contreras-Urbina, M., Blackwell, A., Murphy, M. et al., “Researching violence against women and girls in South Sudan: ethical and safety considerations and strategies,” Conflict and Health, 2020, <https://doi.org/10.1186/s13031-019-0239-4>, Accessed 3 April 2020.

54 DefendDefenders interview, South Sudan, February 2020.



“I don’t think a man can properly document sexual violence. Tradition dictates that a woman cannot talk to man she does not know. But a woman is able to speak to another woman through a natural connection and trust.”<sup>55</sup>

One recent positive development is the appointment of women to senior government positions, including Minister for Foreign Affairs Beatrice Kamisa Wani and Minister of Defence Angelina Teny. It is a welcome first step with symbolic value (especially with regard to the Ministry of Defence in a male-dominated sector), but it should be followed by other steps regarding the promotion of gender equality and women representation in leadership positions, in both the public and private spheres.

### Access to justice

The formal justice system is plagued by arbitrary arrests, instances of prolonged detention without due process, violations of the rights of the defence and equality of arms between the parties, and poor prison conditions.<sup>56</sup> Draconian application of laws without human rights and due process safeguards, including prolonged pre-trial detention, has been used to target HRDs. The judiciary has failed to exercise oversight, uphold due process, and ensure redress for violations of criminal procedure provisions. One respondent recalled how “people are released and told not to even ask why they were in jail.”<sup>57</sup>

South Sudanese lawyers remain the first line of defence against human rights violations and abuses. As an integral part of the justice system, lawyers should be able to visit their clients in jail, monitor prison conditions, and advocate for human rights in public settings.<sup>58</sup> However, this is not always the case in practice. Lawyers consulted for this report highlighted a lack of access to their clients, inconsistent court practices, and other violations of due process. When handling particularly sensitive cases, some lawyers were directly targeted as a

result of their work. Some have gone into exile<sup>59</sup> or have been forcibly disappeared and likely murdered, as in the case of prominent human rights lawyer Samuel Dong.<sup>60</sup>

Without access to adequate remedy within the formal justice system, or funds to hire a lawyer, many South Sudanese turn instead to traditional justice mechanisms and informal, out-of-court settlements. While customary courts should not handle criminal cases, they can help alleviate some stress on the formal justice system by handling cases related to land grabbing, cattle, livelihoods and natural resources, and family matters like divorce and inheritance. Several sources consulted for this report expressed confidence in the system of traditional justice but noted that local leaders who administered these courts need substantive human rights training and capacity building. They described this as a cost-effective means of spreading human rights knowledge and embedding it permanently in trusted mechanisms with a high degree of social capital in rural communities. One HRD noted that “we don’t need to reinvent the wheel. We need to monitor and inject human rights into these cultural courts and harness their power.”<sup>61</sup>

Several international and local CSOs have attempted to alleviate constraints on the justice system by training and empowering paralegal professionals from local communities, who are often well placed to follow up on cases and interact with informal justice mechanisms. This has been especially useful in remote parts of the country, where paralegals are better able to navigate justice in their own communities and are often the only legal professionals operating in their vicinity.<sup>62</sup> However, given the unstable economic situation, many paralegals have quit their profession or reduced their capacity without adequate funding from clients or CSOs.

59 DefendDefenders, “On the Legal Frontline: Lawyers and Paralegals as Human Rights Defenders in the East and Horn of Africa,” January 2020, <https://defenddefenders.org/on-the-legal-frontline-lawyers-and-paralegals-as-human-rights-defenders-in-the-east-and-horn-of-africa/>, Accessed 30 March 2020.

60 DefendDefenders, “It is time for accountability for the enforced disappearance of Samuel Dong and Aggrey Idri,” 3 May 2019, <https://defenddefenders.org/it-is-time-for-accountability-for-the-enforced-disappearance-of-samuel-dong-and-aggrey-idri/>, Accessed 2 April 2020.

61 DefendDefenders interview, South Sudan, February 2020.

62 DefendDefenders, “On the Legal Frontline: Lawyers and Paralegals as Human Rights Defenders in the East and Horn of Africa,” January 2020, <https://defenddefenders.org/on-the-legal-frontline-lawyers-and-paralegals-as-human-rights-defenders-in-the-east-and-horn-of-africa/>, Accessed 30 March 2020.

55 Ibid.

56 See Ibreck, R., “South Sudan’s Injustice System: Law and Activism on the Frontline,” 15 October 2019, Zed Books; 1 edition.

57 DefendDefenders interview, South Sudan, February 2020.

58 DefendDefenders, “Navigating Justice: Lawyers as Human Rights Defenders in Ethiopia and Somalia/Somaliland,” December 2019, <https://defenddefenders.org/navigating-justice-lawyers-as-human-rights-defenders-in-ethiopia-and-somalia-somaliland/>, Accessed 20 March 2020.





# Human Rights Defenders and the Accountability Agenda

## The Hybrid Court for South Sudan

Five years after the signing of the first peace agreement for South Sudan, and one and a half years after the signing of the R-ARCSS, none of the transitional justice mechanisms foreseen have been established. These include the Hybrid Court for South Sudan, the Commission on Truth, Reconciliation and Healing (CTRH) and the Compensation and Reparation Authority (CRA). Ongoing delays bring about questions as to the political will, on the part of the government, to provide victims and survivors with redress and deliver on its promises and commitments. In particular, commitments to operationalise the Hybrid Court have been reiterated on several occasions in front of the Human Rights Council, in Geneva.

The need to operationalise the Hybrid Court remains paramount, not only in order to fully implement the R-ARCSS and build lasting peace, but also as the space for HRDs to document abuses has shrunk and journalists who may otherwise fill that role have been deliberately silenced. The international community, including the AU and the Intergovernmental Authority on Development (IGAD), which has been instrumental in pushing the parties to sign the R-ARCSS and form a unity government, have thus far failed to apply adequate diplomatic pressure to ensure that the Hybrid Court – which as per the R-ARCSS is intended to be a South Sudanese and African mechanism – is swiftly operationalised.

Given recent political developments, the role of regional actors, including IGAD, and the international community is paramount in pushing for accountability. If the government fails to take steps to establish the Hybrid Court, the AU could unilaterally decide to establish it or an ad hoc tribunal.<sup>63</sup>

63 See civil society letters to the HRC, including DefendDefenders et al., “HRC40: DefendDefenders and partners call for continued UN investigations and reporting on South Sudan,” 12 February 2019, <https://defenddefenders.org/hrc40-defenddefenders-and-partners-call-for-continued-un-investigations-and-reporting-on-south-sudan/> and DefendDefenders et al., “Joint letter: Extend the mandate of the UN Commission on Human Rights in South Sudan,” 6 February 2020, <https://defenddefenders.org/joint-letter-extend-the-mandate-of-the-un-commission-on-human-rights-in-south-sudan/>, Accessed 9 April 2020.

HRDs interviewed for this report were generally pessimistic about prospects for the Hybrid Court, instead putting more faith in ad hoc community-based peacebuilding efforts, the CTRH, and the CRA, also to be established pursuant to the R-ARCSS. However, while undoubtedly instrumental in providing victims and survivors with reparations, bringing about truth, building resilience, and preparing the ground for reconciliation, none of these mechanisms have a mandate to prosecute human rights violators for crimes committed since the civil conflict began. Only a judicial mechanism, such as the Hybrid Court or another adequate justice and accountability mechanism, could prosecute perpetrators and ensure full justice for the victims and survivors.

While the efforts of CSOs and the UNMISS’ Human Rights Division are commendable, they do not have the capacity or mandate that a Hybrid Court will have to prosecute perpetrators and ensure accountability. In the meantime, the CoHR remains critical in collecting and preserving evidence to a standard that meets judicial requirements and paving the way for future prosecutions at the national, regional, and international levels.

Some members of the new unity government and high-profile politicians are potential targets for prosecution by the Hybrid Court and other justice mechanisms. Thus, they have a vested interest in seeing the Court permanently stalled. This is all the more true since the Statute of the Court provides for the inability for any indicted individual to run for elections. Those attempting to stall the formation of the Hybrid Court are doubtless aware that delays in this process may result in lack of accountability. For instance, in April 2019 it was revealed that South Sudanese officials had hired US-based lobbyists to the tune of USD 3.7 million to help reverse sanctions and stop the establishment of the Hybrid Court.<sup>64</sup> As one HRD noted: “it is clear that government hardliners are pushing to shut down the Hybrid Court.”<sup>65</sup>

64 Human Rights Watch, “South Sudan’s Cynical Bid to Block War Crimes Court,” 30 April 2019, <https://www.hrw.org/news/2019/04/30/south-sudans-cynical-bid-block-war-crimes-court>, Accessed 3 April 2020.

65 DefendDefenders interview, South Sudan, February 2020.



Moreover, as highlighted in a previous DefendDefenders report,<sup>66</sup> concerns remain over a lack of domestic capacity among human rights monitors and researchers to adequately collect evidence that meets the evidentiary requirements and standards of proof under an operationalised Hybrid Court or similar judicial mechanism. As time passes, the available evidence of crimes and abuses may disappear or be deliberately interfered with or destroyed.

“People tell me if they don’t get justice before they die, they will turn to revenge. Delaying justice for victims creates a lot of tensions.”<sup>67</sup>

### Human rights monitors at risk

Issues surrounding accountability for human rights violations are central to civil society’s involvement in the peace process, fostering space for inclusive dialogue and ensuring that perpetrators are held to account. South Sudanese HRDs have engaged in efforts to monitor and document human rights violations and abuses, both for truth-telling and with a view to prosecuting perpetrators under a future justice and accountability mechanism. Their work has thus far proven invaluable to international actors and the CoHR in their efforts to document past and ongoing violations. However, there remain concerns regarding a lack of professional capacity among human rights monitors and researchers in the country, digital security, safe storage of sensitive documents, and the ability to effectively collect and preserve evidence at a level that meets evidentiary requirements for prosecution.

“How can we document all the sexual violence that occurred since 2016? There is so much abuse, even of children and the elderly, but it’s so risky to document this information.”<sup>68</sup>

Over the last two years, HRDs and CSOs documenting the atrocities committed during the conflict have become targets for repression, as well as those who share information with them – including victims, survivors, and witnesses. Human rights monitors consulted for this report described a heightened sense of fear

and apprehension in carrying out their work, as well as pessimism regarding operationalisation of the Hybrid Court. Many have been victims of arbitrary arrest and harassment by both government and opposition forces, especially by those they see as the main culprits of violations and abuses in the rural areas, which saw the bulk of the fighting.

Even official monitoring mechanisms have been subject to undue interferences. In December 2018, a team from the independent Transitional Security Arrangements Monitoring and Verification Mechanism (CTSAMVM) was assaulted and detained by government security forces, in violation of both the R-ARCSS and the Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access signed in December 2017.<sup>69</sup>

“We are at risk all the time. My team is at risk day and night. This is because when you talk about justice, accountability, human rights, monitoring of conflict, sexual violence, abduction of women, you are a threat to those committing these acts.”<sup>70</sup>

Human rights monitors represent a clear risk for perpetrators of violations, who have attempted to silence and obstruct their efforts to evade accountability. One HRD consulted for this report recounted having to disguise documentation efforts in rural areas as peacebuilding workshops, as the NSS had sent a representative to observe the process. This has led them to collect evidence discreetly from sources who feared being targeted for reprisals. Another HRD noted how they immediately shared information collected with sources outside of the country via digital means, but often had difficulty doing so in a timely manner given South Sudan’s unreliable telecommunications networks, putting them at risk if security forces intercepted them with the information.<sup>71</sup>

Several human rights researchers consulted explained how sanctions made perpetrators

66 DefendDefenders, “This is our Freedom. These are Our Rights,” op. cit.

67 DefendDefenders interview, South Sudan, February 2020.

68 Ibid.

69 United Nations, “Security Council Press Statement on Assault of Ceasefire, Transitional Arrangements Monitoring, Verification Team in South Sudan,” 21 December 2018, <https://www.un.org/press/en/2018/sc13647.doc.htm>, Accessed 4 April 2020.

70 DefendDefenders interview, South Sudan, February 2020.

71 Ibid.

increasingly anxious, leading them to threaten or directly harm those seen as providing information to international CSOs, the CoHR, the Office of the UN High Commissioner for Human Rights (OHCHR), or the UNMISS' Human Rights Division. As an unintended consequence, it appears that the US and European Union (EU) financial sanctions on key individuals have fuelled a crackdown on those attempting to document human rights violations and preserve evidence.

“When the image of someone important is tarnished with sanctions, they become defiant and do even worse than they were doing before. They now have less to lose as their financial interests are suffocated.”<sup>72</sup>

This apparent sanction-related crackdown has made HRDs apprehensive about keeping sensitive information on their computers or at their organisations' premises. It has also made them increasingly worried about communicating with sources outside the country. While all human rights monitors consulted for this report agreed on the importance of their work, one interviewee doubted whether it was worth the risk to their personal safety, unless the Hybrid Court eventually used the information to prosecute perpetrators. A lack of proper tools and adequate working environment to conduct their work was also listed as a major barrier. This includes transportation limitations (no regular access to vehicles), difficulties travelling to rural areas without arousing suspicion, and lack of access to places where interviews can take place in a safe and confidential manner. One HRD highlighted how “there is no safe place to interview someone who has experienced human rights violations.”<sup>73</sup>

Delays in the collection of evidence may result in evidence been altered, destroyed, disappearing, or victims and survivors opting not to share their testimony out of fear for their own safety or psychological wellbeing. Several actors interviewed for this research noted how, as time passed, victims and survivors and their families, and witnesses, remembered fewer details, had died or moved away, making the collection of reliable testimonies and verification of information increasingly difficult.

“The most important thing now is to preserve of whatever evidence is available. Monitors require some degree of protection to continue recruiting and making this process attractive and safe. But how do you manage the backlash that affects the documenters?”<sup>74</sup>

While some monitors have established their own networks of sources and informants spread out across the country, it remains difficult to verify information with multiple independent sources. HRDs often face the dilemma of whether to respond quickly to a human rights violation without being able to verify the information to a high investigative standard or leave out information (which could potentially be deliberate misinformation meant to discredit civil society). Staff are often limited to volunteers who lack documentation tools, training, protocols and processes, and safety mechanisms for themselves. These challenges are all exacerbated by an overall lack of capacity to safely handle sensitive cases and assess and mitigate risks, especially if the cases involve high-ranking government officials or military officers.

Moreover, several HRDs highlighted the need for investigators to be better trained in handling trauma, not only for the communities they serve, but also for themselves (i.e., self-care). An overall failure on the part of civil society to adequately deal with trauma and mental health issues was cited as a major barrier for HRDs conducting investigations, as it significantly reduced capacity, efficiency, and resilience.

“We needed real trauma training before we can conduct any documentation. We build trust with communities over time, and they may need counselling sessions before they're ready to open up.”<sup>75</sup>

72 Ibid.  
73 Ibid.

74 Ibid.  
75 Ibid.



## Challenges and Needs

HRDs and other stakeholders consulted for this research highlighted a myriad of cross-cutting challenges that, if seriously addressed, could help equip civil society with the tools needed to defend itself against harassment, intimidation, and other risks. Addressing these and creating and maintaining a safe environment in which HRDs and civil society can operate free from hindrance and insecurity should be a matter of priority for the government (as duty-bearer), partners of South Sudan, and other stakeholders.

“How do you reconcile? This needs to be done in an environment where people can speak openly and freely. We do not currently have that kind of environment.”<sup>76</sup>

CSOs engaged in peacebuilding and civic education, including knowledge of the R-ARCSS, especially transitional justice arrangements under its Chapter V, find themselves particularly vulnerable. They are often caught between warring/former warring groups and localised tensions and grievances. Many HRDs consulted for this report highlighted a general lack of awareness of R-ARCSS provisions among people outside of the capital, especially when it came to citizen participation in reform and accountability processes. This results in the Revitalised Peace Agreement not being fully shared or publicised throughout the country. This in turn has led to an overall lack of ownership of the R-ARCSS on the part of the general population, including victims and survivors of grave violations.

“The more you want to wait and verify information, the longer it takes to respond. The right information doesn’t always come on time, but the person affected needs help right away.”<sup>77</sup>

As previously noted, the NSS’ de facto authorisation regime for gatherings and

76 Ibid.  
77 Ibid.

events was reported as a major barrier in conducting workshops, trainings on justice and accountability, and proper documentation of violations to a prosecutorial standard. Bureaucratic mazes, small- and wider-scale corruption, and intimidation are hallmarks of this system. One NGO executive director recounted how he was instructed to remove the words “justice,” “human rights,” and “democracy” from his organisation’s promotional material in order to renew his registration certificate. The government’s recent efforts at establishing a tribunal for NSS operatives has not translated into a serious opening of civic space or real accountability for abuses committed by state organs.<sup>78</sup>

HRDs returning from international trainings and human rights fora like the African Commission on Human and Peoples’ Rights (ACHPR) and the HRC reported being harassed by security forces at the airport upon return and detained for short periods. These reprisals extend the arms of government influence beyond the borders of the country and leads to an atmosphere of silence among national organisations, which HRDs in exile have increasingly sought to fill.

“We are monitored all the time. We cannot be ourselves; we feel like we can be gunned down at any time. We do not feel free.”<sup>79</sup>

These challenges extend to funders as well. HRDs indicated that donors were reticent to fund rights-based projects in the country as they could be construed as “political” projects and jeopardise broader diplomatic efforts. Basic logistics, human resources, and a lack of financial support continue to be major challenges, especially for CBOs based in rural areas without regular access to vehicles and poor telecommunication services. Concerns over digital security and fears of surveillance and infiltration were commonly cited as

78 VOA, “South Sudan Creates Tribunal to Try Security Operatives,” 5 December 2019, <https://www.voanews.com/africa/south-sudan-creates-tribunal-try-security-operatives>, Accessed 4 April 2020.

79 DefendDefenders interview, South Sudan, February 2020.



major concerns, seriously hindering broader networking efforts among HRDs.

General capacity building programmes for HRDs were frequently requested, including on physical and digital security, documenting, monitoring, and reporting, as well as training in managing trauma. One HRD noted that: “if you have these skills, you will know how to take care of yourself when following a case or trying to report on a human rights violation.” Specialised trainings in documentation, monitoring, and reporting were cited as needs for human rights monitors, especially in order for them to collect evidence at a prosecutorial standard.

Enhanced skills in physical security remains a major need for HRDs operating in South Sudan, with a focus on on-site security audits and funding for CCTV systems at offices and other locations where sensitive data is collected or stored. Significant investment in physical security infrastructure is key in allowing CSOs to grow sustainably in a safe environment.

Trainings in digital security were also frequently cited as a means to help protect HRDs in the course of their work, although this in practice may be limited to urban centres with more regular access to telecommunications networks. Digital security needs especially extend to journalists, bloggers and HRDs who are active on online forums and social media. One HRD questioned “how can you have your ideas and stay protected if you don’t have the digital security skills to hide your profile?”<sup>80</sup> Moreover, trainings in safe storage and transmission of sensitive information, especially videos and photos, would help alleviate the risks for monitors, as well as protocols for the management of sensitive information.

“Trauma healing is a process, it happens through conversations, dialogue, when they are able to sit and reflect. When their livelihoods have been restored and families have been reconnected.”<sup>81</sup>

Better cooperation between CSOs and media professionals would also enable these groups to quickly activate protection mechanisms and early warning systems if HRDs are under threat.

80 Ibid.

81 Ibid.

Several organisations have piloted human rights education broadcasts on local radio stations that have been effective in spreading civic education to local populations. Unfortunately, the projects were dropped because of lack of funding. Even basic human rights education, if disseminated effectively, could help enhance civic engagement and lay the foundations for a more enabling environment for HRDs.

An increased focus on bringing together different stakeholders involved in peacebuilding and reconciliation work, like community leaders, UNMISS, and international actors, could help address and alleviate inter-communal tensions. In doing so, international actors could also demonstrate an active role in the peacebuilding process beyond targeted sanctions, showing solidarity with the people of South Sudan and increasing pressure on the government.

“The International community needs to understand the context right now. The most important thing is to document everything, this process contributes to healing.”<sup>82</sup>

International CSOs and donors should consider investing in capacity building for HRDs involved in the justice system, including lawyers, paralegals, and officers of customary courts. An increase in support to pro bono legal aid services could help improve South Sudan’s critically low level of access to justice. This could be accomplished through the training of a robust network of paralegals, capable of logging testimonies on a safe server. Moreover, as previously noted, these paralegals could also help activate the informal justice system by providing human rights trainings to local leaders who administer these critically important systems of remedy.

The need for greater networking among CSOs operating in South Sudan was highlighted as a key area where improvement could result in increased protection efforts and joint advocacy at the international and regional levels. This would also allow civil society to more easily issue joint statements and strengthen their research endeavours. In this regard, one HRD noted that: “if you speak by yourself, you become an easy target.” Existing networks should be strengthened in order to equip HRDs with the skills they will need in the event of a return to fighting on a small or larger scale, or

82 Ibid.





if a peaceful transition is sustained. Moreover, South Sudanese CSOs need to form stronger bonds based on trust with local communities. In several cases, human rights awareness programmes were successfully paired with food security programmes in order to capitalise on existing distribution networks. Networks are crucial in sharing best practices, and avoiding accidental replication of existing projects.

“We come talking about civic education or human rights, but people want something tangible. They don’t know that information can be powerful.”<sup>83</sup>

The need for a major increase in in-country psychosocial support mechanisms for HRDs and victims of human rights violations was frequently cited as a major area of concern, especially with regard to larger peacebuilding efforts. CSOs in South Sudan need to be able to properly identify trauma and offer or refer counselling. Training in counselling for SGBV was cited among WHRDs as an avenue for more effective engagement with survivors, especially those who have been stigmatised or marginalised from their communities as a result.

“When we look at the conflict that occurred here since 2016, many people were traumatised and sought support services. Providing advice alone may not be adequate to address a person’s trauma – they need one-on-one counselling to really address these issues.”<sup>84</sup>

Existing civil society networks in South Sudan are best poised to act as the bridge between mental health services and populations that need them most. Artist collectives like Ana Taban have attempted to fill this gap through unique approaches to collective art therapy, like street art, theatre, and poetry, to create inclusive spaces for dialogue.<sup>85</sup> While several other

trauma and healing programmes currently exist, one HRD interviewed for this report lamented their inability to access these services when they need them: “everyone is talking about psychosocial support, trauma, and healing. But whenever I try to refer a case, none of these services ever seem to be available.”<sup>86</sup> Donors should prioritise engagement with these efforts in order to effectively promote psychosocial support, healing, and rehabilitation.

83 Ibid.

84 Ibid.

85 The Guardian, “Tired of war: South Sudan street artists calling for peace - in pictures,” 21 September 2016, <https://www.theguardian.com/global-development-professionals-network/gallery/2016/sep/21/tired-war-south-sudan-street-artists-calling-peace>, Accessed 4 April 2020.

86 DefendDefenders interview, South Sudan, February 2020.



## Conclusion

It is important to acknowledge the differences between a military ceasefire, an overall fragile peace at the national level, and an enabling environment for HRDs and civil society, including transitional justice and accountability actors. The latter is an essential condition for peace to be lasting and sustainable. In many regards, HRDs and civil society should be taking on this critical role, but they are being deliberately prevented from doing so. As this report shows, independent human rights actors are being targeted and South Sudan's civic space is being deliberately restricted. The pattern is clear: the signing of the R-ARCSS has not brought about an opening of the space for HRDs and civil society.

As it stands, South Sudanese media platforms are not able to fully perform their role in reporting news, exposing facts, and making evidence of human rights violations and abuses available to the general public.

It remains to be seen whether this crackdown on independent voices will be addressed with the formation of a National Unity Government. Accountability will be key to create an environment in which citizens have confidence in the authorities. To do so, inclusive spaces for human rights, truth-telling, accountability, reparations, and ultimately reconciliation must be established, with safeguards in place to protect all those who speak out.

The CoHR remains the most viable mechanism to continue collecting, preserving, publicising, and sharing evidence with the international community and regional actors, including of CRSV and SGBV, as per its mandate. No other mechanism is currently able to do this. Only a fully operationalised Hybrid Court, with the backing of international and regional partners, or similar justice and accountability mechanism, will be able to effectively deliver redress for victims and survivors. Regardless of when the Hybrid Court is operationalised, truth-telling efforts and legal and institutional reforms are needed to help safeguard against the resumption of violence, especially at the community level, and deter all parties from

resorting to violence and human rights abuses to settle disputes. These reforms must extend to the judiciary, which must be transformed into an independent branch that is able to protect the rights of victims and survivors of violations, HRDs, journalists, lawyers, and other civil society actors.

In order for South Sudan's fragile peace to hold, civil society must play an active role not only in human rights monitoring and reporting, but also in peacebuilding, healing, and disseminating the R-ARCSS in order to foster national ownership of transitional justice processes. In order to achieve these goals:

- (1) the current ceasefire must hold for civil society organisations to gain their footing, and security must extend to the whole country;
- (2) civic space must be enlarged, and issues highlighted in this report must be addressed, including the passing of reforms effectively protecting the rights to freedom of expression, peaceful assembly, association, and participation in public affairs; and
- (3) perpetrators of grave violations must be held to account in fair trials, both to help victims and survivors secure redress and as a deterrent for future violations and abuses.

Violence and human rights violations and abuses must not be part of the new South Sudan.

If these tenets are met, HRDs and civil society, with the right training and resources, can be an active player in building a lasting peace, which must be cemented by effective justice and accountability and respect for human rights.

In the meantime, HRDs and CSOs operating in this space are targeted but not deterred. They continue to face challenges and restrictions to their legitimate work, with few avenues for remedy, but they are steadfast in their fight for justice and dignity.

International actors have a role to play in applying diplomatic pressure to help alleviate the strains of conflict and guarantee non-recurrence for grave human rights violations,



but grassroots efforts will be the backbone of any lasting peace. Every time a South Sudanese citizen speaks out against injustice or exercises their right to peaceful assembly, they become an HRD deserving to enjoy an enabling environment safe from hindrance or insecurity. A safe, sustainable space for the promotion and protection of human rights will be key to create a new South Sudan built on accountability, justice, truth, reconciliation, and healing.



## Recommendations

### To the Transitional Government of National Unity:

- Immediately cease the harassment of human rights defenders, journalists, members of civil society organisations and other independent actors, and release prisoners of conscience, including activists being detained for engaging in legitimate, peaceful activities relating to human rights, civic education, monitoring of the implementation of the Revitalised Peace Agreement for Resolution of Conflict in South Sudan, and other truth, healing, reconciliation and transitional justice issues;
- Pay particular attention to the situation, challenges, and risks facing women human rights defenders, including multiple and intersecting forms of violence and discrimination;
- Implement the provisions of the resolution adopted on 10 November 2019 by the African Commission on Human and Peoples' Rights,<sup>87</sup> which strongly condemns all acts of violations of human rights and international humanitarian law in South Sudan, including attacks against journalists, human rights defenders, members of civil society organisations and humanitarian workers;
- Take immediate measures to implement the African Charter on Human and Peoples' Rights and provisions of the Kigali Declaration 2003,<sup>88</sup> which recognises the important role of civil society organisations in general and human rights defenders in particular, in the promotion and protection of human rights in Africa;
- Amend existing laws, policies and practices to bring them into line with the African Commission on Human and Peoples' Rights Guidelines on Freedom of Association and Assembly in Africa and other regional and international protection standards;
- Immediately adopt the Statute of the Hybrid Court for South Sudan and sign the Memorandum of Understanding to formally establish and operationalise the Hybrid Court;
- Establish and operationalise other transitional justice institutions, including the Commission on Truth, Reconciliation and Healing and the Compensation and Reparation Authority;
- Create and maintain, in law and in practice, a safe and enabling environment in which human rights defenders and civil society can operate free from hindrance and insecurity, including by:
- Adopting a law on the protection of human rights defenders in order to create a national legal framework for their effective functioning;
  - Publicly recognising and pledging to support human rights defenders and protect them from threats, violence, human rights violations, and violations of due process, and pledging to specifically address challenges facing women human rights defenders, including intersecting threats and risks;
  - Fully respecting citizens' rights to freedom of peaceful assembly, association, expression, and participation in public affairs; and
  - Reforming the National Security Service Act to prohibit the agency from carrying out arrests and detaining citizens, closing all unauthorised detention sites and releasing or appropriately charging detainees and transferring them to police custody;
- Ensure independent and effective investigations into attacks against human rights defenders, journalists, and other independent voices, including the enforced disappearance and reported killing of government critics Dong Samuel Luak and Aggrey Iddri, and killings of journalists, and hold all perpetrators to account in fair trials;
- Fully cooperate with the Commission on Human Rights in South Sudan established by the

<sup>87</sup> African Commission on Human and Peoples' Rights, "Resolution on the human rights situation in the Republic of South Sudan, ACHPR/Res.428(LXV)2019," available at: <https://www.achpr.org/sessions/resolutions?id=459>, Accessed 22 April 2020.

<sup>88</sup> Kigali Declaration: The 1st African Union (AU) Ministerial Conference on Human Rights in Africa meeting on 8 May 2003 in Kigali, Rwanda, available at: <https://www.achpr.org/legalinstruments/detail?id=39>, Accessed 22 April 2020.



United Nations Human Rights Council and allow and facilitate the Commission's access to all locations and persons of interest;

- Cease obstructing efforts of the United Nations Mission in South Sudan, fully cooperate with the Mission, facilitate the work of humanitarian actors, especially their delivery of aid to civilians, and facilitate free movement for the Ceasefire and Transitional Security Arrangements Monitoring and Evaluation Commission in order to verify transitional security arrangements;
- Allow human rights defenders to visit detention centres and monitor prison conditions;

### **To the Sudan People's Liberation Movement-in-Opposition and other opposition forces, including forces that have not signed the Revitalised Peace Agreement:**

- Abide by the regional and international human rights standards and ensure that human rights defenders and other civil society actors operate without fear of reprisals or attacks in areas under their control, as well as ensure the protection of South Sudanese citizens' rights to freedom of peaceful assembly, association, and expression.

### **To the African Union Commission:**

- Publicly recognise and support human rights defenders in South Sudan, including women human rights defenders, and highlight their role in building sustainable peace, accountability, and justice, including monitoring of the implementation of transitional security arrangements and transitional justice provisions of the Revitalised Peace Agreement; and
- (a) Take immediate steps, including the establishment of the Hybrid Court for South Sudan, to ensure justice for serious crimes committed, as recommended by the African Union Commission of Inquiry on South Sudan and provided for in the 2015 Peace Agreement and the 2018 Revitalised Agreement; (b) Inform the public about a timeline for the establishment and operationalisation of the Court, making clear that failure by the Government to sign the Memorandum of Understanding and adopt the Statute for the Court will result in the African Union unilaterally establishing an ad hoc tribunal; and (c) Guarantee the transparency of the process for establishment of the Court or an ad hoc tribunal, and ensure that South Sudanese civil society actors will be consulted throughout.

### **To United Nations bodies and mechanisms, including the United Nations Mission in South Sudan and the Commission on Human Rights in South Sudan:**

- Continue documenting human rights violations and reporting to the international community, including the United Nations Security Council and the Human Rights Council, on developments in South Sudan, in line with their respective mandates;
- Provide support to human rights defenders, in particular regarding their capacity to monitor, document, and report on human rights developments; and
- Follow up on all recommendations offered to the South Sudanese government and other parties to date, regarding civic space, human rights defenders, and accountability and justice.

### **To diplomatic missions, donors, and development partners:**

- Increase support, including where relevant financial support, to human rights and other civil society organisations working on civic space, protection of human rights defenders, and accountability and justice issues;
- Publicly recognise and support human rights defenders, including women human rights defenders, and highlight their role in building sustainable peace, accountability, and justice, including monitoring of the implementation of transitional security arrangements and transitional justice provisions of the Revitalised Peace Agreement;

- Urge the government of South Sudan to immediately adopt the Statute of the Hybrid Court for South Sudan and sign the Memorandum of Understanding to formally establish and operationalise the Hybrid Court;
- Encourage further concrete action to deter and address ongoing violations of international law at the United Nations Security Council and exercise their jurisdiction over crimes under international law committed in South Sudan under the principle of universal jurisdiction and where the opportunity arises;
- Prioritise mental health and trauma healing as key elements of the new peacebuilding process, and increase funding for comprehensive rehabilitation services, including psychosocial support for victims, survivors, and human rights defenders working in this field; and
- Continue, expand, and, where relevant, reinstate direct financial and technical support to human rights defenders working across all states of South Sudan.

### **To human rights defenders and civil society members:**

- Continue to engage in the promotion and protection of all human rights in South Sudan, including by monitoring developments, reporting on the situation, and engaging in capacity-building, awareness-raising, civic education and advocacy activities, among others; and
- Seek relevant technical, financial, and other forms of assistance from national, regional, and international actors regarding all dimensions of their work.



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“Human rights issues need to be covered. If people are starving and you say nothing, they will die. If someone is arrested, if you don’t cover it, they will not be released. If you keep silent, when you are killed, no one will help you.”

- South Sudanese human rights defender

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DefendDefenders (East and Horn of Africa Human Rights Defenders Project) seeks to strengthen the work of human rights defenders 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 more than 100 human rights organisations in the eleven countries of the East and Horn of Africa sub-region: Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia/Somaliland, South Sudan, Sudan, Tanzania, and Uganda.

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