



Submission to the United Nations Universal Periodic Review

40th Session of the UPR Working Group

South Sudan

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Joint submission by East and Horn of Africa Human Rights Defenders Project (DefendDefenders), NGO in Special Consultative Status with ECOSOC

And

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1.Introduction

- 1.1 The East and Horn of Africa Human Rights Defenders Project (DefendDefenders) is a regional non-governmental organisation (NGO) registered and based in Uganda. Established in 2005, DefendDefenders seeks to strengthen the work of human rights defenders (HRDs) throughout the East and Horn of Africa sub-region by reducing their vulnerability to the risk of persecution and by enhancing their capacity to effectively defend human rights. DefendDefenders focuses its work on 11 countries, including South Sudan.
- 1.2 South Sudan Human Rights Defenders Network (SSHRDN) is a non-profit, non-political civil society network registered and identified by the Relief and Rehabilitation Commission (RRC) in 2019. It is a coalition of civil society organisations and individuals working to protect and promote human rights defenders in South Sudan.
- 1.3 In this submission, DefendDefenders and SSHRDN outline a series of concerns relating to civic space in South Sudan since 2016. We specifically assess concerns relating to South Sudan's respect for the rights to freedoms of opinion and expression, association, and peaceful assembly. We assess the government's efforts in implementing the recommendations it accepted during its second Universal Periodic Review (UPR), in 2016.
- 1.4 Since the last UPR review, armed conflict resumed in July 2016, as the Agreement on the Resolution of Conflicts in South Sudan (ARCSS) collapsed. On 14 December 2016, President Salva Kiir announced the launch of a national dialogue addressing transitional justice within the ARCSS framework.ⁱ
- 1.5 In early July 2018, the government proposed a bill in Parliament sought to extend the term of the President, national transitional parliament, vice president, and the state governors from 12 August 2018 to 21 August 2021.ⁱⁱ
- 1.6 With the signature, in September 2018, of the Revitalised Peace Agreement for Resolution of the Conflict in the Republic of South Sudan (R-ARCSS), South Sudan's government and rebel leaders agreed to form a new Revitalised Transitional Government of National Unity (RTGoNU, or National Unity Government), but the country continues to face major governance, security, humanitarian, and human rights issues. Observers remain only cautiously optimistic amid sporadic violations of the ceasefire and continued human rights abuses throughout the country with little chance of real accountability through a mandated Hybrid Court which has failed to materialise. 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 with the African Union (AU) and to enact legislation to operationalise the Court.
- 1.7 Fighting continued in parts of the country, with holdout opposition groups in Yei. In other areas, particularly in Tonj, Bor, and Greater Pibor/Jonglei, inter-communal tensions and conflict continued to threaten the country's stability and people's safety, human rights, and livelihoods.
- 1.8 In November 2019, after weeks of uncertainty and a first six-month extension of the deadline, the government of South Sudan and the opposition postponed the creation of a unity government for a further 100 days. Following this, the US government recalled their

ambassador on 25 November, citing the failure to form a unity government. In February 2020, a transitional government of national unity was formed by former warring factions, including the government, led by President Salva Kiir, and the Sudan People's Liberation Movement-in-Opposition (SPLM-IO), with Riek Machar appointed as First Vice-President.ⁱⁱⁱ

1.9 Positively, on 29 January 2021, South Sudan's cabinet approved the process of establishing a Commission for Truth, Reconciliation and Healing, a Hybrid Court for South Sudan, and a Compensation and Reparation Authority, as planned in the 2018 R-ARCSS.^{iv} However, concrete action is needed to operationalise these mechanisms and to hold perpetrators of the most serious crimes to account. The government has repeatedly delayed and obstructed the process of establishing the Hybrid Court. The January 2021 announcement follows similar announcements. The Council of Ministers now seems to have authorised the Ministry of Justice and Constitutional Affairs to move ahead with the establishment of the three transitional justice mechanisms, but the key issue remains as to whether this plan will be implemented in practice.

1.10 In February 2021, the state governments were fully formed amidst rising inter-communal clashes in the states that were previously attributed to leadership vacuum. Also, with the formation of the new state governments, new positions of human rights advisors to all the state governors were created, with the aim of improving human rights agendas in the government.

1.11 Ahead of the 46th session of the UN Human Rights Council (UNHRC), a group of 38 CSOs, including DefendDefenders and CIVICUS, issued a letter calling for the extension of the mandate of the UN Commission on Human Rights in South Sudan (CHRSS).^v

1.12 While South Sudan's government has taken measures to create peace and signed the R-ARCSS to reach a permanent ceasefire, we remain concerned over the situation in South Sudan. Human rights violations and abuses and violations of international humanitarian law continue, including rape and sexual and gender-based violence (SGBV), deliberate starvation of civilians, recruitment and use of children in armed conflict, as well as inter-communal violence, serious humanitarian challenges, and attacks on civil society and civic space, evidenced by routine violations of the right to freedom of expression, unlawful arrests, prolonged detentions and torture of critics and perceived dissidents, sustained pressure over human rights defenders (HRDs), journalists, and other independent actors. Impunity for violations and abuses remains widespread, in particular at the command responsibility level. South Sudan is currently rated "Closed" by CIVICUS Monitor.^{vi}

- Section 2 of this submission assesses South Sudan's implementation of recommendations concerning freedom of opinion and expression.
- Section 3 assesses South Sudan's implementation of recommendations concerning freedom of peaceful assembly.
- Section 4 assesses South Sudan's implementation of recommendations concerning freedom of association.

- Section 5 contains recommendations to address ongoing restrictions on civic space.
- Section 6 contains an annex of implementation of 2nd cycle UPR recommendations related to civic space.

2. Freedom of opinion and expression

- 2.1 During its second UPR review, the government of South Sudan received 12 recommendations relating to freedom of opinion and expression, including freedom of press. It accepted nine and noted three.
- 2.2 Article 19 of the ICCPR guarantees the right to the freedom of opinion and expression in all its dimensions. Additionally, the Transitional Constitution of the Republic of South Sudan (TCSS, 2011) enshrines the right to freedom of expression. Article 24(1) provides that “Every citizen shall have the right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to public order, safety or morals as prescribed by law.” Article 24(2) further outlines that “all levels of government shall guarantee freedom of the press and other media as shall be regulated by law in a democratic society.”^{vii}
- 2.3 We welcome the establishment of the Media Authority, the key regulatory institution aimed at promoting freedom of the media. Despite this positive development, state institutions including security forces misuse national laws to censor and restrict freedom of expression. The Media Authority itself has come under criticism for its role in the imposition of undue restrictions to journalists’ work.^{viii}
- 2.4 The legislative framework is not fully in line with constitutional provisions that protect freedom of opinion and expression. Various laws enacted – notably the Penal Code Act (2008),^{ix} the Media Authority Act (2013), and National Security Service Act (2014) – have in practice increased restrictions on freedom of opinion and expression.
- 2.5 The government noted three recommendations on the basis that the “National Security Act (2014) does not intrude upon the rights of citizens” and “any case of detention or arrest of any member of the civil society or journalist is always due to violation of the media laws or Non-Governmental Organisation Act.”^x Concerns have been mounting over the government’s interference in citizens’ enjoyment of their right to freedom of expression, in various forms, which has contributed to the shrinking of civic space and resulted in growing self-censorship. In June 2020, a civil society activist, Gurush Wen was arbitrarily arrested and detained for 14 days without trial for simply putting up a campaign billboard for accountability and transparency.^{xi} In September 2019, the CHRSS indicated that “surveillance and securitization have created a climate of fear and heightened paranoia among civil society.”
- 2.6 Since the last UPR cycle, South Sudan’s crackdown on freedom of opinion and expression, including freedom of the press, has intensified. Cases of journalists being abducted, threatened, killed, and arbitrarily arrested due to their work were documented in reports. According to a Human Rights Watch report released in December 2020, South Sudan’s National Security Service (NSS) tortured and killed journalists at a detention centre.^{xii} The report details the testimonies of journalists who were arrested and detained after writing articles about opposition parties. Amnesty International’s 2021 report found that the NSS was using abusive surveillance methods to target journalists, activists, and opposition members.^{xiii} DefendDefenders’ last report, published in May 2020, presents similar findings. The report shows that HRDs and independent actors have been operating under increasing pressure. It documents patterns of repression, which have resulted in mounting fear and self-censorship, in particular among those who monitor, work, and report on issues

deemed sensitive, which include human rights, lack of accountability, governance, and implementation of the provisions of the peace agreement, including transitional security arrangements and transitional justice institutions.^{xiv}

- 2.7 On 14 September 2020, Zachariar Makuach, a freelance journalist, was criminally charged and sentenced to one year imprisonment and a fine of 5,000 South Sudan Pounds (SSP).^{xv} Subsequently, *Agamlong Newspaper*, the local newspaper he was contributing to, was indefinitely suspended. Similarly, a local newspaper reporter for *No. 1 Citizen*, Mr. Jackson Ochaya, was also reported to have been arrested, harassed, and jailed on 1 September 2020 for having conducted an interview with a rebel group.^{xvi}
- 2.8 On 10 October 2016, a reporter for the Arabic-language daily *AlMaugif*, Malek Bol, was abducted and found alive in a Juba graveyard.^{xvii} Similarly, On 26 September 2016, Isaac Vuni's body was found dumped on a farm.^{xviii} The freelance journalist had been abducted four months earlier. On 29 August 2017, Christopher Allen, a US freelance reporter and photographer, was killed while covering the conflict between government troops and rebels in Kaya.^{xix} He was among the 19 people killed in the crossfire between the government and SPLA-IO.
- 2.9 The South Sudanese government continued to unduly restrict freedom of opinion and expression by suspending and closing down media outlets. On 11 November 2016, the NSS closed *Eye Radio* temporarily.^{xx} The NSS locked four studios, switched off the transmitter, and ordered the staff to leave. The radio station reopened on 19 November 2016.^{xxi}
- 2.10 On 1 May 2017, the Media Authority banned the operations of *Al-Jazeera English* in Juba.^{xxii} The suspension followed several stories covering the clashes between the government and the rebel forces and references to the government sustaining significant losses. On 9 March 2018, the Media Authority suspended *Radio Miraya*, a UN-backed station for "persistent non-compliance and refusal to be regulated."^{xxiii}
- 2.11 The Association for Media Development (AMDISS) revealed that the *Nation Mirror* and *Juba Monitor* had at least six articles removed by NSS in the first week of August alone.^{xxiv} On 15 September 2016, NSS officials closed the *Nation Mirror* for "engaging in activities that are incompatible with "the newspaper's registration status."^{xxv} Prior to the closure, the newspaper published a story which claimed that President Salva Kiir and Vice President Riek Machar had accumulated wealth and invested in properties abroad.
- 2.12 Moreover, in an attempt to censor online content, the government deliberately targeted online media outlets. On 17 July 2017, the authorities blocked four sites including: Sudan Tribune, *Radio Tamazuj*, and two popular blogs, *Nyamilepedia*, and *Paanluel Wel*.^{xxvi} The South Sudan National Communication Authority (SSNCA) claimed that the websites were blocked to protect citizens from the dissemination of "subversive material."
- 2.13 On 7 January 2019, the South Sudanese Media Authority ordered *Al-Watan* newspaper to stop reporting on the ongoing protests in Sudan and to issue an apology to the Sudan embassy in Juba within 72 hours.^{xxvii} The newspaper rejected this order. On 17 July 2019, Michael Christopher, editor in chief of *Al-Watan*, newspaper was arrested.^{xxviii} The South Sudanese authorities seized his passport and detained him as he attempted to fly to Nairobi.

- 2.14 International journalists are subjected to multiple restrictions. The Media Authority rejected visas and accreditation lodged by foreign journalists. At least 20 foreign reporters' accreditation were rejected.^{xxxix}
- 2.15 Additionally, international journalists face threats and the risks of detention and arrest. On 28 May 2016, South Sudanese soldiers detained two American journalists. On 30 May 2016, Justin Lynch, a freelancer for the Associated Press, was "roughed up" by SPLA soldiers in Yei.^{xxx} On 7 December 2016, NSS agents detained and deported him. The NSS mentioned that Lynch's reporting was "too critical" of the government.^{xxxi}

3 Freedom of peaceful assembly

- 3.1 Article 21 of the ICCPR guarantees the right to peaceful assembly. Article 25 of South Sudan's Constitution further guarantees the right to peaceful assembly.^{xxxii} During South Sudan's second UPR review, the government received four recommendations relating to freedom of peaceful assembly. It supported three recommendations and noted one.
- 3.2 According to a 2019 report published by Freedom House, protests rarely occur in the current conditions of conflict, displacement, and hunger. Therefore, South Sudan's commitment to the right to freedom of peaceful assembly under the constitution has not been fully tested.^{xxxiii}
- 3.3 In the few instances of protests that did occur, authorities restricted freedom of peaceful assembly by threatening and arresting protestors and violently dispersing demonstrations. For instance, on 16 May 2019, a group of South Sudanese youth planned a cross border protest organized by the Red Card Movement (RCM). However, on 7 May 2019, Minister of Information Michael Makuei Lueth threatened protestors. On 21 May 2019, President Salva Kiir echoed those threats publicly, stating: "If the government closes its mind and decides to use automatic weapons, why do you want to die for nothing?"^{xxxiv} We deem these threats to be unacceptable.
- 3.4 In the same incident, the NSS conducted a door-to-door search in people's home and closed public spaces in Juba. Three security officials arrested Grang Aher, a member of RCM on 19 May 2019, for his associations with the movement.^{xxxv} He was later released on 23 May 2019.
- 3.5 On 4 June 2020, Jonglei Secretary-General, Mabior Atem, publicly warned anyone going for a peaceful demonstration in Bor in the name of showing solidarity with the Juba protestors for an incident where a soldier of the South Sudan People's Defence Force (SSPDF) opened fire at a group of angry protestors in Sherikat, killing five civilians. Atem said: "Anybody who is going to go on the road again in the name of the incident which happened in Juba, we will arrest them. No compromise on that."^{xxxvi} Again, there is no justification, and no legal basis, for this blanket restriction on the right to freedom of peaceful assembly.
- 3.6 On 30 March 2021, South Sudanese police arrested several protestors and activists who were demanding for better health services. Activists, civilians, and motorcyclists, known as "*boda boda*" riders, held demonstrations in Juba following the death of South Sudanese

singer Trisha Cee and a *boda boda* rider in a road accident.^{xxxvii} The protestors were later released.

4 Freedom of association

- 4.1 Article 22 of the ICCPR also protects the right to freedom of association. However, concerns have been mounting over the government's onslaught on independent trade unions and their leaders. Article 25 (1) of the Constitution stipulates: "The right to peaceful assembly is recognized and guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interests." However, concerns have been mounting over the government's crackdown on press associations. The Media Authority Act (2013) has been used to restrict the operations of media houses and to censor information. In late October 2017, South Sudan's Media Authority suspended three press associations as they registered for operating licenses.^{xxxviii}
- 4.2 In 2016, the government adopted the Non-Governmental Organisations Act (NGO Act, 2016), which requires NGOs to seek written permission to hold a bank account or conduct any activities. Additionally, as per the Act, 80 percent of staff members must be South Sudanese citizens. The stifling regulations make it harder for NGOs to carry out their work. Between January and September 2019, the United Nations Mission in South Sudan (UNMISS) recorded 124 instances where the government prevented it from assisting civilians.^{xxxix}
- 4.3 HRDs in South Sudan continue to face threats, intimidation, kidnappings, and torture, in an extremely volatile political environment. According to the CIVICUS Monitor, South Sudan remains one of the most dangerous countries in the world for aid workers.^{xl}
- 4.4 HRDs and aid workers are being targeted by both states and non-state actors, rebel Sudan People's Liberation Movement-in-Opposition (SPLM-IO) held seven aid workers for nearly three weeks before releasing them on 15 April 2018. SPLA-IO accused the aid workers of being "government spies."^{xli} Separately, on 30 April 2018, ten aid workers were released by the SPLA-IO after being held for a week.^{xlii}
- 4.5 In October 2019, three UN staff members were killed in a crossfire between the government forces and the National Salvation Front.^{xliii} On 5 October 2020, a convoy carrying food aid was attacked. Three World Food Programme personnel were shot and sustained serious injuries in an attack, and one member went missing and is presumed dead.^{xliv} According to UN Office for the Coordination of Humanitarian Affairs (OCHA), at least 100 aid workers have died since the beginning of the conflict in 2013.^{xlv}
- 4.6 On 29 May 2020, Kanybil Noon, a civil society activist, was arbitrarily arrested and detained in the main NSS detention facility in Juba, known as the "Blue House."^{xlvi} In June 2020, a lawyer filed an application to the High Court in Juba for him to be unconditionally released or brought before a court. His health was deteriorating, and he was denied medical care until he was released without charge on 22 September 2020.

4.7 On 25 October 2018, the government announced that it would release five political prisoners. While the R-ARCSS indicates the release of several key rebel leaders, none of the five appear to be high-ranking rebel officials.

5 Recommendations

We are concerned about the failure by the South Sudanese government to meaningfully implement the recommendations it accepted in relation to civic space during its second UPR. The patterns documented point to a lack of political will to operationalise and implement the recommendations, many of which do not require financial resources or enhanced technical capacity to be complied with.

We urge the government of South Sudan to implement the recommendations formulated not just in the framework of the UPR, but by a range of independent actors, including international and African human rights bodies and mechanisms, including the UN Human Rights Council, the CHRSS, and the African Commission on Human and Peoples' Rights. We urge the government to create and maintain, in law and in practice, online as well as offline, an enabling environment for civil society and the media to operate in accordance with the rights enshrined in the Constitution of South Sudan as well as international and regional instruments South Sudan is a party to.

5.1 Regarding freedom of opinion and expression

- Amend the National Security Service Act (2014), the Penal Code Act (2008), and the Media Authority Act (2013) to bring them in line with international standards on the right to freedom of opinion and expression;
- Immediately end arbitrary arrests and detention of journalists and activists;
- Investigate and hold perpetrators to account in fair trials for violence, threats, and murder, and any illegal acts committed against human rights defenders, journalists, and independent actors exercising their right to freedom of expression;
- Reinstate media outlets, online blogs and newspapers that have been suspended or sanctioned;
- Unconditionally and immediately release all journalists and human rights defenders detained solely for their work; and
- Cease unwarranted raids on media outlets.

5.2 Regarding freedom of peaceful assembly

- Send clear instructions to all security forces and agents to refrain from using excessive and lethal force while dispersing protests; force may only be used when strictly necessary, and in a proportionate manner, in line with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,^{xlvii} and the principles for the for the proper management of assemblies, as per the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of

association and the Special Rapporteur on extrajudicial, summary or arbitrary executions^{xlviii};

- Ratify and accede to the International Covenant on Civil and Political Rights; and
- Initiate swift, thorough, transparent and effective investigations into all instances of illegally detained activists and civil society actors.

5.3 Regarding freedom of association

- Amend the Non-Governmental Act (2016), to bring it in line with international standards;
- Investigate the deaths of aid workers and HRDs;
- In line with Article 25 (1) of the Constitution, allow the formation of independent trade unions; and
- Ratify the International Convention on the Protection on All Persons from Enforced Disappearances.

6 Annex: Recommendations under the 2nd cycle

| | Recommendations | Supported/noted | Theme | Source |
|---|---|-----------------|---|--------|
| 1 | Establish a robust legal framework for the functioning of a pluralistic system of political parties and ensure that free and fair elections are held regularly and in accordance with international standards | Supported | Freedom of association and peaceful assembly | 128.93 |
| 2 | Revise and amend legislation, including the 2014 National Security Service Act and the 2015 Non-Governmental Organizations Act, which have been used to restrict the rights to freedom of expression, association and peaceful assembly | Noted | Freedom of association and peaceful assembly Freedom of opinion and expression | 128.92 |
| 3 | Take all necessary measures to ensure that civil society organizations, human rights defenders and journalists are able to carry out their legitimate activities without | Supported | Freedom of the press | 128.90 |

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| | facing legal or administrative obstructions or fear or threat of reprisals | | | |
| 4 | Protect human rights defenders and journalists from violence and arbitrary arrests, address impunity for crimes against human rights defenders and journalists, and notify the United Nations Educational, Scientific and Cultural Organization of the status of judicial inquiries into the murder of journalists | Noted | Freedom of the press | 128.89 |
| 5 | Ensure the enjoyment of freedoms of expression and assembly and put to an end the unlawful detention of peaceful protesters | Supported | Freedom of association and peaceful assembly Freedom of opinion and expression | 128.88 |
| 6 | Take concrete steps to ensure freedom of expression, including for civil society and the media, and ensure that harassment, threats, unlawful detainment and intimidation of these groups by the national security services end immediately | Noted | Freedom of opinion and expression Freedom of the press | 128.87 |
| 7 | Provide full access for journalists, human rights organizations and other members of civil society to all areas of the country | Supported | Freedom of the press | 128.86 |
| 8 | Ensure the protection of and access to all areas by journalists, human rights defenders and humanitarian workers | Supported | Freedom of the press | 128.85 |
| 9 | Guarantee fundamental freedoms, in particular freedom of expression, which will contribute to the reconciliation process | Supported | Freedom of opinion and expression | 128.84 |
| 10 | Ensure protection of freedom of expression and association, | Supported | Freedom of association and | 128.83 |

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| | and take action to protect journalists | | peaceful assembly Freedom of opinion and expression Freedom of the press | |
| 11 | End, investigate independently and prosecute promptly cases of sexual violence against civilians, as well as of assaults on and harassment of journalists and civil society activists | Supported | Freedom of the press | 128.69 |
| 12 | Take steps to hold to account the perpetrators of the human rights violations, including sexual and gender-based violence, committed during the violence in Juba in July 2016, more specifically, the perpetrators of the attack on the Terrain Hotel, during which a local journalist was killed and several aid workers were raped | Supported | Freedom of the press | 127.38 |
| 13 | Take measures to ensure freedom of expression | Supported | Freedom of opinion and expression | 126.67 |

ⁱ Reliefweb, “Statement from the Transitional Justice Working Group (TJWG) on National Dialogue and the launch of the Technical Committee of the Commission for Truth, Reconciliation and Healing”, 19 December 2016, <https://reliefweb.int/report/south-sudan/statement-transitional-justice-working-group-tjwg-national-dialogue-and-launch>, Accessed 1 June 2021.

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