



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

“For us, silence is not an option”

Human Rights Defenders and the
South Sudan Civil War



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East and Horn of Africa Human Rights Defenders Project

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Human Rights Defenders and the South Sudan Civil War

“You can be targeted for reporting on military events that the government doesn’t want to acknowledge, you can be targeted for investigating human rights atrocities and corruption...if you are involved in human rights advocacy, you are a target”

Human Rights Defender, South Sudan, September 2014

“After the crisis, so many donors pulled out [of funding human rights groups]. All the money was directed to humanitarian relief... We have been left in limbo.”

Human Rights Defender, South Sudan, September 2014

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Foreword

On Saturday December 14th 2013, I left South Sudan from Juba Airport along with several members of my team. That morning, there were no obvious signs of the chaos that would engulf Juba later the following day, and then spread across large parts of the country. From 15th December 2013 to present, South Sudan has been engulfed by a humanitarian and human rights catastrophe on an almost unimaginable scale.

The previous day, the East and Horn of Africa Human Rights Defenders Project (EHAHRDP) closed a successful five-day workshop for South Sudanese human rights defenders (HRDs). Throughout the previous week, HRDs from across South Sudan assembled in Juba for trainings on a range of techniques aimed at improving their safety and security, and enhancing their ability to effectively advocate for the human rights of their fellow citizens. In Juba earlier that same week, EHAHRDP launched a report detailing the risks and challenges facing HRDs in South Sudan from 2010-13. This current report should be read in conjunction with *'Change Will Not Come Until We Talk About Reality: The Closing Space for Human Rights Defenders in South Sudan'*.

The scale of human suffering in South Sudan defies comprehension. As this report went to press, the UN estimates that almost two million people have been displaced by the conflict. Untold thousands of civilians have been killed, and the risk of famine remains frighteningly real. Colleagues and friends of EHAHRDP have been forced into exile, to neighboring countries and further afield.

Throughout 2014, EHAHRDP has responded rapidly and creatively to the needs of HRDs caught up in one of the most brutal civil wars on the African continent. From the first hours of the violence breaking out in Juba, we received reports of HRDs being targeted by military and state security forces. Within days, prominent activists had been forced into hiding, or into exile. Throughout this year, EHAHRDP has supported almost twenty South Sudanese HRDs who faced untenable risks in the course of their work.

Throughout this year also, EHAHRDP has sought out every available avenue to raise the profile of South Sudanese HRDs regionally and internationally, and to create opportunities for national voices to raise their concerns to regional and international stakeholders. We have supported delegations of South Sudanese activists to attend the United Nations Human Rights Council, and engaged with the African Union Commission of Inquiry on South Sudan.

In parallel, my team has been carefully monitoring and documenting the fallout of the current conflict on South Sudanese HRDs, both for those in the country, and those now in exile. EHAHRDP returned to South Sudan in September 2014 to assess the situation on the ground. The fruits of our research make alarming reading.

The 'closing space' for human rights defenders that we identified one year ago has now narrowed further. The persistent patterns we identified in 2013 – of threats, arbitrary arrests, detention, and serious physical violence against HRDs – have continued with impunity. The risks facing journalists have grown progressively more severe, with government security forces routinely targeting individual journalists, directing the closure of media houses, and confiscating entire runs of published newspapers. The National Security Service (NSS) now operates almost as a shadow government-threatening, arresting, intimidating, and detaining human rights defenders at will, with complete impunity for its actions.

Within NGOs, HRDs working on perceived 'sensitive' topics routinely receive direct threats from state security forces, linked to their activism. In our research, we have documented new and emerging state tactics aimed at silencing human rights voices, including threats targeted at family members of

HRDs, and sophisticated efforts to prevent HRDs from traveling to international human rights forums to voice their concerns.

This report does not seek to provide holistic solution to the crisis in South Sudan. Instead, it seeks to provide an overview of the acute challenges facing South Sudanese HRDs working in the midst of a complex and rapidly evolving conflict, and to make focused recommendations to the government and international community for concrete change. For South Sudan to stand any chance of emerging from the current crisis, a space must be created within which all South Sudanese citizens, including human rights defenders, can speak openly and without fear of reprisal. At present, the hostile operating environment in South Sudan does not provide for this space.

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

EHAHRDP reiterates its commitment to standing alongside civil society in South Sudan in their efforts to achieve full respect for human rights. In 2015, EHAHRDP plans to redouble its efforts to strengthen the capacity of South Sudanese HRDs, and to respond to the needs of HRDs who face risks in the course of their work.

I wish to take this opportunity to thank all of the individuals and human rights organisations that contributed to these research findings and told their stories to our research team, without whose assistance this report would not have been possible. The only cause for optimism in this report is to be found in your courage, and your refusal to remain silent.



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

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

December 2014

About EHAHRDP

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

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

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

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

1. Executive Summary

Since December 15th 2013, South Sudan has been engulfed by a humanitarian and human rights crisis. The Government of South Sudan has instrumentalised the conflict as a pretext to silence critical and independent human rights voices within the country. Through its various security organs, the government has stepped up the harassment and intimidation of human rights defenders (HRDs). The government has attempted, through a combination of existing and new tactics, to stifle civil society's ability to monitor, document and report on the current crisis, as well as on existing and entrenched human rights concerns.

Throughout 2014, the government has simultaneously pursued legislative reforms that will increase government control of the NGO sector, and overseen other opaque legal processes that continue to create confusion and uncertainty over the right to freedom of expression.

Journalists have been most overtly targeted throughout 2014, and the right to freedom of expression has been curtailed in South Sudan. The National Security Services (NSS) has reportedly expanded throughout 2014, and continues to harass and intimidate HRDs at will, and with impunity. In September 2014, state security forces unsuccessfully attempted to prevent a prominent human rights activist from leaving South Sudan to advocate to the United Nations Human Rights Council.

As the humanitarian crisis has grown throughout 2014, a number of international governments and donor organisations have permanently or temporarily suspended or diverted financial assistance from human rights based projects and organisations, to humanitarian relief organisations. The core institutional capacity of human rights groups has been weakened, at a time when they are most needed.

The international community, including the various branches of the United Nations, has adopted an inconsistent and ultimately inadequate approach to the crisis. The United Nations Human Rights Council has failed to respond in a timely manner to the rapidly evolving crisis, and has failed to adopt a position that reflects the severity of the ground.

The Government of South Sudan must take immediate and concrete steps to protect the rights of human rights defenders, and ensure transparent and thorough investigations into all reported threats or attacks against HRDs. The international donor community should expand direct financial and technical support to human rights defenders, civil society organisations, and media houses in South Sudan.

2. Summary of Key Recommendations

To the Government of South Sudan:

- Immediately take steps to ensure that all its state agencies, including the National Security Services and the SPLA, cease all intimidation, harassment, arbitrary arrests, and attacks against human rights defenders;
- Commit to withdrawing from parliament the Non-Governmental Organisations Bill 2013, and undertake to redraft the law to bring it in line with international standards;

To the United Nations Human Rights Council and its Member States:

- To support the establishment of a Special Rapporteur on the Human Rights Situation in South Sudan;

To Donors and Development Partners:

- Continue, expand, and where relevant reinstate direct financial and technical support to human rights defenders working across all states of South Sudan.

3. Methodology

This report is based on over 25 interviews conducted in-person by EHAHRDP researchers in Juba in September 2014, and seven phone and in-person interviews with South Sudanese HRDs currently in exile conducted between May and November 2014. While in Juba, researchers also met with the Chair of the South Sudan Human Rights Commission, and members of the diplomatic corps and the donor community.

The potential implications of participating in this research were discussed with each interviewee, and all interviewees gave informed consent. HRDs and other interviewees have not been named or identified where doing so might expose them to the risk of reprisal. In many cases, HRDs were happy to share their experiences publicly. All information gleaned from interviews was corroborated and verified with other independent individuals or civil society organisations, members of the East and Horn of Africa Human Rights Defenders Network, or other international partners.

Information obtained from interviews has been supplemented by extensive desk research. This includes an analysis of the protection services offered by EHAHRDP to 20 at-risk HRDs between December 2013 and November 2014. All information collected at the time of the interventions was verified according to EHAHRDP policy, which is consistent with best practices in protection case management.

4. Background

When gunfire erupted at the General Headquarters of the SPLA in South Sudan's capital Juba on 15 December, 2013, it heralded South Sudan's return to war, the start of a humanitarian and human rights crisis, and a violent clampdown on civil society, including HRDs, which continues.

The gunshots, which were exchanged between members of the Presidential Guard loyal to Vice-President Riek Machar Teny and other soldiers loyal to President Salva Kiir Mayardit, represented the spillover of political tensions between the leaders, which had been escalating since July, when Riek publically announced his intention to run for president.¹ As with the politics of South Sudan generally, the contestation between the two men is complex and coloured by ethnicity.² Salva, a Dinka, and Riek, a Nuer, command the loyalty of ethnically-based blocks, and many of the Presidential Guard soldiers loyal to Riek were also Nuer.

Violence soon spread across Juba, and into other parts of the country, as Nuer soldiers defected and joined militias loyal to Riek, and largely Dinka security forces instituted a brutal crackdown. While initially sparked by a power struggle between two high-ranking politicians, the conflict was fuelled by South Sudan's long history of war, inter-communal tensions, proliferation of small arms, lack of accountability and reconciliation, and exceptionally fragile state institutions.

The degree of suffering experienced by civilians in the course of this latest war is unimaginable, and its scope still unknown. Entire villages have been emptied and razed; men, women

and children killed, injured and subject to sexual violence. UNMISS, Human Rights Watch, Amnesty International, and national NGOs including Community Empowerment for Progress Organisation, have documented human rights violations at the hands of both government and non-state forces, which could constitute war crimes and crimes against humanity. These include extrajudicial killings, enforced disappearances, rape and other forms of sexual violence, arbitrary arrests and detention, and targeted attacks against civilians.³

The conflict has also created a humanitarian crisis that has impacted not only on South Sudan, but also the entire region. As of November 2014, the United Nations Mission in South Sudan (UNMISS) estimates that 1.9 million civilians have been displaced, with only 100,000 under the protection of UNMISS bases. Food insecurity has doubled since 2013, and 3.8 million are estimated to be in need of humanitarian assistance.⁴ Civilians in Jonglei, Upper Nile and Unity States have borne the brunt of the violence, displacement and hunger.

There has been concerted, if not always adequate, consistent or successful, international intervention at the political, security and humanitarian levels of the crisis. The Intergovernmental Authority on Development (IGAD) has hosted mediations, in an effort to bring the parties to a negotiated settlement. Unfortunately, very little progress has been achieved through these talks to date, with purported 'peace agreements' routinely breaking down within days, or less. In March

1 The Guardian, 'Riek Machar, the Former Rebel Fighter Ready for New Battle' July 4, 2013, retrieved September 13, 2014, from <http://www.theguardian.com/world/2013/jul/04/riek-machar-south-sudan-ambitions>.

2 For a detailed analysis of recent South Sudanese political history, see: James Copnall, *A Poisonous Thorn in Our Hearts: Sudan and South Sudan's Biter and Incomplete Divorce* (2014); Alex de Waal and Julie Flint, *Darfur: A Short History of a Long War* (2006).

3 See, e.g.: UNMISS, *Conflict in South Sudan: A Human Rights Report* (8 May, 2014) available at <http://reliefweb.int/report/south-sudan/conflict-south-sudan-human-rights-report>; Human Rights Watch, *South Sudan's New War: Abuses by Government and Opposition Forces* (7 August, 2014) available at <http://www.hrw.org/reports/2014/08/07/south-sudan-s-new-war>.

4 UN Security Council, *Report of the Secretary-General on South Sudan*, UN Doc. S/2014/821 (18 November, 2014) available at http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/821.

2014 the African Union Peace and Security Council established the Commission of Inquiry on South Sudan (AUCISS), tasked with (*inter alia*) investigating human rights violations and other abuses committed during the armed conflict. AUCISS published an interim report in June 2014

UNMISS was caught off-guard by the outbreak of hostilities in December 2013. Although the Security Council has since voted to reinforce the Mission and reprioritize its mandate towards the protection of civilians, human rights monitoring, and support for the delivery of humanitarian assistance,⁵ UNMISS has struggled to fulfill its mandate. Whilst its decision to open its compounds to displaced persons has undoubtedly saved thousands of lives, it has failed to fulfill its UN Security Council mandate to publicly and regularly report on the human rights situation in the country.⁶ As of December 2014, the Human Rights Division of UNMISS has not released a human rights report since May 2014, in spite of having the only dedicated team of human rights monitors in the country.

5 UN Security Council Resolution 2155, UN Doc. S/Res/2155 (27 May, 2014) available at [http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2155\(2014\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/2155(2014)).

6 UNMISS' mandate was renewed by the Security Council on 25 November 2014 pursuant to UN Security Council Resolution 2187 (2014).

At the UN Human Rights Council, the human rights situation in South Sudan has received limited and inadequate attention. In June 2014, the Council adopted Resolution 26/31 on technical and capacity building assistance in the field of human rights. In this Resolution, the Council decided to convene a panel discussion on the human rights situation in the country, which was held in September 2014. Members of the South Sudanese government, UNMISS, the South Sudan Human Rights Commission, UNMISS, and the AU Commission of Inquiry on South Sudan presented to the Council. Two HRDs from South Sudan were able to attend the session, and intervene directly in the discussion, along with a number of regional and international NGOs. As at the end of 2014, the human rights situation in South Sudan remains under Agenda Item 10 of the Human Rights Council.

Although some donors have given generously, the overall response of the international community to the humanitarian disaster has also been roundly criticized by emergency response NGOs as inadequate.⁷ As 2014 draws to a close, political reconciliation, peace, and prosperity, appear out of immediate reach.

7 See, e.g., Joint Agency Briefing Note, 'From Crisis to Catastrophe: South Sudan's Man-Made Crisis - and How the World Must Act Now to Prevent Catastrophe in 2015' (October 6, 2014), retrieved November 2, 2014, from <http://reliefweb.int/sites/reliefweb.int/files/resources/bn-from-crisis-to-catastrophe-food-security-south-sudan-061014-en.pdf>.

5. The Experience of HRDs in 2014

In the midst of the current conflict, the Government of South Sudan has grown increasingly hostile to civil society. It has instrumentalised the conflict as a pretext to silence critical and independent human rights voices within the country, and through its various security organs has stepped up the harassment and intimidation of HRDs.

In parallel, and as outlined in later sections, the government has vigorously pursued legislative reforms that will increase government control over the sector.

As with EHAHRDP's last report on South Sudan, journalists have been most overtly targeted, and freedom of expression more widely has been curtailed. The National Security Services (NSS) has reportedly expanded throughout 2014, and routinely and regularly intimidates HRDs at will, and with impunity. In September 2014, the government unsuccessfully attempted to execute at least one *de facto* targeted travel ban, to prevent an HRD from advocating to human rights mechanisms outside the country.

Journalists interviewed in the course of this research described a dramatically worsened media landscape, since the outbreak of the conflict.

The Juba Monitor, when interviewed for this report in September 2014, recounted six incidents so far in 2014 in which NSS agents confiscated its entire print-run of newspapers. On each occasion, the newspaper's editor-in-chief, Alfred Taban, attempted to engage with the headquarters of the National Security Service. *"When I confront them, they deny that it ever happened. Sometimes they return the newspapers, and say that no confiscation took place. But by that point, it's too late in the day and the newspapers can't be sold. It has happened six times so far this year, but they [NSS] will deny this."*

Other journalists interviewed for this report described receiving routine threatening phone calls when reporting on, or investigating, certain

so-called 'sensitive' topics. One journalist interviewed for this report, who has previously written and published articles on a range of political and non-political issues, provided evidence of threatening text messages, whilst many others recounted a pattern of phone calls from unidentified individuals (perceived by all interviewees to be NSS agents) warning against reporting on particular issues. In all cases, journalists we interviewed described a climate of fear, and a growing practice of self-censorship among the media. As one journalist told EHAHRDP, *"You may know in the outside world, what is going on in South Sudan. But here, we have no ability to bring the truth to the people. Journalists are afraid to report the true situation"*.

Since December 2013, many South Sudanese journalists have been forced into exile. In some cases documented by EHAHRDP, this was as a result of the wider civil conflict, but in many cases was due to specific threats against their lives, and constant harassment and intimidation from state security forces. One journalist interviewed for this report was reliably advised that his name had been placed on a 'list' by the NSS, and that he had been targeted for arrest. On this basis, the journalist decided to go into exile.

In August 2014, NSS agents raided and forcibly closed *Bakhita FM*, a Juba based radio station and part of the nationwide Catholic Radio Network. After broadcasting a news report, several armed NSS agents entered the radio station's compound, and arrested the station's news editor, managing editor, and two radio presenters⁸. David Ocen, *Bakhita's* news editor, was detained for several days in National Security Headquarters. An informal coalition of national civil society and other media organisations mobilised to try to secure his timely release, and the engage with the NSS. Ocen was eventually released without charge, whilst *Bakhita FM* was

8 EHAHRDP Interview, 2014. See also, Committee to Protect Journalists, 'South Sudan closes radio station, arrests editor', 18th August 2014, <http://cpj.org/2014/08/south-sudan-closes-radio-station-arrests-editor.php>

forced, under the purported authority of the NSS, to remain off-air for several weeks.

As detailed below in greater detail, confusion and uncertainty has persisted throughout 2014 over the passage of three pieces of legislation, known collectively by many as the 'Media Laws'. When interviewed in 2013, many journalists expressed hope that the media laws would provide some much needed clarity on the permissible limits of journalism, and enshrine domestic protection mechanisms for journalists. When re-interviewed in late 2014, many of those same journalists expressed frustration at the ongoing confusion around the status, and contents, of the laws.

"The government has deliberately created this situation. It suits them, to say that we are operating outside the law. They forget that they are responsible for that void. There is just political will to change the situation. The government wants to keep it like this".

EHAHRDP interviewed a wide range of human rights defenders working within civil society organisations in the course of this research. In the majority of cases, we were able to follow up directly with the individuals and organisations interviewed in the course of our earlier research in 2013.

Across the board, all of the NGOs interviewed had been negatively affected by the current conflict. In some cases, organisations had been forced to suspend their operations, and close

field offices in conflict affected regions. For many other organisations, members of staff had been forced into exile as a result of the wider conflict situation.

At an operational level, a number of rights-based organisations have suffered from the decisions of international governments and other institutional donors to divert funds away from human rights projects and organisations, towards humanitarian relief. As one organisation told us, *"as soon as the crisis started, donors pulled out. We were left in limbo, and the situation still hasn't been resolved...Projects have had to be cancelled, and we weren't able to pay salaries to our staff"*.

Civil society organisations working on civil and political rights issues described a pattern of harassment, threatening phone calls and text messages, linked specifically to their human rights work. A recurrent theme throughout the interviews EHAHRDP conducted in 2014 was the increasing targeting of HRDs' family members. As one HRD told EHAHRDP, *"my family members get threats whenever I speak out. It can be through them receiving phone calls or letters, and it is always NSS agents delivering the warning. The message is clear- we know who you are, and we know how to get to your family"*.

In the course of this research, EHAHRDP's researcher witnessed a number of these threats against HRDs first hand.

"If you go to the airport you will be arrested"

Throughout the course of this research, EHAHRDP received a number of credible and independent reports of a *de facto* government policy to prevent certain specific members of civil society from traveling outside of the country. In two cases, HRDs told us that they had been told by a number of highly placed, reliable, and independent sources that their names had been placed on a 'travel ban' list, drawn up by the National Security Services, and that they would be prevented from leaving the country if they tried.

EHAHRDP has not been able to verify the existence of this reported list, but is able to report upon a concerted attempt by the Government of South Sudan to prevent one prominent human rights defender from leaving the country to access the United Nations Human Rights Council.

Edmund Yakani is the coordinator of Community Empowerment for Progress Organisation (CEPO), and is one of the most nationally and internationally visible human rights defenders working in South Sudan. CEPO serves as the focal point organisation in South Sudan for the East and Horn of Africa Human Rights Defenders Network.

After being invited to attend the 27th Session of United Nations Human Rights Council in Geneva in September 2014, Mr Yakani was informed by state agents that he was banned from flying to

Ethiopia, where he needed to travel in order to process his visa. Whilst efforts to resolve this were ongoing, and whilst EHAHRDP was conducting this research in South Sudan, Mr. Yakani received numerous threatening phone calls and text messages from individuals presenting themselves as NSS agents. In a number of cases, EHAHRDP was present to witness these threats directly. In one phone call, as he was planning to leave for the airport, he was told, *“if you go to the airport, you will be arrested”*. That same day, a member of Mr. Yakani’s family received threatening phone calls from individuals presenting themselves as NSS agents.

Upon later arriving at Juba Airport, Mr. Yakani’s passport was taken by security agents, and a sum of money stolen from him. He was interrogated and detained, before being released.

He was eventually allowed to board his flight, and attended the Human Rights Council. Mr. Yakani was accredited by EHAHRDP to attend the Human Rights Council, and spoke to the UN during the scheduled Panel Discussion on South Sudan. He briefed countless diplomats on the human rights situation in South Sudan, and participated as a panelist in a major joint side event organised by a coalition of NGOs working in Geneva.

EHAHRDP’s Protection Interventions

EHAHRDP has kept detailed records of its protection interventions on behalf of HRDs in South Sudan, which occurred between December 2013 and November 2014. During this period, EHAHRDP provided protection services to nineteen HRDs. A number of these cases, which were verified by the EHAHRDP Protection Team, illustrate the challenges facing HRDs outlined in the preceding sections.

Where HRDs were able to identify the person or persons making threats against them, they overwhelmingly identified NSS agents, or other state security personnel (namely, military and police). Two reported being arbitrarily arrested and detained at security apparatus premises (one at a military intelligence installation, another at an SPLA location), where they were subsequently beaten. A number of others were unable to confidently identify the source of the threats against them, but intimated security service involvement. Two HRDs reported receiving threats they identified as from state officials while in Kampala. In one case, one of the threatening phone calls was received from a Kenyan mobile phone number, in the other case the HRD received word that he was being ‘looked for’ by the South Sudanese security personnel in Kampala. A third reported that threats against him continued even after he had relocated from South Sudan to Kenya.

The most common violation reported by HRDs was verbal threats, either in person, phone calls, or text messages. Whilst two HRDs reported being victims of physical assault because of their work, the majority sought protection assistance after verbal threats were made against their lives or families. Invariably, these threats included an explicit demand that they cease their work. It is evident therefore, that these threats are intended to silence those with dissenting views, and that the fear of violence instilled among HRDs is well-founded.

This is borne out when examining work undertaken by those who sought protection. The most common reason reported by HRDs for why they were targeted was their advocacy or legal work, followed by journalists. Many reported that the threats against them contained specific demands in relation to their work – including to cease publishing or writing on atrocities committed during the war, to withdraw legal petitions lodged against members of the government, or to cease conducting radio shows and printing articles on law-making and rule of law. The specific targeting of HRDs who speak out in favour of the rule of law, human rights and accountability, indicates just how narrow the space for civil society has become.

6. Legal Framework

Over the past year, the Government of South Sudan has passed a number of restrictive laws which curtail the space for HRDs to operate, despite the express concerns of South Sudanese civil society and the international community. Most of these laws were in the drafting and consultation phases prior to the eruption of war in December 2013, and at the time of EHAHRDP's last report. Legislative reform was, unsurprisingly, deprioritised during the first months of the war; however the Government of South Sudan has returned to the task with renewed vigor and urgency in the closing months of the year.

The result is that, as 2014 comes to an end, South Sudanese HRDs face the prospect of working under an oppressive and widely-condemned security sector law, a draft NGO bill which breaches the right to freedom of association, and new media laws, the content of which remains unknown. This new legislative regime threatens to encroach on the rights of HRDs, to unreasonably increase government oversight and regulation of their work, and to stifle their essential role in building peace and a stable, rights-respecting South Sudan.

Proposed Non-Governmental Organisations Bill

In our previous report, we described the proposed *Voluntary and Humanitarian Non-Governmental Organisations Bill* as the 'most overt and immediately pressing legislative threat to HRDs in South Sudan'. Worryingly, this remains the case. While the draft law – now known as the *Non-Governmental Organisations Bill (2013)* (NGO Bill) – is yet to pass the National Assembly,⁹ it has not been substantially amended, and its most onerous provisions are intact.

The progress of the bill since the end of 2013 has been convoluted, and has lacked transparency. By the outbreak of hostilities, the third reading of the initial bill had taken place in the National Assembly. The draft was strongly criticized

⁹ Until such time as the NGO Bill is enacted, the *Non-Governmental Organisations Act (2003)* remains in force.

by the OHCHR and UN Special Procedures,¹⁰ international, and national NGOs,¹¹ prompting the government to engage more thoroughly with civil society.

In August this year, a revised draft of the bill was made public. The fourth and final reading of the bill is understood to have taken place soon after.

Unfortunately, few of the concerns raised by South Sudanese civil society and the international community have been addressed, and the draft is largely unchanged. The most problematic provisions, highlighted in our previous report – and which infringe on the constitutionally-guaranteed right to freedom of association¹² – remain.

Chief among these is the requirement that NGOs, in the course of their work, to observe the principle of “respect for the sovereignty of the Republic of South Sudan, its institutions and laws.”¹³ This language is problematically vague and raises the prospect of the State denying registration or interfering in the operation of NGOs representing minority views, or advocating publicly for change in government policies or practices.

The Bill also creates a regulatory structure which places disproportionate power in the hands of the State, and which may be used to curtail the independence and activities of human rights and

¹⁰ Press Release, OHCHR, 'NGO Bill Threatens to Hinder Civil Society's Work in South Sudan, UN Rights Experts Warn' (December 17, 2013), retrieved September 25, 2014, from <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14107&LangID=E>.

¹¹ See, e.g., Gurtong, 'Civil Society Petitions Parliament Over NGO Bill' (November 28, 2013), retrieved September 25, 2014, from <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/13936/Civil-Society-Petitions-Parliament-Over-NGO-Bill.aspx>.

¹² Transitional Constitution of the Republic of South Sudan, section 25(1).

¹³ Transitional Constitution of the Republic of South Sudan, section 6(g).

other civil society organisations. It purports to establish a Non-Governmental Organisations Coordination Board (the Board), which is dominated by government representatives.¹⁴ The Board would also possess excessive discretion in the registration (including re-registration and revocation of registration) of NGOs, according to extremely vague criteria.¹⁵ Moreover, the bill would compel an organisation to register, and where it fails to do so, impose criminal sanctions on both the organisation and its officers.¹⁶ The Board would also be granted powers of regulation over the activities and policies of NGOs.¹⁷ This level of government oversight and interference poses a direct threat to the independent operation of civil society organisations.

One important amendment – which addresses a concern raised in our first report – is the express inclusion of “human rights work” within the definition of NGO.¹⁸ This goes some way to

clarifying the scope of application of the draft law, even if it does not address the bill’s core deficiencies.

The draft bill has proven deeply unpopular in civil society circles, and across South Sudan’s key development partners. On 3 October 2014, the US State Department issued a statement expressing its deep concern regarding the NGO Bill, stating that as drafted it “could restrict civil society space and hinder the formation and operation of NGOs”.¹⁹ The EU,²⁰ UK,²¹ international and national NGOs²² have all raised similar concerns with the Government of South Sudan.

At the time of writing, the status and future of the bill remain unclear, and the process entirely opaque. While the Government has enacted the media laws and NISS Act in the face of opposition, it has remained largely silent on the NGO Bill. However, sources within South Sudan,²³ and recent comments by National Assembly Speaker Manasseh Magok Rhundial,²⁴ indicate that the

14 According to section 9(1) of the Bill, the Board comprises 15 voting members. 11 are government representatives, with 10 appointed by various Ministers, and one being the Chairperson of the Relief and Rehabilitation Commission. Four are representatives of NGOs and civil society. As quorum is by simple majority, being 8, government-appointed representatives will have little difficulty in holding sway.

15 Under section 22(1)(a), an NGO may be refused registration if its “intended activities appear to contravene the principles set out in section 6 of [the] Bill.” While issues of registration are primarily the domain of the Registrar, the Board retains the power to “oversee the work of the Registrar in maintaining the Register and issuing, renewing and revoking registration certificates.” (section 10(k)).

16 NGO Bill, section 29.

17 The Board is empowered to: “facilitate, regulate and co-ordinate the work of all national and international non-government organisations operating in South Sudan” (section 10(1)); “provide policy guidelines to non-governmental organisations for harmonizing their activities with National Development Plan for South Sudan and other national and state policies” (section 10(f)); and “prepare and publish a code of conduct for self-regulation of non-governmental organisations and their activities in South Sudan” (section 10(i)).

18 More accurately, “human rights work” is now included in the definition of “voluntary and humanitarian work”. The intention to conduct such work is an element of the definition of

“non-governmental organisation”.

19 Press Statement, U.S. Department of State, ‘Legislation Under Consideration by the Government of South Sudan’ (October 3, 2014), retrieved September 20, 2014, from <http://www.state.gov/r/pa/prs/ps/2014/10/232551.htm>.

20 Delegation of the European Union to South Sudan, ‘Joint Local Statement on Legislation Being Considered by South Sudan’s National Legislative Council’ (October 17, 2014), retrieved September 30, 2014, from http://eeas.europa.eu/south_sudan/docs/17102014_eu_local_statement_south_sudan_legislation_en.pdf.

21 UK Foreign and Commonwealth Office, ‘Corporate Report: South Sudan - Country of Concern’ (last updated October 16, 2014), retrieved September 21, 2014, from <https://www.gov.uk/government/publications/south-sudan-country-of-concern/south-sudan-country-of-concern-latest-update-30-september-2014>.

22 See, e.g., Press Release, Civicus, ‘concern Over South Sudan NGO Law Amidst Deepening Crisis’ (October 6, 2014), retrieved September 21, 2014, from <http://www.civicus.org/index.php/en/media-centre-129/press-releases/2127-concern-over-south-sudan-ngo-law-amidst-deepening-crisis>.

23 Email correspondence with HRD in South Sudan, October 30, 2014.

24 Radio Tamazuj, ‘S Sudan Parliament Remains on Call to Consider Peace Proposal’ (November 24, 2014), retrieved September 30, 2014, from <https://radiotamazuj.org/en/article/s-sudan-parliament-remains-call-consider-peace->

Bill remains an active legislative priority for the government. Without meaningful consultation with civil society, substantial revisions, and greater transparency, it remains a real threat to the work of HRDs in the country.

The NGO Bill is not the only indication of the government's impulse to curtail civil society. On September 12, 2014, the Minister of Labour issued Circular No. 007/2014,²⁵ which stated that "All Non-Governmental Organisations... working in South Sudan are directed to notify all the Aliens working with them in all the positions to cease working as from 15th October, 2014 forthwith." Under substantial international pressure, the government withdrew the directive almost immediately, claiming it had been misinterpreted.²⁶ However, the incident is illustrative of the current government's rising discomfort with the independence of civil society, and growing impulse to control the sector.

Proposed National Security Service Bill

HRDs also face the threat of increase surveillance and erosion of their civil and political rights, after the National Assembly passed the *National Security Service Bill (2014)* (NSS Bill) in October 2014. The bill is now before President Salva Kiir, who may sign it into law, or return the bill to the Assembly for further deliberation.

The NSS Bill grants the National Security Service (NSS) greatly enhanced powers, including powers to arrest and detain suspects, undertake surveillance including of communications, and conduct searches and seize property,²⁷ which plainly exceed standards enshrined in international law and South Sudan's own constitution.

In addition to increasing the NSS' powers, the bill provides inadequately for oversight and the protection of basic civil and political rights. Due

process rights, such as the rights to be informed of the reasons for arrest, to fair trial (include within reasonable time) and to counsel, are not guaranteed. Nor does the bill contain adequate mechanisms for recourse, thereby potentially fostering impunity within the NSS.²⁸ Of particular concern is the absence of a prohibition on torture and other cruel, inhuman, and degrading treatment and punishment, and the potential for detainees to be held in 'black prisons' because of the Bill's failure to define permissible places of detention.

Like the NGO and media laws, the progress of the NSS Bill has been mired in confusion, and characterized by opaque procedure and lack of transparency. The bill has been roundly criticized by national and international bodies and NGOs,²⁹ some of whom contend it will transform South Sudan into a police state. A large block of parliamentarians hold similar reservations, and chose to walk out of the third and final hearing of the bill in protest. They were therefore absent from the Assembly when the bill passed on 8 October, and some members argued that the Assembly had failed to achieve quorum.³⁰ The bill has nonetheless been passed to the President, who at the time of writing had yet to sign it.

28 Section 18 provides for the establishment of a complaints procedure for individuals aggrieved by the actions of the NSS, however the independence and potential effectiveness of the mechanism may be compromised, as complaints are made to the NSS itself rather than an independent oversight body.

29 See, e.g.: Press Statement, U.S. Department of State, 'Legislation Under Consideration by the Government of South Sudan' (October 3, 2014), retrieved September 20, 2014, from <http://www.state.gov/r/pa/prs/ps/2014/10/232551.htm>; Amnesty International, Community Empowerment for Progress Organisation (CEPO), The Enough Project, Human Rights Watch, South Sudan Action Network on Small Arms (SSANSA), and Redress Trust, 'Comments on the 8 October 2014 Draft National Security Service Bill of the Republic of South Sudan' (October 14, 2014), retrieved September 20, 2014, from http://www.hrw.org/sites/default/files/related_material/Commentary%20on%20the%20NSS%20Bill%20-%20October%2014%2C%202014.pdf; South Sudan Law Society, 'Statement on NSS Bill November 2014' (November 8, 2014) retrieved September 30, 2014, from http://www.sslawsociety.org/news&events_Statement_on_NSS_Bill.html.

30 The National Assembly defines a quorum as "more than half its members".

proposal.

25 There is some confusion regarding when the circular was issued, as it was also dated 21 August.

26 Gurtong, 'Government Refute Ban of Foreigners in South Sudan' (September 17, 2014) retrieved September 30, 2014, from <http://www.gurtong.net/ECM/Editorial/tabid/124/ctl/ArticleView/mid/519/articleId/15646/Government-Refute-Ban-Of-Foreigners-In-South-Sudan.aspx>

27 NSS Bill, section 12.

HRDs interviewed by EHAHRDP have described routine harassment and surveillance by the NSS, which has escalated dramatically in the course of 2014. The expansion of security service powers, and lack of basic safeguards, contained in the NSS Bill represent potent threats to those HRDs who hold dissenting views, and to accountability and the rule of law in South Sudan.

New Media Laws

The South Sudan Public Broadcasting Corporation Bill 2012, Media Authority Bill 2012, and Right to Access Information Bill 2012 – collectively known as ‘the media laws’ – illustrate perhaps most vividly the lack of transparency in the legislative process in Sudan. While these laws may potentially improve media regulation in South Sudan, the final Acts have still not been circulated almost three months after becoming law, and their specific provisions remain unknown.

As noted in our previous report, South Sudan currently lacks any laws regulating the media or providing a framework for access to information, and so the draft media law represents a significant and welcome step forward. However, they do appear to fall short in some important areas, most notably allowing for excessive government control of media organisations, and inadequate protections of the independence of the Media Authority and South Sudan Broadcasting Corporation.³¹

Drafting of the bills began in 2006, and after protracted discussions and delays, the final drafts came before the National Assembly in 2012. However, in a bizarre series of events, when the bills were signed and returned to

the President’s office for signing, they went ‘missing’. The National Assembly, the office of the President and the Ministry of Information and Broadcasting failed to shed any light on the bills’ whereabouts, despite repeated inquiries by various civil society groups. On 9 September, a press conference was held in Juba in which Press Secretary of the Office of the President Ateny Wek Ateny announced that the bills had been located and that the President had signed the bills the previous day.³²

Despite the bills having evidently been signed into law, the final drafts have yet to be circulated, and none of the journalists and other HRDs which EHAHRDP spoke with have seen copies of the new laws. A number of civil society groups, while generally hailing the signing of the bills, are worried that last minute revisions may have been made to the documents without the input of civil society. In any event, incidents of media censorship and intimidation of journalists continue unabated.

The lack of transparency surrounding the new media laws threatens to undermine their greatest value – greater certainty for all those working in the media space in South Sudan. The lack of a media framework has been identified as the source of problems by many journalists and others, and the new media laws should go a long way to addressing this. However, until the text of the new laws is made public, one unknown is simply replaced by another.

31 See Part 6 of EHAHRDP’s ‘Change Will Not Come Until We Talk About Reality’, for a detailed analysis of the proposed media laws.

32 Gurtong, ‘Long Awaited Media Bills Signed’ (September 10, 2014) retrieved September 25, 2014, from <http://www.gurtong.net/ECM/Editorial/tabid/124/ID/15622/Default.aspx>.

7. Conclusion

In December 2013, EHAHRDP issued an urgent call to action to the Government of South Sudan: *“There needs to be, in short, a fundamental re-imagining of the relationship between human rights defenders and the government. The government must recognize the vital position that human rights defenders have in nation-building, and developing the unique potential of South Sudan.”*

Not only has this call gone unheeded, but one year later, South Sudan has become one of the most restrictive and hostile environments in the region for HRDs. Trends identified in the 2013 report have grown dramatically worse. These include the routine intimidation and harassment of HRDs, as well as a worsening operating environment for journalists in particular. Ongoing confusion regarding the status and content of the media laws, continuing pre-publication censorship, and increased sensitivity on the part of government and non-state factions around reporting on the current conflict, have increased risks for journalists significantly.

Moreover, as the fledgling state has been engulfed by conflict, a new set of threats to the work of HRDs has emerged. These include the targeting of HRDs’ family members, and attempts to silence HRDs by denying them access to international human rights forums. Perhaps most worrying, has been the expansion of the NSS, the explosion in threats against HRDs emanating from the NSS, and the proposed entrenchment in law of the wide ranging powers and impunity it currently enjoys, through the draft NSS Bill.

As the space for civil society has shrunk, and risks to HRDs have grown more acute, many of the best and boldest HRDs have been forced to limit or abandon their work or flee the country, leaving South Sudanese civil society depleted, and those who remain overstretched. Their work has been made even more difficult by the reallocation of funds by many donors away from rights-based projects, into humanitarian aid.

The scale of the crisis - and of human suffering - in South Sudan is overwhelming. All sides of the conflict have been implicated in grave violations of international human rights and humanitarian law. It is easy to understand why the voices of civil society, and the issues raised in this report, may not be considered pressing. However, a healthy, active, and protected community of human rights defenders is essential if South Sudan is to stand any chance of emerging from the current conflict with the potential for stability and democratic governance.

8. Recommendations

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

To the Government of South Sudan:

- Immediately take steps to ensure that all its state agencies, including the National Security Services and the SPLA, cease all intimidation, harassment, arbitrary arrests, and attacks against human rights defenders;

- Commit to withdrawing from parliament the *Non-Governmental Organisations Bill 2013*, and undertake to redraft the law to bring it in line with international standards;

- Publicly clarify the status of the laws regulating the media in South Sudan; and ensure that the laws, if passed, are made publicly available and accessible to South Sudanese citizens;

- Ensure transparent and thorough investigations into all reported threats or attacks against human rights defenders, and commit to hold perpetrators of such threats or attacks accountable in accordance with international legal standards.

- To Donors and Development Partners:

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

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

- To report publicly and regularly on the human rights situation in South Sudan, in compliance with Security Council Resolution 2155.

To the United Nations Human Rights Council and its Member States:

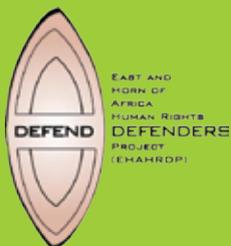
- To support the establishment of a Special Rapporteur on the Human Rights Situation in South Sudan;

- To ensure that the mandate holder is tasked with reporting directly the Human Rights Council and the UN General Assembly, and ensure the consideration of South Sudan under Item 4 of the Council's Agenda as a *Country of Concern*;

- To take urgent steps to investigate reports of reprisals against South Sudanese human rights defenders engaging with the Council, and more widely to take urgent steps to prevent, and promote accountability for, threats and attacks against *all* those who submit information or seek to engage with the Council.

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

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



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