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HUMAN RIGHTS PRIORITIES FOR SOUTH SUDAN



South Sudan
Human Rights Defenders
Network (SSHRDN)

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South Sudan: Human Rights Priorities for the Government of South Sudan

A Proposal from Amnesty International, Human Rights Watch and the South Sudan Human Rights Defenders Network

Introduction

Since independence from Sudan in 2011, South Sudan has faced the challenge of respecting, protecting, and fulfilling the full panoply of human rights that come with the responsibility of being a sovereign state. It has consistently ranked towards the bottom of global human development indexes.¹ The new state inherited a legacy of prolonged civil war and severe underdevelopment that continues to date. The armed conflict that broke out on December 15, 2013, reversed limited gains in infrastructure development and security and exacerbated the dire human rights and humanitarian situations across the country as people's livelihoods were interrupted and huge sections of the population faced extreme food insecurity. Both government and armed opposition groups committed crimes under international law and other human rights violations and abuses with impunity, including unlawful killings, forced displacements, and sexual violence. The parties to the armed conflict also looted civilian properties, and destroyed villages and public infrastructure, including schools and hospitals.

A 2015 peace deal collapsed in July 2016 when parties to the peace agreement fought for four days in the capital, Juba, killing hundreds of civilians.² In September 2018, warring parties signed the Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan (R-ARCSS),³ paving the way for a Revitalized Transitional Government of National Unity (R-TGoNU). The formation of the new government has been fraught with delays and disagreements between parties over appointments. The presidency was formed in February 2020, the Cabinet was sworn in on 23 March 2020⁴ and all state executives formed by January 2021.⁵ The Transitional National Legislature, composed of the Transitional National Legislative Assembly and the Council of States, was reconstituted in August 2021.⁶ These delays and gaps in governance and security have led to increased fighting at the state, local and community levels, yet often stirred up by national-level politics and supported by senior government and opposition political and/or military officials.⁷

While large-scale fighting between the now South Sudan People's Defence Forces (SSPDF) and the Sudan People's Liberation Army – In Opposition (SPLA-IO) and their aligned militias has subsided with the signing of the R-ARCSS, since late 2019 fighting between local non-state armed actors, organized, and mobilized along ethnic lines, and often supported by state and SPLA-IO forces, has

dramatically increased insecurity across the country and attacks against civilians have increased too.⁸

Concurrently, the government has squandered opportunities to ensure human rights and improve the lives of South Sudanese by failing to prioritize public service provision and to stem widespread corruption and embezzlement of public funds by government officials, senior military and political figures. This has impacted the maximum available public resources for realization of rights.⁹ The government has yet to deposit instruments of ratification and accede to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and work towards realization of rights to health, education amongst others. Basic service delivery, every government's responsibility, is mostly run by non-governmental organisations and the United Nations. Humanitarian aid has been under constant attack. Since December 2013, at least 129 aid workers, most of them South Sudanese, have been killed mainly by government forces, armed opposition groups and affiliated militias, as well as armed youth groups.¹⁰

The government has also failed to pursue accountability for violations and abuses committed during the armed conflict. Instead, individuals sanctioned by the UN Security Council, or otherwise implicated, for their alleged involvement in serious crimes, have been promoted and given senior positions in the army or government, most recently in December 2021.¹¹

The Government of South Sudan (GoSS) must take responsibility to improve the human rights situation. The 2018 peace deal, which includes a rich reform agenda, offers the R-TGoNU the opportunity to finally ensure the human rights of the South Sudanese people.

In some cases, it will need sustained, long-term international assistance, donor cooperation, and investment to fulfil rights, especially economic, social, and cultural rights. But there are immediate steps that it can and should take to fulfil its legal obligations to people living in South Sudan.

This briefing paper draws on the work of our organizations over the last decade and credible secondary sources, including UN reports. It proposes ten priorities that should form the basis of a comprehensive human rights agenda that are based on South Sudan's existing obligations in the Bill of Rights, international and regional law treaties, customary law, and the human rights reforms in the R-ARCSS. Many of the recommendations set out in this document were accepted by the government during the 2016 Universal Periodic Review (UPR), but have not been implemented.¹² For example, the GoSS accepted recommendations by Ethiopia and Pakistan to develop a human rights agenda and action plan but has yet to do so.¹³

1. Right to life: unlawful killings

The exact number of people killed by the parties to the conflict that erupted in December 2013 is unknown, but it is estimated to run into the hundreds of thousands.¹⁴ All parties to the conflict deliberately killed civilians, including women, children, older people, and people with disabilities.¹⁵ Deliberate attacks on civilians constitute war crimes. Targeting of civilians continues in the southern Equatoria region where a non-international armed conflict persists between the R-TGoNU, SPLA-IO and rebel group National Salvation Front (NAS), a non-signatory to the peace deal.¹⁶ The most recent fighting took place between June and October 2021 in Tambura, Western Equatoria between competing local groups aligned with forces affiliated with the SSPDF on the one hand and the SPLA-IO on the other.¹⁷ According to local government figures, around 300 people were killed.¹⁸

The July 2018 arms embargo imposed by the UN on South Sudan has curtailed to some extent the flow of weapons and use of heavy weapons such as the helicopter gunships against civilians. However, the UN Panel of Experts on South Sudan in 2020 found that South Sudanese and neighbors have continued to violate the arms embargo. The experts found evidence that Sudan delivered weapons three times between March and June 2019; that Ugandan troops entered the country without notifying the UN; and that regional states, as in previous years,¹⁹ failed to report required cargo inspections.²⁰

Fighting, including cattle raiding, between ethnic groups and between clans surged across the country in 2020.²¹ Supported by senior military and political Sudan People's Liberation Movement (SPLM) and Sudan People's Liberation Movement – In Opposition (SPLM-IO) officials, including by providing military-grade weapons, local vigilante groups engaged in violence which killed at least 600 people in 2020.²² This violence, according to the UN, declined in 2021.²³

Extra-judicial killings increased with the outbreak of the conflict in December 2013, as military intelligence, and the National Security Service (NSS) killed real and/or perceived opponents of the government including human rights defenders and journalists. Human rights organizations, as well as the UN Panel of Experts and the UN Commission on Human Rights in South Sudan (CHRSS), have documented extra-judicial killings of detainees in NSS detention facilities as in other locations.²⁴ In 2021, at least 52 people, including children and older people, were extrajudicially executed in Warrap and Lakes State.²⁵ Government officials defended the unlawful executions as a necessary deterrence mechanism in the absence of rule of law institutions.²⁶

Between independence in 2011 and 31 December 2020, South Sudan has executed at least 43²⁷ people who were sentenced to death, among them at least three individuals who were below 18 years of age at the time of the crimes of which they were convicted.²⁸

Recommendations:

To the President:

- Make a public commitment to abolish the death penalty and promptly take interim steps to achieve that including implementing an official moratorium on all executions.

To South Sudanese authorities:

- End all unlawful killings, including deliberate attacks on civilians, indiscriminate attacks and extra-judicial killings;
- Investigate unlawful killings independently and efficiently and bring all alleged responsible to justice in fair trials in ordinary civilian courts and without recourse to the death penalty;
- Pending the abolition of the death penalty, immediately ensure full compliance with international law and standards on the use of the death penalty, including the prohibition on imposing it against persons below 18 years of age at the time of the commission of the crime;
- Promptly accede to the Rome Statute of the International Criminal Court and implement it fully into national law.

To all UN member states:

- Ensure full compliance with the UN arms embargo on South Sudan.

2. Humanitarian access and the rights to food and to water

More than 7 million people in South Sudan lack reliable access to a sufficient quantity of affordable and nutritious food to satisfy their basic needs.²⁹ The latest food security assessment projected that 2.5 million people were severely food insecure.³⁰ Food production has been crippled by the conflict and by the ongoing fighting in the Equatorias and insecurity, including violence and cattle raids, in parts of the country.³¹ Government forces and armed opposition groups have severely restricted civilians' access to food in the Equatorias, Western Bar el Ghazal and Unity states, cutting supplies, looting from markets and homes, burning produce and targeting civilians, even while cultivating in their fields, for their perceived allegiances³² or

ethnicity.³³ More than two million people have fled their homes and sought refuge in other countries.³⁴

Only 40 percent of the population has access to safe water and only 10 percent to adequate sanitation which, as well as being distinct rights themselves, are also interconnected to and constituent elements of the rights to an adequate standard of living and health and essential to the realization of all other rights.³⁵ Most of the country is forced to drink contaminated water which leads to water-borne diseases, a major cause of child mortality.³⁶ The lack of adequate access to clean water affects the ability of people to take measures to prevent infections and the spread of diseases including Covid-19.

Recommendations:

To the Government of South Sudan:

- Ensure that all communities have unfettered access to humanitarian aid, including sufficient supplies of food and clean water, and take measures to hold accountable state agents as well as individuals from opposition non-state armed groups who have obstructed or unlawfully diverted humanitarian assistance;
- Take urgent measures to address the malnutrition and overall health situation of children, including by investing in infrastructure to facilitate access to adequate and nutritious food; water treatment; sanitation; ensuring the availability of potable water; and adopting adequate measures concerning communicable disease surveillance and prevention.

3. Right to education, including adhering to the Safe Schools Declaration

Access to education is painfully restricted and unequal. According to a report by the United Nations Children Fund (UNICEF), more than two million children are out of school due to Covid-19 and other challenges accessing education including financial barriers and flooding.³⁷ Most of these children are girls.³⁸ Poverty, child marriage, teenage pregnancies, abductions, war, and restrictive cultural and religious beliefs on the value of educating girls have all contributed to these high numbers of children out of school.³⁹ A significant number of the children out of school are children with disabilities.⁴⁰ The government has persistently underinvested in education. For instance, only nine per cent of the 2019 national budget was allocated to education well below the Education 2030 Framework of Action target of at least 15-20 per cent.⁴¹

In June 2015, South Sudan endorsed the Safe Schools Declaration, an inter-governmental political agreement dedicated to protecting education in armed conflict, and thereby committed to using the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict as a practical tool to guide their behaviours during military operations.⁴²

However, contrary to the Declaration, attacks on education continue, including the use of schools by armed forces and groups,⁴³ attacks on schools, and attacks on students and teachers. Between the beginning of the conflict in December 2013 and October 2017, there were 293 reported incidents of military use and attacks on schools, affecting over 90,000 children.⁴⁴ In the first six months of 2018, the UN reported the military use of 35 schools for sleeping quarters and bases and a total of 85 schools vacated by armed forces or armed groups.⁴⁵ In 2020, the UN reported military use of 10 schools.⁴⁶ In September 2021, the UN reported military use of schools by the SPLA-IO in Western Bar el Ghazal.⁴⁷ SSPDF-affiliated fighters had used a primary school in Tambura town as barracks for several weeks during the fighting, until late October 2021 when government officials finally coaxed them into leaving.⁴⁸

Recommendations:

- Order immediate evacuation of military personnel currently occupying schools' premises;
- Implement article 4 of the Convention on the Rights of the Child (CRC) which obliges South Sudan to “undertake all appropriate legislative, administrative, and other measures” for the implementation of the right to education and ratify the African Charter on the Rights and Welfare of the Child;
- Re-introduce legislation similar to the draft amendment to the 2009 Sudan People’s Liberation Act proposed by the Ministry of Defence and Veteran Affairs in 2014, which would have prohibited the occupation of schools or hospitals by the armed forces;
- Ensure accountability for soldiers who disobey existing military orders prohibiting the military use of schools;
- Ensure that all children enjoy their right to free primary education and take measures to ensure that secondary education is available and accessible to all free of charge as expeditiously and effectively as possible;
- Follow international standards set out in the Education 2030 Framework of Action, which sets out goals to achieve equal education opportunities for all, to allocate at least 15 to 20 percent of the total national budget, or 4 to 6 percent of Gross Domestic Product, to education;
- Design concrete and sustainable solutions to address direct and indirect financial barriers to accessing education, in consultation with communities, including children, and seek further cooperation and assistance of the international community to ensure no child is

left behind;

- Expand efforts to raise public awareness on the importance of education for girls;
- Develop retention strategies to ensure that girls who enroll in school can remain in school, such as incentives for families to keep girls in school including subsidizing any costs for uniforms and textbooks;
- Expand efforts to provide continuing formal education and vocational training opportunities for married girls and women. In particular, expand access to alternative programs in all states, and inform the public about their existence.

4. *Right to health*

The government continues to fail in its obligation to respect, protect and fulfil the right to health for everybody in the country. South Sudanese continue to die in high numbers of preventable diseases, and other conditions, due to inadequate health facilities, exacerbated by attacks on health care facilities and medical practitioners by government forces, armed opposition groups, vigilante groups, and militias.⁴⁹ In July 2019, only 44 percent of the population had access to primary health care services.⁵⁰ Health expenditure as a percentage of general government expenditure has been unacceptably low at about two-three percent over recent years. In the 2019-2020 national budget, only 2.8 percent (around US\$14 million) was allocated to public health.⁵¹ This is in stark contrast to the commitment made by African governments in the Abuja Declaration in 2001⁵² to commit at least 15 percent of their annual budgets to the health sector.⁵³ In 2019, about 80 percent of South Sudan's health services were provided by international organizations.⁵⁴ Despite the high prevalence of sexual and gender-based violence, both in relation to the conflict and outside conflict situations, survivors do not have adequate access to appropriate public health services.⁵⁵

Covid-19 revealed as well as exacerbated the impact of decades of underinvestment in the health sector in then Sudan and now South Sudan, and the acute shortage of critical and lifesaving equipment. At the start of the pandemic, South Sudan had four ventilators and 24 ICU beds for a population of 12 million.⁵⁶ Frontline health workers especially in areas outside Juba lacked adequate personal protective equipment such as masks and gloves and were frequently harassed by security personnel.⁵⁷ In 2020, doctors on the government's payroll did not receive salaries for at least three months.⁵⁸

Despite widespread post-traumatic stress disorder in the population,⁵⁹ the availability and accessibility of mental health and psychosocial support services remains extremely limited. There

are only three psychiatrists serving the entire country and they are also responsible for training and supervising health staff. Juba Teaching Hospital is the only public medical facility providing in-patient psychiatric care and demands exceeded the number of beds available for psychiatric patients. The availability of psychotropic drugs is sporadic and limited.⁶⁰

Recommendations:

- Ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR) and work towards realization of the rights to health, education amongst others;
- Utilizing the maximum available resources including through seeking international cooperation and assistance, take concrete steps to improve the availability, accessibility, and quality of health services across the country with a concrete target of ensuring that everybody can access primary health care services;
- Commit to the Abuja Declaration and progressively allocate at least 15 percent of the national budget to health;
- Introduce measures to support people's mental health including providing additional resources by prioritising it in the national budget, integrating mental health services into primary health care and by increasing public awareness about the nature of mental health conditions, including by combating negative stereotypes and stigma, highlighting the impact of Covid-19 on mental health, the recovery process, and available support services.

5. Children's rights

Children make up 65 percent of the more than 2.3 million refugees who have fled the most recent conflict that broke out in 2013.⁶¹ In 2018, an estimated 65 percent of children went undocumented⁶² and in November 2021, UNICEF reports only one in three children are registered at birth,⁶³ resulting in potentially stateless children and preventing them from accessing healthcare and basic education. South Sudan also lacks adequate social protection services.

An estimated 1.4 million children under five lacked access to food and were projected to suffer from acute malnutrition and over 300,000 of severe acute malnutrition between April and July 2021.⁶⁴ UNICEF reports that 75 percent of all child deaths in South Sudan are due to preventable diseases, such as diarrhoea, malaria, and pneumonia.⁶⁵

Since the outbreak of the conflict in December 2013, grave violations and abuses continue to be committed against children by armed groups and government security forces, some constituting war crimes, including incidents of sexual violence; the recruitment and use of children in combat and as porters, cooks, and spies; and attacks on schools and hospitals.⁶⁶

Both government and armed groups continue to kill, injure, maim, and abduct children.⁶⁷ Accountability for this has been scant.⁶⁸ The rehabilitation and reintegration of child soldiers remain a challenge due to the shortage of services, the lack of social and psychosocial resources, the lack of education and employment opportunities and the risk of re-recruitment⁶⁹ due to slow implementation of the peace deal and ongoing violence in parts of the country.

In government-run prisons, child prisoners are often comingled with adult detainees, contrary to international law, exposing them to abuses including sexual violence.⁷⁰ The National Security Service has detained children as young as 13 who have been accused of supporting rebels or committing other national security crimes.⁷¹ Mothers have also been detained together with their children as young as eight months.⁷²

In 2015, UNICEF estimated that 35,000 children were living and working in the streets,⁷³ leaving them vulnerable to abuse and exploitation and without access to sufficient food, basic healthcare services and education. UNICEF reports that the number of children living on the streets increased due to Covid-19.⁷⁴

Child and forced marriage of girls and women is also prevalent in the country.⁷⁵ Child marriage has a significant negative impact on women and girls' realization of key human rights, including the rights to health and education, physical integrity and the right to marry only when they are able and willing to give their free consent. While South Sudan has a national action plan to combat child marriage and laws criminalizing child and forced marriage, the provisions in those laws are often unclear and contradictory.⁷⁶

Recommendations:

- Fully implement the Convention on the Rights of the Child and the 2008 Child Act;
- Ratify the International Covenant on Economic, Social and Cultural Rights and ratify the African Charter on the Rights and Welfare of the Child;
- Expand efforts to raise public awareness on the importance of birth notification and registration;
- Using maximum available resources, and seeking international cooperation and assistance to do so where necessary, increase expenditure on education, health and social protection services that benefit children's rights;
- Improve access to justice mechanisms in South Sudan to ensure criminal cases involving children are handled by appropriate rule of law authorities in a prompt manner with due process rights guaranteed;
- Ensure that the detention of children is always used only as a measure of last resort and for the shortest appropriate period of time. Explore and support non-custodial alternatives

to imprisonment of children such as reformatory/rehabilitative programs and community service;

- Impartially investigate and, if there is sufficient admissible evidence, prosecute all South Sudanese officials and armed opposition group commanders suspected of criminal responsibility for recruiting, abducting and committing other crimes and abuses against children;
- Fully implement the Strategic National Action Plan to End Child Marriage by allocating enough funding, investing in addressing the main drivers and consequences of child marriage, protection for survivors, and supporting already married girls;
- Develop a national strategy on children in street situations using a child rights approach focused on prevention and response in line with the CRC.

6. *Right to liberty*

The 2011 Transitional Constitution, the 2008 Code of Criminal Procedure, the 2008 Child Act, and the 2011 Prisons Service Act all provide due process protections. These are bolstered by international law requirements that pretrial detention be “an exception and as short as possible” and that defendants be tried “without undue delay.”⁷⁷ Yet in South Sudan, suspects may wait in prison for long periods before investigations are complete and trials commence. Partially completed trials can drag on due to adjournments, missed court dates or the absence of key witnesses.⁷⁸ Under domestic law, the total period of pre-trial detention should not exceed six months, except with the consent of the relevant Court of Appeal, but this limit is often not respected.⁷⁹

Organizations, including the United Nations, the South Sudan National Commission on Human Rights, Amnesty International and Human Rights Watch, have documented patterns of arbitrary arrests and prolonged detention by South Sudan’s security forces, especially the NSS, of real and perceived opponents, outspoken individuals and government critics, and journalists since South Sudan gained independence in 2011. With the outbreak of civil war in December 2013, the army’s Military Intelligence Department (MID) and NSS escalated their crackdown on individuals accused of supporting armed opposition groups or criticizing the government and targeted them for abuses.⁸⁰ Most were detained and kept in poor conditions, and in some instances tortured or beaten. Most were never charged or brought before a court or judicial authority and were denied access to a lawyer and their family. This is contrary to South Sudan’s 2011 Transitional Constitution which requires detainees to be produced in court within 24 hours⁸¹ and, even in times of conflict, international law requires that a detainee be brought before a judicial authority within a reasonable period.⁸²

These practices of unlawful detention have rendered detainees more vulnerable to enforced disappearances, deaths in custody and extrajudicial killings.⁸³

Recommendations:

- Authorities should immediately release detainees who have not been charged or, if there is sufficient credible evidence of recognizable criminal offences, promptly charge them and bring them before a judge to determine any request for pre-trial detention. Detainees who have already been charged should be released while awaiting trial or promptly brought before a judge to determine any request for their continued pre-trial detention. All detainees should be guaranteed their full due process rights, including access to a lawyer of their choosing, be allowed to see family members, and receive any needed medical treatment;
- Amend the 2014 NSS Act to limit its role to intelligence gathering, evidence collection and analysis as stipulated by the Constitution and make reforms to ensure it operates in line with international law. In particular, remove powers of arrest, detention, search and seizure;
- Amend the 2008 Code of Criminal Procedure to require that criminal suspects appear before a judge within 24 hours of arrest, as required by the Transitional Constitution;
- Immediately review the legality of all detentions, including of children;
- Promptly ratify, without any reservations, the International Convention on the Protection on All Persons from Enforced Disappearances and implement it fully into national law. In accordance with articles 31 and 32, recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of persons claiming to be victims of violations of the Convention or other states parties alleging violations of obligations under the Convention.

7. Rights of women and girls

The rights of girls and women in South Sudan remain significantly curtailed. Women and girls face myriad hardships and obstacles in their daily lives, including high levels of poverty, low levels of literacy, pronounced gender gaps in education and political representation,⁸⁴ and the highest maternal mortality rate in the world — estimated at more than 2,054 deaths per 100,000 live births.⁸⁵ Violence against women and girls is widely prevalent. Although exacerbated by years of conflict, these forms of abuse are also based on long-standing patriarchal systems, making them even harder to eliminate. Survivors have limited ways to get help from authorities. Widespread displacement exacerbates other risks to the safety of women and girls, including gender-based violence.⁸⁶

Marriage shapes the experience, status, and security of South Sudanese women and is at the center of many violations of their rights. Customary practices attach great social and economic importance to dowry payment, and a husband's consequent rights over his wife, being rooted in gender stereotypes that view the woman as the property of her family or husband. This has increased the likelihood of violence against women and contributed to denying women child custody and matrimonial property rights.⁸⁷

The widespread child and forced marriage have detrimental effects on the sexual and reproductive health of women and girls. According to the United Nations Population Fund (UNFPA), almost half of 18-year-old girls were married.⁸⁸

Women and girls have unique health needs, including maternal and reproductive health care, especially in rural and marginalized communities, as well as in camps for refugees and internally displaced people.

During the conflict, women and girls have suffered in distinct ways. Government and opposition forces committed widespread sexual violence, including rape, gang rape, sexual slavery, sexual mutilation, torture, or forced nudity, committed mainly against women and girls.⁸⁹ Women and girls have also suffered from other crimes under international law and human rights violations and abuses that affect them in unique ways. For instance, killings of male relatives and enforced disappearance of loved ones, have left women as sole breadwinners for their families. Obstructed access to health care due to the fighting has resulted in preventable deaths of women, for instance during childbirth. Access to healthcare, justice and other remedies such as reparations for conflict-related rape is urgently needed.

Recommendations

- Carry out comprehensive reform of South Sudan's laws on marriage, separation, divorce, and related matters, in collaboration with relevant government ministries and agencies, the National Legislative Assembly, experts both within and outside the country, and NGOs and civil society groups working on women's rights, to:
 - Prohibit forced marriage and related harmful practices including bride kidnapping, girl-child compensation, marriage as dispute settlement or debt payment, polygamy, and wife inheritance;
 - Set clear penalties and punishment for acts of violence against girls and women carried out as intimidation or retribution for refusal to marry; and provide for adequate legal, medical, and psycho-social services to survivors of these attacks;
 - Grant the same legal status to parties in customary marriages as those in civil marriages;
 - Protect survivors of sexual and gender-based violence;

- Ensure adequate medical, including mental health support, to survivors of sexual and gender-based violence;
- Ensure the commitment provided for in the revitalized peace deal to secure at least 35 percent women representation in all levels of governance is implemented;
- End the harmful practice of child marriage including by setting in law a clear minimum age of 18 for marriage;
- Ratify the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, referred to as the Maputo protocol;
- Improve access to sexual and reproductive health services and information for all girls and women, including access to emergency obstetric care and family planning;
- Ensure that truth telling, reparations, and accountability processes in South Sudan for gross human rights violations and abuses effectively address the gendered causes and consequences of the conflict on women and girls, and actively involve them in such processes;
- Fully enforce standards and obligations in the Convention on the Elimination of all Forms of Discrimination Against Women and the CRC, and ratify the third Optional Protocol of the CRC.

8. *Freedom from torture*

South Sudan's 2011 Transitional Constitution prohibits torture, cruel, inhumane, and degrading punishment.⁹⁰ Under international law the prohibition on torture is without exception or derogation, as reflected in treaties to which South Sudan is party such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) the African Charter on Human and Peoples' Rights (ACHPR), and is a *jus cogens* norm.⁹¹ Nevertheless, torture and ill-treatment are practiced by police, the NSS and military intelligence during arrests and detentions.⁹² People, including political opponents, journalists, human rights workers, have been harassed, beaten, raped or tortured in police custody before being transferred to prison.⁹³

Due to widespread stigma and inadequate mental health services, people with psychosocial disabilities can be arbitrarily detained in prisons, even when they have committed no criminal offense.⁹⁴ Human Rights Watch and Amnesty International have documented people with psychosocial disabilities being kept naked, chained, or held in solitary confinement in prisons.⁹⁵ The UN special rapporteur on torture has noted that chaining "unequivocally amount(s) to torture" and the imposition of solitary confinement "of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment."⁹⁶

Recommendations

- End all practices of torture or other forms of ill-treatment;
- Fully enforce standards and obligations of the CAT and its additional protocol as well as the relevant obligations under ACHPR and CRC;
- Ensure all acts and allegations of torture are promptly investigated and that all those suspected of criminal responsibility are brought to justice in fair trials before ordinary civilian courts and without recourse to death penalty;
- End the use of solitary confinement for prisoners with disabilities;
- Ban chaining in law and enforce the ban in practice;
- Promptly recognize the competence of the Committee against Torture to receive and consider communications from or on behalf of victims or other states parties;
- Pass legislation to prohibit the incarceration in prison of people based on mental disability.

9. Civic space

Right to privacy

The 2011 Transitional Constitution prohibits interference with private life, family, home, and correspondence. Authorities, however, have engaged in unlawful surveillance of individuals including physical, telephonic, and digital surveillance.⁹⁷ The NSS can likely only intercept communications with the collaboration of telecommunication service providers. Tapped telephone conversations have been presented as evidence in court, recounted to a detainee in interrogations, and appear to have provided leads for arbitrary arrests.⁹⁸

Freedom of opinion and expression and of peaceful assembly and the right to information

Despite provisions for the freedom of opinion and expression and peaceful assembly enshrined in the 2011 Transitional Constitution,⁹⁹ South Sudanese authorities have harassed, detained, and clamped down on journalists, human rights defenders, activists, and persons perceived to oppose the government.¹⁰⁰ These attacks have contributed to self-censorship and a shrinking of civic space. Journalists have also faced criminal and civil cases on allegations of defamation in the course of their work.¹⁰¹ The NSS's reach extends into neighbouring countries where they have threatened and forcibly disappeared human rights defenders and journalists.¹⁰²

The South Sudan National Communication Authority, NSS agents and the Media Authority, an oversight body, are responsible for censoring media, suspension and closure of news outlets, seizure of newspapers, blocking access to prominent news sites,¹⁰³ revocation or denial of accreditation of foreign correspondents,¹⁰⁴ arbitrary arrests, and prolonged detention of persons

allegedly responsible for critical posts on social media.¹⁰⁵

Information that should be public, including laws and court judgements, is shrouded in secrecy and considered as classified by many government officials, restricting the right to information contrary to article 32 of the 2011 South Sudan constitution and the 2012 Access to Information Act.

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Recommendations:

- Ensure the right to freedom of opinion and expression and peaceful assembly is respected;
- Ratify the International Covenant on Civil and Political Rights;
- Immediately cease the harassment of activists, journalists and civil society actors;
- Immediately release all arbitrarily detained activists and civil society actors;
- Amend the 2013 Media Authority Act and the 2008 Penal Code to decriminalize defamation.
- Ensure a member of the journalists' union sits on the Media Authority. Introduce vetting and screening guidelines of Media Authority members to ensure independence from the NSS and other security agents;
- Implement the 2012 Access to Information Act and guarantee the right to information.

10. Right to truth, justice, and reparations

After seven years of armed conflict characterized by serious crimes under international law and other human rights abuses and violations committed by all parties to the conflict, access to justice remains blocked for the victims. Despite a few trials related to sexual violence, impunity for the overwhelming majority of widespread abuses and violations is deeply entrenched as a norm and continues to fuel cycles of violence.¹⁰⁷ Victims lack access to redress, medical and psychosocial services.

Civilian courts lack independence. Prosecutors follow the directives of the executive and judges experience political interference. Military courts are not independent as the president has the power to confirm or reject judicial decisions. South Sudanese authorities should end the practice of prosecuting crimes committed against civilians in military courts and should instead prosecute these in civilian courts in accordance with South Sudanese and international law.¹⁰⁸

The government lacks political will to hold perpetrators of serious crimes accountable. Individuals sanctioned by the UN Security Council for their alleged involvement in serious crimes have been

promoted. Government-led investigation committees lack independence and impartiality and, except one, have not resulted in prosecutions of serious crimes.¹⁰⁹

In 2015 and the 2018, parties to the (revitalized) peace agreements committed themselves to a holistic transitional justice process.¹¹⁰ Chapter V provides for a Commission for Truth Reconciliation and Healing (CTRH), a Compensation and Reparations Authority (CRA), and a Hybrid Court for South Sudan (HCSS) to address the legacy of past violence and provide justice, truth and reparations to victims of the conflict.

On 29 January 2021, South Sudan's cabinet approved implementation of the Chapter V accountability mechanisms provided for in the 2015 and 2018 peace agreements.¹¹¹ This step empowers the Minister for Justice and Constitutional Affairs to take the establishment of these mechanisms forward. While this development has the potential to unlock much needed criminal accountability for those implicated in the worst abuses and violations, it remains unclear whether this newly stated recommitment will be supported and accompanied by concrete actions leading to the finalization and operationalization of accountability mechanisms.¹ At the time of writing, however, the government had only reconstituted the technical committee for the establishment of the CTRH and a UN agency had begun training committee members. The government continues to delay and block the establishment of the HCSS.

Recommendations:

- Adopt the Draft Statute of the HCSS without further delay;
- Work with the African Union Commission to develop a plan for immediate creation and operationalization of the HCSS, including by fostering evidence collection as a matter of particular priority, supporting recruitment and hiring of staff, and provide a public update on the court's progress;
- Conduct judicial and legal reform to improve the domestic justice system's ability to address impunity for crimes committed in the context of the ongoing conflict including by ensuring the independence of the judiciary, respecting the division of jurisdiction between military and civilian courts, and the creation of an independent office of the Director of Public Prosecutions;
- Incorporate crimes under international law into the penal code, including, but not limited to, genocide, crimes against humanity, war crimes and torture in line with definitions under international law.

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⁷⁴ UNICEF, “Child protection in South Sudan – Briefing Note”, Quarter 3, 2021, www.unicef.org/southsudan/media/7626/file/Child%20Protection%20Briefing%20Note_2021%20Q3_0.pdf

⁷⁵ UNICEF South Sudan, Ministry of Gender, Child and Social Welfare, Ministry of Finance and Planning, *The situation of children and women in South Sudan 2018 – 2020*, July 2021, www.unicef.org/southsudan/media/8191/file/UNICEF-South-Sudan-Situation-Analysis-2021.pdf

⁷⁶ UN Population Fund (UNFPA), Statement on ending child marriage in South Sudan by the Ministry of Gender, Child and Social Welfare and UNFPA, 3 December 2018, southsudan.unfpa.org/en/news/statement-ending-child-marriage-south-sudan-ministry-gender-child-and-social-welfare-and-unfpa; HRW, “This old man can feed us, you will marry him”, 7 March 2013, www.hrw.org/sites/default/files/reports/southSudan0313_forinsertWebVersion_0.pdf. For more on gaps and conflicts in existing law and the need for more direct legislation protecting girls from early marriage, see page 74.

⁷⁷ International Covenant on Civil and Political Rights (ICCPR), art. 9 and 14. See also UN Human Rights Committee, General Comment No. 8 on the ICCPR; Article 9, U.N. Doc. A/40/40 (1982). Note that South Sudan has not ratified the ICCPR. Article 7(4) of the African Charter on Human and Peoples’ Rights (ACHPR), to which South Sudan is a party, provides for the right to be tried within a reasonable time.

⁷⁸ Human Rights Watch, “Prison is not for me”: Arbitrary Detention in South Sudan, 21 June 2012, www.hrw.org/node/256328/printable/print

⁷⁹ Code of Criminal Procedure, art. 100. Because the courts of appeal sit only in Juba, Rumbek, and Malakal, and because there is no effective communication system within the judiciary, it is extremely difficult for the courts of appeal to exercise this role. Some rule of law actors suggest that this provision may require reform.

⁸⁰ See, for instance, Human Rights Watch, “South Sudan: End Media Restrictions”, 31 July 2014, www.hrw.org/news/2014/07/31/south-sudan-end-media-restrictions; Human Rights Watch, “South Sudan: Arbitrary detention, torture”, 18 May 2015, www.hrw.org/news/2015/05/18/south-sudan-arbitrary-detention-torture; Amnesty International, “Denied the protection of the law: National Security Service detention in Juba, South Sudan”, 15 April 2016, www.amnesty.org/en/documents/afr65/3844/2016/en/; CHRSS, Report of the Commission on Human Rights in South Sudan, 6 March 2017, A/HRC/34/63; Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan’s Intelligence Agencies Continues* (Index: AFR 65/8823/2018), 4 September 2018,

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⁸¹ Article 19(4) of the 2011 Transitional Constitution.

⁸² Article 7(4) of the ACHPR, to which South Sudan is a party, provides for the right to be tried within a reasonable time. See also, ICCPR, art. 9 and 14, See also UN Human Rights Committee, General Comment No. 8 on the ICCPR; Article 9, U.N. Doc. A/40/40 (1982). Note that South Sudan has not ratified the ICCPR.

⁸³ Enforced disappearances arise when people acting on behalf of the government arrest, detain, or abduct people and then refuse to acknowledge the act or conceal the whereabouts or what happened to them. International law prohibits enforced disappearances, which violate fundamental rights to liberty and security, and to be free from torture or cruel, inhuman, and degrading treatment. See, Human Rights Watch, “South Sudan: Thousands still missing”, 28 August 2020, [www.hrw.org/news/2020/08/28/south-sudan-thousands-still-missing#:~:text=The%20International%20Committee%20of%20the,were%20implicated%20in%20the%20disappearances](http://www.hrw.org/news/2020/08/28/south-sudan-thousands-still-missing#:~:text=The%20International%20Committee%20of%20the,were%20implicated%20in%20the%20disappearances;); Human Rights Watch, “What Crime Was I Paying For?” Abuses by South Sudan’s National Security Service, 14 December 2020, www.hrw.org/sites/default/files/media_2020/12/southsudan1220_web.pdf

⁸⁴ UNICEF South Sudan, Ministry of Gender, Child and Social Welfare, Ministry of Finance and Planning, *The situation of children and women in South Sudan 2018 – 2020*, July 2021, www.unicef.org/southsudan/media/8191/file/UNICEF-South-Sudan-Situation-Analysis-2021.pdf

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⁸⁸ UNFPA, “At risk of rape outside and violence in South Sudan PoC camp – will women and girls ever be safe”, 18 June 2020,

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⁸⁹ See, for instance, Human Rights Watch, “They burnt it all”, 22 July 2015, www.hrw.org/report/2015/07/22/they-burned-it-all/destruction-villages-killings-and-sexual-violence-unity-state; Amnesty International, “Do not remain silent”: Survivors of sexual violence in South Sudan call for justice and reparations (Index: AFR 65/6469/2017), 24 July 2017, www.amnesty.org/en/documents/afr65/6469/2017/en/; Amnesty International, “Anything that was breathing was killed” - War crimes in Leer and Mayendit, South Sudan (Index: AFR 65/8801/2018), www.amnesty.org/en/documents/afr65/8801/2018/en/

⁹⁰ Article 18 of the 2011 Transitional Constitution.

⁹¹ Article 2 of the CAT and article 5 of the ACHPR.

⁹² Human Rights Watch, “South Sudan: Arbitrary detention, Torture”, 18 May, 2015, www.hrw.org/news/2015/05/18/south-sudan-arbitrary-detention-torture; Human Rights Watch, “Prison is not for me”: Arbitrary detention in South Sudan, 21 June 2012, www.hrw.org/node/256328/printable/print; Amnesty International, *Broken Promises: Arbitrary Detentions by South Sudan’s Intelligence Agencies Continues* (Index: AFR 65/8823/2018), 4 September 2018, www.amnesty.org/en/documents/afr65/8823/2018/en/; Human Rights Watch, “What Crime Was I Paying For?” Abuses by South Sudan’s National Security Service, 14 December 2020,

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¹⁰² Amnesty International, “We are at risk and on the run”: Security agents track down peaceful protesters (Index: AFR 65/0692/2019), 18 July 2019, www.amnesty.org/en/documents/afr65/0692/2019/en/; Frontline Defenders, *No refuge: South Sudan’s targeting of refugee HRDs outside the country*, 18 March 2021, www.frontlinedefenders.org/en/resource-publication/report-no-refuge-south-sudans-targeting-refugee-hrds-outside-country; Human Rights Watch, “What Crime Was I Paying For?” Abuses by South Sudan’s National Security Service, 14 December 2020, www.hrw.org/sites/default/files/media_2020/12/southsudan1220_web.pdf; Amnesty International, “These walls have ears”: The chilling effect of surveillance in South Sudan (Index: AFR/65//2021), 2 February 2021, www.amnesty.org/en/documents/afr65/3577/2021/en/;

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