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Policy Brief

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National Security Versus Basic Liberties: Human Rights Challenges in South Sudan

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Summary

Although South Sudan publicly commits to a culture of human rights protection, whether through the bill of rights in the national constitution or by creating a cabinet level human rights commission or the establishment of a parliamentary committee on human rights or other public pronouncements to this effect, human rights violations have remained a constant feature in the brief history of the country's sovereignty. These violations are primarily born of the murky legal environment, allowing some security elements to act above the law, political leaders to order unconstitutional arrests of citizens, suppression of opinion, seizure of media outlets and latently sanctioning rogue security elements to get away with crimes. The violations have also emanated from the weakness of the justice system or its absence in the rural areas and small towns, a long history of liberation war that has militarized the whole society, elite competition for public office, and government's lack of confidence to withstand public criticism.

This situation has been exacerbated by the new civil war that started in 2013, with the political leadership on all sides of the political divides putting themselves in a rather absurd and an unnecessary dilemma, whether to fight and win the war at the expense of communal and individual basic rights, or safeguard the welfare of citizens at the risk of losing the fight.

This policy brief examines the current state of human rights situation in South Sudan, and the global and regional contexts that complicate it. It particularly looks at how the government of the young state could be more caring about the lives of citizens and what options the world community has in prevention and punishment of atrocities and crimes committed against the South Sudanese citizens. The analysis concludes with the recommendation that the South Sudanese state, its political leadership and security apparatus need to revise their approach to political stability maintenance by promoting and defending open debates, tolerance of criticism, and freedom of expression, instead of snuffing out popular voices. It should come as common sense that continued suppression of legitimate divergent views only drives citizens toward adopting unconstitutional means of expression, including the use of violence and rebellions. For example, the government needs to follow the law and try suspects in a court of law, instead of arrests and indefinite detentions, without charge. The country is also in need of promotion of justice through security reforms, judicial accountability, improved legislative oversight, and a commitment to the universal protection of life, rights, and property.

I. Introduction

South Sudan has had a checkered human rights record since the north-south civil war ended in 2005. Before the war ended, the government of Sudan had conducted a reign of terror in what was then Southern Sudan. Most of Sudan's atrocities and violations were driven by counter-insurgency run wild, with others prompted by ethnic and religious bigotry. These included indiscriminate attacks on communities, deliberate displacement of people from oil explorations areas, especially in Upper Nile, attacks on relief operations, slave raiding, obstruction of humanitarian access to war-affected areas, and keeping hostage the civilian populations in garrison towns under the control of Khartoum's armed forces. Southern Sudan was a region under siege by a ruthless and genocidal government. Some of these massive violations have since been investigated as potential war crimes, genocide and crimes against humanity. Several investigations from the United Nations Human Rights Rapporteurs conducted between 1990s and 2005 indicted the Sudanese government for these crimes and violations of international law. When the reports were presented to the UN Security Council as basis for potential resolutions to condemn the government of Sudan, they were blocked, often by Sudan's allies such as China. The disastrous human rights situation in Southern Sudan became a subject of much diplomatic debate, international legal action and media coverage, but very little happened in the end to deliver justice in the region. The exceptions were a couple of alien torts cases against oil companies¹ or the unsuccessful campaign to boycott the 2008 Beijing Olympics.²

This history of human rights abuses by Sudan was all hoped to become that once Southern Sudanese took control of its affairs following the Comprehensive Peace Agreement that ended the two-decade long civil war in 2005. With the retreat of the Sudan Armed Forces (SAFs) there was euphoria all over Southern Sudan, that the massive human rights violations that the government of Sudan had presided over had come to an end and that the people of the region would live in freedom from that point on. But with the Sudan People's Liberation Army/Movement (SPLA/M) taking over the territory, and with various militia groups that used to be propped by the government of Sudan being active all over the place, it was not long before that jubilation began to dissipate. The SPLA and the many militias opposed to it did not live up to the expectations of South Sudanese and abuses against the civilians became nearly the practice, not the exception, all across the country.

¹ Some of these court cases, one in New York City against the Canadian Talisman Oil and Gas and the other against the Swedish Company, Lundin, are still having to answer to the accusations of aiding and abetting the Sudanese military campaigns against the civilians living in the oil producing areas of Upper Nile region.

² Much of the campaign to boycott the Beijing Olympics, dubbed as "blood Olympics," however, gathered momentum because of the mass murder in Darfur and not so much about Southern Sudan. Nevertheless, the boycott campaign revealed both the bloody nature of Sudan's violence and the double standards in the international system.

The current human rights record in the country is born of the lackluster adherence to the rule of law more than it is about a deliberate government policy aimed at a wholesale suppression of rights. The 2014 National Security Law, which empowers the security forces to circumvent the constitution in their fight against what they see as threats to the national security of the country, however, being an exception. Some of the current abuses emanate from the SPLA's own culture and history as a liberation movement, i.e., some actions against the people by a supposed people's movement were deliberate and ugly. This was not new, as the whole philosophy of the movement had been hinged on forcing the ordinary people to pay the cost of war, both in terms of material and human resources. Even women, once deemed by men as unable to contribute to the war militarily, were expected and pressured to do their part in a variety of other ways, including the birthing of a nation once decimated by war. This became nearly a license for men to have their sexual ways with the women. Those who stepped outside this philosophy, even just as much as a criticism to point out other, perhaps better approaches to the liberation, were considered enemies of the movement and were swiftly dealt with. Extrajudicial killings, disappearances and prolonged detentions of critics or suspects became common practice throughout the liberation period, at least until 1994, when the SPLM held its first national convention in Chukudum, Eastern Equatoria.³

Prior to the National Convention, the abuses during the liberation period, ghastly as they were at times, were often swept under the carpet and the victims were consoled on account that the violations were all part of the price that the people of South Sudan had to pay in order to be free. But many other abuses that have been happening since 2005 have resulted from pure incompetence in the security forces and from the overall failure of the whole system of justice and the rule of law. The SPLA, which became the nation's defense force following the referendum on secession and the declaration of independence in 2011, has found itself acting above the nation's constitution, often on the basis of the claim that they liberated the country and are free to act as they choose. The rest of the security forces, including the National Security Services, the National Police Service and the Game and Wild Life Service have all acted outside the bounds of the law, as they have not been subject to any judicial oversight or the control of the civilian political leadership, as they should normally do according to the transitional constitution of South Sudan, 2011. But within each security force unit, some of the actions in violation of basic citizens' rights are often carried out by individual soldiers who either have not understood the institution's manual of conduct or out of assumption that they are allowed to do so, that they would be entitled enough to get away with their negative actions. This is all coming from the failure of the whole professionalization of the security forces and from the absence of an efficient command and control.

³ The national convention, which attracted all walks of life from all corners of the New Sudan, presented the first time ever that the SPLA/M was brought face-to-face with the grievances of the people, and constructive criticism began to gradually emerge for the next decade.

Some of the most glaring incidents that have characterized the human rights situation in South Sudan since 2005 include both the actions of the security forces and the ethnic feuds that the state has not been able to quell and against which the state has not been sufficiently capable of protecting the citizens. Members of the security forces have often been reported to assault the citizens in situations where the law is supposed to take precedent before the judgment of the individual. Many army units and individual agents in these units have often taken actions to arrest and detain people in circumstances where the police would normally be responsible for such actions. Police and national security agents have also acted as the arresting officers, jailers, judges and jury, sometimes as executioners. Ethnic rivalries and violence have also exposed the citizens to situations of abuse through cattle rustling, raiding of villages across ethnic lines or an all out war between two competing ethnic nations, all with devastating consequences for innocent people. For example, one particular circumstance that characterizes this morass is the response of the state to ethnic rivalries. From 2005 onward, the state was thrown into a dilemma at once. On the one hand, there was popular pressure to quell ethnic feuds by force and through disarmament of civilians, as a sovereign state is expected to do, but at the risk of fighting wars against entire tribes. On the other is the suggestion to peacefully reconcile the ethnic groups, at the risk of the state being seen as weak, which cannot impose its sovereign power by monopolizing the use of legitimate force. But to appease the civilians would amount to compromising on the rule of law in the name of ethnic reconciliation.

Both situations produced an unsustainable human rights situation, with the government, the sole protector of citizens, shouldering responsibility for most atrocities against civilians or loss of property. To disarm the civilians, the security forces used excessive force, which amounted to violation of basic rights of the citizens. Between 2008 and 2011, entire villages, especially in Bahr el Ghazal and Upper Nile regions, were demanded to turn in their guns, but in many instances where a civilian turned in his gun, he was beaten for having the gun in the first place, instead of being appreciated. People were damned if they reported their guns and damned if they did not. The result was that more people opted to hide their guns. The disarmament policy collapsed under the weight of human rights violations, achieving nothing toward security sector reform and alienating the citizens from the government at once. This is the combination that has placed South Sudan for the last decade on an ignominious list of states that violate human rights.

The New Civil War and Human Rights: This situation became even graver with the start of the new civil war between the government of Salva Kiir Mayardit and the rebel force headed by former Vice President, Riek Machar Teny. Both sides to the war have taken the suppression of contrary voices and violation of basic human rights to new heights, both borrowing from liberation history and taking a leaf from the actions of Khartoum that the South had fought against on account, at least partly, of suppression of basic rights of Southerners. Furthermore, even long before the civil war began, South Sudan government had already been criticized by the citizens and foreign observers alike, that

it had fallen short of its obligations in protecting human security, combating ethnic violence, ensuring food security, providing healthcare services, promoting justice for victims of crime, and reigning in its security personnel who are suspected of engaging in violent crimes.

This policy brief is an assessment of human rights situation in South Sudan, how the civil war situation contributes to human rights abuses by the state and the rebel movements, what human rights issues are born of the local traditions and cultures and how gender, political opinion, ethnic background and types of employment have influenced the human rights situation in the country, either by pressuring the government to abide by the country's laws or prompting it to crack down on its critics. The analysis reviews the regional and international human rights history to help situate South Sudan in a wider context.

II. Human Rights: A Game that Governments Play

When some developing countries get criticized for their appalling human rights record, their responses have often varied according to their prevailing systems of government. Very few accept criticisms and calls for improvements. Some claim that the concept of “human rights” is a foreign concept. Other governments simply deny their involvement in human rights abuses, often accusing rights agencies of bias and political motivations or targeting. Examples of this include the Kenyan government's 2015 order to de-register several human rights and civil society agencies, accusing them of potential involvement in funding terrorism. The decision was as if to say “deregister them on the basis of suspicion and then investigate this suspicion later.” Yet, other countries simply whitewash their actions, sometimes making claims that the reported abuses are being investigated, but often without evidence that such an investigation is taking place since the results are rarely published. These investigations hardly ever result in arrests and prosecutions, with evidence against government entities overwhelming and publicly known. It takes certain unique circumstances in a given country, especially those enabling the supremacy of the rule of law, for the behavior of governments towards citizens, to have consequences for individual officials.

It is only in such countries where allegations of abuse are taken seriously and perpetrators brought to book that government officials are not allowed to have a free hand to violate the basic rights of citizens. Government officials who are not confident enough in their system of government to grant citizens an open political space often suggest that human rights genre is the long arm of foreign powers' interference in the internal affairs of weaker countries. Certain governments also question the capacity of rights groups to understand the nuances of human rights situation in a given country, saying that the people investigating and reporting about the human rights situation do not understand the complexities of the situation and have no basis for the assertions they make in reporting abuses or violations. Rights agencies and individual activists, however, argue that basic human rights and civic liberties are universal rights and should not be

confined to cultures, national boundaries, political philosophies, or a system of government. Basic rights to life, food, shelter, political association, justice, state protection, and citizenship are inalienable and require governments to provide and protect. The ability and willingness of governments to ensure these rights have in recent years been confronted by the daunting threats to the national security of countries.

As the world becomes ever more replete with political violence, civil wars, crime, terrorism and violent aggression, governments have become more challenged within and outside their borders, consequently deploying a variety of approaches. Some of those responses are seen as controversial and blur the line between national security protection and the infringement of individual and communal freedoms. Government responses to national security challenges are also increasingly scrutinized in their conformity to the laws of the country. From the American war on terrorism, to counter-insurgency strategies in many African and Middle Eastern countries, and to new legislations that are aimed at tracking suspected individuals and groups of insurgents and terrorists, the need for governments to stamp out an increasing violence has become a slippery slope toward violation of citizens' civic rights. In some instances, the national security agenda may have even become a license to security agents to use excessive and illegal force to deal with suspects. In other instances, this free hand has been used to settle political scores, address business competition or to tackle individual grudges. This has thrown many governments into a tight space between the use of state power to quell war and violence on the one hand and the need to do so in a measured and even-handed manner that protects and preserves civic liberties on the other.

The requirement of keeping the threats to national security at bay while upholding the laws of the country has proven a very serious challenge indeed. Maintaining that balance has become a minefield for many a government, a real test to the willingness and ability of governments to abide by their own laws. But some governments choose to do anything and everything in their power to supposedly keep their citizens safe, protect property, uphold constitutions, and safeguard territorial integrity of the country, even if that means infringing on constitutionally protected rights. "I will take my safety, the political stability of my country and freedom from fear of violence any day, over lofty and moralized ideas about my civic liberties," remarked a Rwandan peace activist in a public lecture in Kigali in 2014.

While all countries, from advanced and open democracies to the most closed are all facing these challenges, nowhere has this conflict between protecting national security and compromising basic constitutionally protected freedoms been more evident than in countries with weak institutions. Countries in the developing world often top the list of failure to maintain the balance. Countries faced with civil wars or have been under autocracies have more strongly concentrated on defending the national security at the expense of basic freedoms, all with the attendant potential for atrocities committed by security personnel or entire agencies. Many African countries at the time of independence in the 1960s and 1970s, for example, gradually slid into an era where

governments abused human rights, mostly on the account of Western democracies propping allied dictators. But when major geopolitical shifts began to occur in the 1990s, due to the end of the cold war, decline of the Soviet Union, and the demise of communism that used to underpin autocracy, most African countries moved toward entrenching a culture of open society.

However, some countries on the continent continue to lag far behind in the areas of good governance, the supremacy of the rule of law and adherence to their national constitutions, partly subject to unique circumstances of each country. Nowhere on the African continent has this challenge emerged more strongly than in countries emerging or undergoing civil conflicts and other forms of political violence, including the new East African state of South Sudan. Since its independence in 2011, and particularly since the beginning of the civil war in December 2013, South Sudan has been on the news headlines around the world regarding its treacherous human rights record, especially relating to how the parties to the civil war have conducted themselves vis-à-vis the civilian population.

The independence brought new security challenges, especially with regards to ethnic rifts, the heavy-handed tactics of the security agencies, the increasing urban crime and the widespread firearms inherited from the liberation war. The new war has produced the most toxic environment and blurred the protection of national security and the safeguarding of human rights lines. The plunge of the new state into a fresh civil war, a mere two years since attaining independence, was partly a product of human rights violations and has since become the biggest driver of some of the most ghastly violations by all sides to the conflict. It has since provided the cover for certain actions against individuals and communities in total violation of their rights. Apart from the civilians who die in cross-fire, the targeting of entire communities, on account that they support a particular party to the war, the arrest of certain individuals on charges of supporting one side or the other, and the displacement of 1.8 million persons from their homes and 200,000 others into the United Nations Protection of Civilians (PoC) sites— are all direct outcomes of rights abuses in the course of the war. Some of these abuses are considered violations of international law and may in the future be subject to investigation toward the goal of trying them as international crimes.

III. The State of Human Rights in South Sudan

The civil war and all the events leading up to it, especially the period following the end of the north-south war in 2005, and the violations that have since taken place, have been most decried by citizens and external observers alike. This criticism often takes the moral approach, i.e., pointing out the fact that some of the violations that the government of South Sudan has committed are the exact violations, which the South fought to free itself from. GoSS is accused of hypocrisy, especially in committing the very atrocities for it criticized and fought the Sudanese government. Because South Sudan is a country that was born of the ashes of liberation wars, of massive local

sacrifices, and of massive international good will to see the young and nascent state succeed, many critics find it unconscionable that the leadership of a country with such a history would allow these violations.

The most common comment by citizens of South Sudan has been the reference to the liberation effort, “why did we go through all that, just so that we end up killing each other and destroying our hard-earned country?” That South Sudan has now become perennially listed among the top state violators of human rights in the world is most unfitting of the history of the struggles by its people. This is a country whose viability and future prosperity had posed the ultimate litmus test to its leaders; that it has now become embroiled in some of the worse circumstances that threaten human security of its citizens is more disappointing than for most African countries at independence from western domination. Many rights groups’ reports, from Human Rights Watch, Amnesty International, the United Nations Mission in South Sudan (UNMISS), the African Union Commission of Inquiry for South Sudan and journalistic accounts from BBC, Al Jazeera, the New York Times, the Washington Post and many others, have all documented and published some of the most chilling accounts of rights abuses by all sides to the conflict. Accounts of what took place at the start of the war in Juba, where people of Nuer ethnicity were targeted by the security elements allied to the government and the subsequent retaliatory actions by Nuer against the Dinka and other groups in Bor, Bentiu, Malakal, Pariang, Baliet and Akobo, present some of the most heinous criminal events, many of which have potential for war crimes and crimes against humanity, subject to international war crimes investigations and tribunals.

Though infringement on human rights has been a feature of South Sudan’s political landscape for many decades, whether at the hands of the Sudanese state before the split or by the liberation forces of the Sudan Peoples Liberation Army (SPLA) during the liberation war (1983-2005) or by South Sudan’s security forces since 2005, when the north-south civil war ended, the state of human rights has gravely deteriorated following the outbreak of the 2013 civil war. Reports on violent crimes have become a subject of heated discussions among civil society groups, rights activists, journalists and jurists, but the government has been quite hostile to individuals and media institutions who push for some kind of legal action against the perpetrators. For instance, journalists have been arrested and detained by national security services, with the Minister of Information at one point issuing threatens to those cover the activities of rebel forces.

Many citizens have registered their grievances about state violence, that the national security measures, including the 2014 National Security Bill, that have been aimed at fighting the new civil war, have strongly collided with the citizens’ basic freedoms, with the conflict between the country’s constitution and the prevailing political climate producing what some have described as a human rights disaster.⁴ For example, the

⁴ United Nations Assistant Secretary General for Human Rights, Ivan Simonovic, described South Sudan in January 2014 as a “Horrible Human Rights Disaster.” The Associated Press, January 17, 2014.

Committee for the Protection of Journalists, a US-based advocacy group, in decrying the death of seven journalists in South Sudan in 2015 alone, added South Sudan to the list of countries where it is most dangerous for journalists to operate. The country's security agencies have closed down newspapers, jailed journalists absent of judicial oversight and sometimes without being charged. Meanwhile, in the rural areas and small towns throughout the country, the combination of lack of access to justice, the unchecked behavior of security forces, lack of basic services, sectarian conflicts and the overall absence of adequate administrative oversight, all combine to create a situation of generalized violence and suffering.

Civil society activity has also been curtailed and the whole political space, many sections of the country's citizenry say, has been increasingly shrinking to the point where all sizable congregations of people are often monitored by security agents, even when these gatherings are social in nature. For example, church services, funerals, speeches at weddings and other types of meetings are all scrutinized, with a view to keeping a tap on certain individuals and communities. The assumption among security personnel is that these gatherings, no matter their social and cultural significance, are often a conduit to sensitive security and political messages.⁵ In another example, all hotels in Juba are required to have a resident undercover security agent at the expense of the facility. Some journalists, civil society activists, and prominent politicians have experienced unlawful arrests, detention, and torture.⁶ Disappearance or killing of activists has also become a common practice, while attributing their death to "unknown gunmen" who are not properly investigated. All of this, many people fear, speaks of a country that has become a tightly controlled police state, turning it into everything many citizens say was the type of state they did not want to live in when they supported the liberation effort for over 50 years and when they voted to secede from Sudan in 2011. "We did not spend over two decades fighting the Sudanese state over basic freedoms only to have these freedoms taken from us at gun point by our own free state," remarked an activist we interviewed in Juba, South Sudan's capital in the summer of 2015. The failure of state to live up to its human rights obligations manifests in a variety of ways. The first is its direct perpetration of the violations. Another is allowing its rogue agents to abuse citizens without consequences. Finally, this appears in state's failure to protect the people and investigate and prosecute the violations. A state that does not investigate and does not bring the perpetrators of rights violations to book is just as good as a perpetrator itself.

⁵ It has to be noted that South Sudanese get a lot of their news through the word of mouth, often at these social gatherings.

⁶ Among the most prominent of these detainees is Joseph Bakasoro, an elected former governor of Western Equatoria State, who was removed by a presidential decree in 2015 and was arrested and detained at the National Security headquarters, released and arrested again, now remaining in unknown circumstances of detention. The public only knows about his detention because of his high profile as a prominent politician, but his detention is symptomatic of the notoriety of unlawful detentions throughout the country.

Many people are quick to compare South Sudan to the rump state, the Republic of Sudan, in terms of state violence, human rights abuses, the passing of draconian laws by the national legislature, disregard for the rule of law by many government agencies and the free reign given to security services. The comparison is sometimes made in an attempt to suggest that no matter how bad the human rights situation becomes in South Sudan, it surely cannot be worse than in Sudan. There is some truth to that suggestion, that Sudan is a major state violator of human rights, but such a position can quickly become simplistic, as countries need not try to get off the hook for their own failures by simply declaring that other governments in the region are worse off.

South Sudan, however, is not exactly the National Islamic Front or National Congress Party's Sudan in terms of civic liberties. After all, South Sudan is a country with its own value systems and the lives of its people should not be measured by standards of other countries. Thus, the comparison to Sudan is seen as an absurd attempt to evade responsibility, especially if it is made in an attempt to justify the behavior of certain security agents, and that South Sudan's human rights situation needs to be assessed on its own merits. But life in South Sudan has become increasingly difficult, with the comparison of the two countries becoming unavoidable, especially in light of the high expectations of what independence had meant in the lives of many ordinary South Sudanese. For many, independence meant a better South Sudan than what Sudan had offered. South Sudan should be able to exact some pride in being better than Sudan, for the whole liberation struggle was hinged on creating a totally new image. Most South Sudanese, at least according to opinion surveys by the International Republican Institute (IRI), indicate that the new state of South Sudan has fallen way short of the expected fruits of a new political dispensation.

In view of the fact that most South Sudanese saw security as the most highly anticipated peace dividend, the citizen cannot help but reminisce how South Sudan fares in comparison to other countries, not only because the provision of security has proven the most difficult service to attain but also because it is being actively taken away by the very state that is supposed to provide and protect it. State violence, failure to protect the citizens, disregard for the laws of the land, and limited access to justice are among the top disappointments that have caused the constant comparison between Sudan and South Sudan. As civic liberties become the primary victims of the war against the rebellion, with basic freedoms being largely frowned upon in the name of national security, with citizens getting attacked by security agents and private property being seized, all without due process, it does not matter whether life here is or is not like it used to be in Sudan; but it matters more that South Sudanese suffer and die needlessly at the hands of their protectors and have no recourse of any kind. Such a situation is unacceptable by any measure, let alone from the perspective of a people who have suffered immeasurably in order to be "free."

The people of South Sudan expect to be governed by their own laws, their own cultural norms, all with their own history as a reminder about how the country came into being.

“What was the point of breaking away from Sudan if we were just going to create another autocracy that is similar to the old Sudan?”, many people often ask. A few months ago, the president of the Republic, Salva Kiir Mayardit, wrote very eloquently in an opinion piece about that treacherous past, reminding the world that he did not spend decades in the bush fighting for the freedom of South Sudanese only for him to come and condone their mistreatment by anyone.⁷ Unfortunately, the undeniable good will and the liberatory role of the president do not serve the families and communities whose lives have been shattered by the actions of his security agents. These great words and promises that he uttered are not always reflected in the way security agents behave, and citizens are often told that some of the security personnel act outside the orders and the laws governing their behavior. Tell that to the families of journalists who were killed by “unknown gunmen,” the many journalists who cannot work in their professions any longer or the many rural people who do not have the benefit of a justice system, or the women who cannot challenge their social circumstances just because the local cultures are considered to be above the needs and aspirations of individuals. For example, South Sudan remains one of the African countries where child marriage continues to be propagated in the name of culture. It is also a place where the concept of marital rape is not recognized, where the line between morality and legality remains blurred and a country where female children are often denied basic services such as education on account of their gender. This is all despite the existence of great laws that prohibit these practices and the availability of policy plans, programs of action and clear directives that adhere to international conventions. Ensuring these legal frameworks and policies are effected requires funding and political commitment at the highest level.

In 2014, the country’s legislature passed a national security law, which many people described as draconian.⁸ It was passed against all pleading sense from human rights organizations, civil society, ordinary citizens and media people, urging the president to reject this legislation and to request its revision. The law was seen as unfitting for a country with such a historical trajectory as South Sudan, where some of the law-makers were the leading liberation fighters who had given the ultimate price to free the country. This law violates the constitution and is mainly destined to address the war situation and the threats it poses to the security of the country, allowing for security agencies to arrest, seize assets of and detain any suspects in undisclosed locations, all without any judicial oversight. It was hoped that the National Security Act would not become law because many critics relied on the president to return the bill to the parliament for meaningful revisions. Unfortunately, the bill slipped into law by virtue of having overstayed the maximum time required for president’s response. Ever since that law took effect, lives of many citizens have been changed. Consider the following scenarios, a description of the

⁷ See President Kiir’s message in *The Washington Times*, “South Sudan: the World’s Youngest Nation Strives to Build Democracy.” October 11, 2015.

⁸ Human Rights Watch, “South Sudan: Abusive Security Bill.” New York: HRW, October 15, 2014. Also see Amnesty International, “South Sudan Security Bill Violates International Law.” London and Nairobi: Amnesty International, October 15, 2014.

behavior of national security or police personnel, a real life situation provided by an individual whose family member was manhandled by the security agents:

“You wake up one morning to the sound of policemen pounding on your door. They handcuff you and throw you into the back of a squad car and haul you off to jail without telling you why. They confiscate all your belongings and cease your life savings. You spend months in a lonely cell wondering why you are there. Now and then the guards take you out to be questioned by detectives. But it's a strange kind of interrogation. They want you to tell them why you've been arrested. They say that there are seven or eight witnesses against you but they won't say who they are. They want you to guess that too... Sometimes they promise to let you go, but only if you cooperate. So eventually you begin to make things up. To confess the things you've never done, hoping to satisfy them. After a year or so, they take you to a courtroom with several other prisoners. The judge would free some and give life imprisonment and some are getting the death penalty.”

The concept of human rights is clearly defined in the interim and the transitional constitutions of South Sudan, 2005 and 2011, respectively. These committed the government agencies to ensuring the respect, protection and enforcement of basic rights of individuals and all people. But at best, the concept remains very vague for most people in the country and considered an outright foreign concept at worst, one that international human rights groups only document and practice selectively and unevenly across different countries. The government, though it has a cabinet level Human Rights Commission, is very wary and suspicious of anything to do with documentation of its actions. One government official described human rights as a notion that “sometimes singles out some countries for condemnation and letting other countries off the hook, depending on the country’s level of economic development.” As a practice, it is an effort that suffers from the absence of clear distinction between moral obligations and legal pursuits.

Before the civil war started in 2013, violation of basic rights, independent speech, association, congregation, worship, and freedom of press was quite common, but often dismissed as a sojourning situation that will improve as the country’s institutions become stronger. It was hoped that the culture of respect for human rights would grow together with the strength of the separation of powers, the strengthening of the legislative oversight upon security agencies, and the maturity of the judiciary in leveling the playing field for all citizens. The right to state protection and to life was certainly one of the most highly anticipated fruits of the liberation wars and of independence, especially among the urban population who better understand this concept.

But since the war broke out, the situation of human rights has reached disastrous levels, one that took away state protection, with people dying in thousands over the next two years. Even without identifying or suspecting the perpetrators of violence against civilians in the course of this war, the truth is that people died in shocking numbers and these are people who did not have to die. The massacres in Juba, Bor, Akobo, Malakal, Baliet, Bentiu and numerous other places, and the level of sexual violence that the

United Nations, Human Rights Watch, and other news outlets have described in gruesome detail—are all going to remain in the country’s psyche into the future.

Whether or not the perpetrators of these atrocities can be identified and held to account, the fact remains that everyone who was in a position to prevent them but did not do so will have to deal with their conscience. As well, the whole society will have to find ways to come to terms with that reality. The person who ordered the atrocities, the people who carried out the orders, those who watched the innocent people being humiliated, assaulted and killed, are in one way or another guilty. Any pursuit of justice quickly runs into serious challenges here, especially in light of the country’s prevailing search for a peaceful settlement of the current conflict. For example, laying the blame at the doorsteps of the top leadership, especially without evidence that they ordered the killings, risks both the loss of the case and the peace process, as the same leaders who are supposed to give us peace would be the same people held to account. Moreover, it might not suffice to hold South Sudanese leaders responsible for war crimes or crimes against humanity without substantial evidence that supports their involvement.

IV. Right to State Protection and the Role of International Law

What happens when the government of a given country plays the sovereignty card in response to international criticisms about the state of human rights within its border? What can the world community do when the government of a particular country commits atrocities, jails its critics, suppresses freedom of expression, closes down news outlets, and denies access to journalists and human rights monitors to enter certain areas where atrocities are reported, as the government of Sudan has been doing in Darfur, Blue Nile, the Nuba Mountains and Abyei since 2003? South Sudan’s notion of sovereignty is challenged as the reported incidents of the country’s military actions in Mundri West County of Western Equatoria and Lainya County of Central Equatoria become more credible, revealing unspeakable and horrible crimes that are forcing hundreds of innocent rural civilians to flee their homes.⁹ They placed human rights observers and the rest of the world in a predicament over weighing sovereignty versus the responsibility to act. Does the world community strictly abide by the rules of state sovereignty or is sovereignty rendered irrelevant when the government of a given country engages in heinous atrocities or allows them to be carried out by elements within its ranks, all in the name of protecting the state or fighting a rebellion? These are the questions at the heart of the quandary about how the world addresses the increasing human rights violations across the globe.

These were some of the questions that the former UN Secretary General Kofi Anan wanted to explore in the 1990s when he convened a panel of international legal experts, including Francis Mading Deng, a South Sudanese who is now, ironically, the South

⁹ See “South Sudan Army Denies Committing Atrocities in Central Equatoria.” *Sudan Tribune*, September 18, 2015. The United Nations Mission in South Sudan has also confirmed these reports.

Sudan's permanent representative to the United Nations in New York and the one having to defend the country against a concept he himself developed into an international system. What Deng and colleagues suggested in their report was to turn the concept of state sovereignty upside down. They redefined the concept to mean sovereignty of the people rather than state-centered territorial sovereignty. They set up three pillars in support of their redefinition of sovereignty. First, they suggested that it is the primary responsibility of the state to protect the lives of its citizens and their basic human rights. Secondly, they argued that if a state was unable or unwilling to discharge this responsibility, it would have relinquished its sovereignty and all the privileges associated with it. Thirdly, they concluded that, under these circumstances, the burden of responsibility to protect the citizens of the state in question would fall under the jurisdiction of the international community, which in turn would have the obligation to intervene in such a situation. This was the summary of the famous Responsibility to Protect, R2P, which is what the UN has been promoting over the years, often to very little evidence of success, but remaining a plausible philosophical proposition.¹⁰

With the government of South Sudan having rightly emphasizing sovereignty over the years, it is equally expected to behave in a nationally and internationally acceptable way, or else the sovereignty of the government, and indeed that of the whole state, is called into question. And if the human rights violations rise to the level where the sovereignty excuse can no longer protect the government against international condemnation, then the government will also lose ground of its sovereignty claims.

V. Conclusion and Recommendations

Though massive human rights violations have been happening since 2005, the situation has worsened since the outbreak of the civil war in 2013, allowing the warring parties, especially the government of South Sudan, to compromise the protection of human rights, the safety of the citizen and the adherence to the laws of the land in a bid to win the war.

In its effort to fight the rebellion, the government has tried to suppress free speech, closing down media outlets, arresting journalists and civil society activists, and passing draconian legislations that aimed at unconstitutionally taking away the freedoms and properties of opponents and suspects. This is all made possible by a system of collusion between the executive, the judiciary and the legislature, where the office of the president reigns supreme over the other arms of government, rendering the system of checks and balance ineffective.

By engaging in efforts that suppress the free will and enterprise of the people of South Sudan, all in the misguided thinking that these efforts would safeguard the national

¹⁰ See "The Responsibility to Protect and the Protection of Civilians in Armed Conflicts: Review and Analysis." Hugh Breakey, *Institute for Ethics, Governance and Law*, Griffith University, May 2011.

security of the country, the government of South Sudan has unfortunately made the country more insecure by leaving the critics no room to exercise their constitutional right to question their government. Instead, these people are forced to opt for more unconstitutional means, including violence and armed rebellion.

The government of South Sudan has so far made major decisions of peace and war, of shrinking or expanding the political space and of arresting critics or sparing them, all from the perspective of national pride and from the point of view of protecting the national security of the country. There is no question that at the higher policy level, these decisions are well-intended. But good intentions that are often translated badly into action by some individuals actually become major setbacks for the country. Many individuals appropriate state authority to settle scores with individuals they do not like and the blame ends up at the doorsteps of the security system or even the whole government. It would help the image of the security agencies if they go after those individuals and bring them to book.

The current government leadership needs to realize that it is pointless to argue sovereignty and national pride when the state has failed in its primary and basic responsibility to protect the lives and other basic rights of its citizens. Instead of the confrontation that has now become the common way the Juba-based government interacts with world governments, they should focus on collaboration rather than intransigence, to gain minimum respect from the citizens and from outside the country, especially on the issue of justice.

About Sudd Institute

The Sudd Institute is an independent research organization that conducts and facilitates policy relevant research and training to inform public policy and practice, to create opportunities for discussion and debate, and to improve analytical capacity in South Sudan. The Sudd Institute's intention is to significantly improve the quality, impact, and accountability of local, national, and international policy- and decision-making in South Sudan in order to promote a more peaceful, just and prosperous society.

About the Author

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