



ADF INTERNATIONAL

*ECOSOC Special Consultative Status (2010)*

UNIVERSAL PERIODIC REVIEW – THIRD CYCLE

**Submission to the 40<sup>th</sup> Session of the Human Rights  
Council's Universal Periodic Review Working Group**

**July 2021, Geneva, Switzerland**

**SOUTH SUDAN**

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## Introduction

1. ADF International is a faith-based legal advocacy organization that protects fundamental freedoms and promotes the inherent dignity of all people before national and international institutions.
2. This report highlights violations of freedom of religion and expression in South Sudan, including laws criminalizing blasphemy and defamation, as well as arbitrary arrests of journalists and representatives of civil society. It also raises concerns over targeted attacks on religious leaders and church communities. Finally, it calls on South Sudan to improve its maternal health-care infrastructure.
3. In the previous review cycle in March 2017, South Sudan supported recommendations on finalizing the ratification process for several human rights instruments; however, it requested “the international community to provide the Transitional Government of National Unity with the necessary technical and resources support” in implementing this commitment “within the cycle period before the next review”.<sup>1</sup> Consequently, in June 2019, the South Sudanese parliament unanimously ratified the International Covenant on Civil and Political Rights (ICCPR), along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and their respective Optional Protocols.<sup>2</sup> As of July 2021, the government has yet to formally deposit the instruments of accession to the UN Secretary-General.<sup>3</sup>

### (a) Freedom of Religion and Expression

4. South Sudan has a current population of roughly 11 million.<sup>4</sup> While accurate statistics are unavailable, it is estimated that in 2020, the population consisted of roughly 60% Christian, 33% adherents of folk religions, and 6% Muslim.<sup>5</sup>

#### *National Laws*

5. Article 23 of the 2011 Transitional Constitution of South Sudan guarantees freedom of religion, including “the right to worship or assemble in connection with any religion or belief and to establish and maintain places for these purposes”, as well as “the right to communicate with individuals and communities in matters of religion and beliefs at national and international levels.”<sup>6</sup> Article 8 recognizes the separation of church and state and establishes that “All religions shall be treated equally and religion or religious

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<sup>1</sup> OHCHR ‘Report of the Working Group on the Universal Periodic Review - South Sudan, Addendum’ (8 March 2017) A/HRC/34/13/Add.1, 5.

<sup>2</sup> R. Colville ‘Press briefing note on South Sudan’ (7 June 2019)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24683&LangID=E>>.

<sup>3</sup> OHCHR ‘Ratification Status for South Sudan’ UN Treaty Body Database

<[https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=215&Lang=en)>.

<sup>4</sup> Worldometer ‘South Sudan Population’ (2020) <<https://www.worldometers.info/world-population/south-sudan-population/>>.

<sup>5</sup> Pew Forum ‘South Sudan – Religious Demography’ (2020) Global Religious Future Project

<<http://www.globalreligiousfutures.org/countries/south-sudan>>.

<sup>6</sup> Transitional Constitution of the Republic of South Sudan, 2011, art. 23.

beliefs shall not be used for divisive purposes.”<sup>7</sup>

6. Article 24 guarantees the right to freedom of expression, stating “Every citizen shall have the right to the freedom of expression, reception and dissemination of information, publication, and access to the press without prejudice to public order, safety or morals as prescribed by law.” It also protects the freedom of the press and other media.<sup>8</sup>
7. South Sudan’s Penal Code criminalizes several “offences relating to religion”. According to Article 201, “Whoever by any means publicly insults or seeks to incite contempt of any religion in such a manner as to be likely to lead to a breach of the peace, commits an offence, and upon conviction, shall be sentenced to imprisonment for a term not exceeding three years or with a fine or with both.” Article 202 similarly criminalizes “[the abuse of] religious or noble spiritual beliefs for political exploitation or with the intention to incite or promote feelings of hatred, enmity or discord among religious communities or commits an act intended or is likely to cause the same”. Articles 203-205 further condemn “Injuring or Defiling Place of Worship with Intent to Insult the Religion of any Class”, “Disturbing Religious Assembly” and “Committing Trespass on Burial Places” respectively.<sup>9</sup> There are no reports of enforcement of such provisions.<sup>10</sup>
8. Additionally, according to Article 289 of the Penal Code, defamation is an offense punishable by up to two years imprisonment. According to the provision, “Whoever, by words either spoken or reproduced by any mechanical means or intended to be read or by signs or by visible representations makes or publishes any imputation concerning any person, intending to harm or knowing or having reason to believe that such imputation will harm the reputation of such person, is said, save as hereinafter excepted, to defame that person.” Article 290 provides a number of factors to consider in the determination of the severity of an act of defamation, including the persistence and extravagance of the statement made, the nature and extent of publication, and the impact on the interests of the State or any community. Articles 291 and 292 extend the punishment to those knowingly involved in the reproduction or sale of defamatory materials.<sup>11</sup>

#### *Government violations of freedom of expression*

9. According to Freedom House’s 2020 Freedom in the World Report, an annual survey of political rights around the world, South Sudan had a Global Freedom Score of only 2 out of 100. Under “freedom of expression or belief”, the report notes the complete access of freedom of the press in practice, citing numerous attacks, arrests and even killings of journalists.<sup>12</sup>

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<sup>7</sup> Id., art. 8.

<sup>8</sup> Id., art. 24.

<sup>9</sup> South Sudan Penal Code Act, 2008, art. 201-205.

<sup>10</sup> End Blasphemy Laws ‘South Sudan’ (13 October 2020) <<https://end-blasphemy-laws.org/countries/africa-sub-saharan/south-sudan/>>.

<sup>11</sup> South Sudan Penal Code Act, 2008, art. 289-292.

<sup>12</sup> Freedom House ‘South Sudan’ (2020) Freedom In the World 2020 <<https://freedomhouse.org/country/south-sudan/freedom-world/2020>>.

10. In September 2020, a reporter was detained and questioned by South Sudan's National Security Service (NSS) after publishing an article featuring a quote from a rebel militia leader. The South Sudanese Journalist' Union called for his release, noting that the government "should not treat journalists like criminals".<sup>13</sup> Two weeks later, another journalist was arrested and charged with defamation after writing articles accusing the Minister of Finance of corruption. He was sentenced to a year of imprisonment and a fine.<sup>14</sup>
11. In May 2020, a civil society activist was detained by the NSS on accusations of defamation due to writings on Facebook critical of the government. He was released four months later with a warning "not to speak against the state or things that are of conspiracy against the state".<sup>15</sup>

### *Violence against religious leaders and communities*

12. Religious actors have been playing a critical, positive role in the South Sudan conflict, including through direct engagement with the peace process.<sup>16</sup> The 2020 Peace Declaration was brokered by the Rome-based Sant'Egidio Community.<sup>17</sup> In February 2021, the South Sudan Council of Churches, in partnership with several other civil society groups, issued a joint statement calling for peace, stability and a return of all parties to the commitments of the revitalized peace agreement of 2018.<sup>18</sup> Individual church leaders regularly speak out against the ongoing village attacks by militia.<sup>19</sup> Regrettably, their active role has resulted in many churches and religious leaders being targeted by local militia groups.
13. In July 2020, a cathedral in the Jonglei state was stormed by a group of gunmen, resulting in over 30 deaths, including the dean, as well as the abduction of 6 children as hostages. The local bishop believed the attack to be politically motivated.<sup>20</sup> The attack prompted a statement by the All Africa Conference of Churches, calling on the government of South Sudan "to do all in its power to protect the lives of its citizens", as

<sup>13</sup> Radio Tamazij 'Journalist detained for allegedly quoting rebel spokesperson' (7 September 2020) <<https://radiotamazuj.org/en/news/article/journalist-detained-for-allegedly-quoting-rebel-spokesperson>>.

<sup>14</sup> Committee to Protect Journalists 'Journalists harassed, detained, and sentenced to jail in South Sudan' (5 November 2020) <<https://cpj.org/2020/11/journalists-harassed-detained-and-sentenced-to-jail-in-south-sudan/>>.

<sup>15</sup> W. Emmanuel 'Kanybil released, warned against criticizing the establishment' (22 September 2020) EyeRadio <<https://eyeradio.org/kanybil-released-warned-against-criticizing-the-establishment/>>.

<sup>16</sup> J. Jeffrey 'Church and Conflict in South Sudan' (3 July 2018) ReliefWeb <<https://reliefweb.int/report/south-sudan/church-and-conflict-south-sudan>>.

<sup>17</sup> APO Group 'New South Sudan peace declaration brokered by Sant'Egidio comes into force' (15 January 2020) Africa News <<https://www.africanews.com/2020/01/15/new-south-sudan-peace-declaration-brokered-by-santegidio-comes-into-force/>>.

<sup>18</sup> B. Mayaki 'South Sudan: Church leaders call for peace, security and stability' (22 February 2021) Vatican News <<https://www.vaticannews.va/en/africa/news/2021-02/south-sudan-peace-security-stability-government.html>>.

<sup>19</sup> Anglican News 'Primate of South Sudan urges prayer for bishop of Abyei after 'barbaric attack' on village' (18 May 2021) <<https://www.episcopalnewsservice.org/2021/05/18/primate-of-south-sudan-urges-prayer-for-bishop-of-abyei-after-barbaric-attack-at-dungob-alei/>>.

<sup>20</sup> C. Giangravé, F. Nzwili 'Attackers shoot Italian bishop-elect in his home in South Sudan' (27 April 2021) Religion News <<https://religionnews.com/2021/04/27/italian-bishop-elect-is-shot-by-armed-attackers-in-south-sudan/>>.

well as for intervention by the international community.<sup>21</sup>

14. In April 2021, an Italian Roman Catholic priest was shot and severely injured by gunmen in his residence, shortly after being appointed to serve as bishop for a local diocese. This was the latest in a series of attacks on high-level church leaders, including a Catholic priest murdered in 2018, and a Pentecostal Bishop killed in 2017 for “being too noisy”. According to the chairman of the South Sudan Council of Churches, these attacks are motivated by targeted revenge related to ethnic killings, raids, and violence across the country.<sup>22</sup>

#### *Freedom of religion of belief in international law*

15. Article 18 of the International Covenant on Civil and Political Rights (ICCPR) guarantees the right to freedom of religion or belief, including the right to manifest one’s religion or belief on private as well as public settings. Inseparably linked to Article 18 is Article 19, which enshrines the right to freedom of opinion and expression. Along with the freedom of association, guaranteed under Article 22, these freedoms are fundamental to the operation and maintenance of an open and free society, even when content that is expressed and disseminated proves unpopular or offensive. South Sudan’s blasphemy laws violate all three provisions of international law by criminalizing expression that is deemed problematic by the State. Even if not enforced, the government should take swift action to repeal these laws.
16. Similarly, the broad prohibition of defamation and the criminal penalties imposed by the Penal Code do not constitute a proportionate derogation from the right to freedom of expression, as Article 19(3) only allows restrictions on expression where they are necessary “for the respect of the rights and reputations of others’ or ‘for the protection of national security, public order or public health or morals.” Furthermore, the subjective language of the defamation provisions opens the door to arbitrary and unjustified application of the law, as seen in the arrests of journalists and activists critical of the government.
17. While South Sudan’s constitution guarantees freedom of religion, in practice this right is undermined by frequent violence targeted towards religious leaders and churches. In addition to the evident need to comply with its international legal obligations to take all necessary steps to protect them, the government should consider the critical role these actors play in building peace and promoting democratic transition.

#### **(b) Maternal Mortality**

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<sup>21</sup> All Africa Conference of Churches ‘Statement by the All Africa Conference of Churches on the attack on the cathedral of Makol Chuei in the Diocese of Athooch of the Episcopal Church of South Sudan’ (7 August 2020) World Council of Churches <<https://www.oikoumene.org/resources/documents/statement-by-the-all-africa-conference-of-churches-on-the-attack-on-the-cathedral-of-makol-chuei-in-the-diocese-of-athooch-of-the-episcopal-church-of-south-sudan>>.

<sup>22</sup> C. Giangravé, F. Nzwili ‘Attackers shoot Italian bishop-elect in his home in South Sudan’ (27 April 2021) Religion News <<https://religionnews.com/2021/04/27/italian-bishop-elect-is-shot-by-armed-attackers-in-south-sudan/>>.

18. In 2017, South Sudan had the highest maternal mortality rate in the world, at 1150 maternal deaths per 100,000 live births.<sup>23</sup> According to the European Union's INFORM Epidemic Risk Index, the country also has the third highest risk to epidemic outbreak in the world, reflecting an extreme vulnerability to COVID-19 and other diseases, particularly for those belonging to vulnerable groups such as pregnant women.<sup>24</sup> These numbers can largely be attributed to extremely poor healthcare conditions.
19. According to a 2019 study conducted in Jubek State, only a quarter of women in the area surrounding the capital of Juba gave birth in a health facility or with skilled birth attendance. "Factors positively associated with health facility births were antenatal care visits, secondary or higher maternal education, high socio-economic status, and primiparity."<sup>25</sup> This highlights the need to employ a holistic approach to maternal health, including improved access to quality health facilities and skilled birth attendance, as well as investing in women's education, infrastructure, and economic development.
20. These issues must be remedied, but frequent calls to increase access to legal abortion as a necessary precondition to solving them are misguided. Legalizing abortion does not guarantee that pregnancy and childbirth will become safer and does nothing to assist women who desire to have children safely in accordance with their fundamental right to health and to found a family. Moreover, providing more access to abortion will mean more women will suffer from abortion complications. South Sudan must focus on introducing measures to reduce recourse to abortion, instead of legalizing the practice, in line with paragraph 8.25 of the Programme of Action of the International Conference on Population and Development. Measures to reduce abortion include improving access to education, which empowers women and leads to social and economic development, as well as facilitating responsible decision-making and risk-avoidance skills.

### **(c) Recommendations**

21. In light of the foregoing, ADF International suggests the following recommendations be made to South Sudan:
  - a. Ensure full respect for the rights to freedom of religion or belief and freedom of expression, in accordance with international human rights law;
  - b. Repeal Articles 201-205 of the Penal Code criminalizing 'offences against religion';
  - c. Repeal or review the Articles 289-292 of the Penal Code to end any arbitrary or discriminatory restrictions to freedom of expression;
  - d. Cease all arbitrary arrests of journalists and civil society activists, and ensure full respect for freedom of expression, in accordance with international obligations,

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<sup>23</sup> WHO, UNICEF, UNFPA, World Bank Group, and the United Nations Population Division 'Maternal Mortality Ratio – South Sudan' (2019) Trends in Maternal Mortality: 2000 to 2017 <[https://data.worldbank.org/indicator/SH.STA.MMRT?locations=SS&most\\_recent\\_value\\_desc=false](https://data.worldbank.org/indicator/SH.STA.MMRT?locations=SS&most_recent_value_desc=false)>.

<sup>24</sup> European Commission 'INFORM Epidemic Risk Index' (2020) <<https://drmhc.jrc.ec.europa.eu/inform-index/INFORM-Risk/INFORM-Epidemic-Risk-Index>>.

<sup>25</sup> J. B. Tongun et al. 'Determinants of Health Facility Utilization at Birth in South Sudan' (9 July 2019) Int J Environ Res Public Health 16(13) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6651414/>>.

- e. Adopt all the necessary measures to protect religious leaders and church communities from all forms of violence, including targeted political violence;
- f. Increase efforts to improve the health-care system, including access to health facilities and skilled birth attendance and other resources for maternal health, with a focus on getting mothers and babies safely through pregnancy and childbirth.



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