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Deng Manyok Awol
Akham Deng Akham
Tut Biel

Legacies of Enforced Disappearances in South Sudan

BRIEFING PAPER

Intersections of Truth, Justice and Reconciliation in South Sudan

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Summary

- This briefing paper examines the legacy of enforced disappearances—or the arrest, detention, or abduction of people by state actors followed by a refusal to acknowledge the act or conceal the whereabouts or fate of the disappeared person—that occurred during the 22-year war (1983-2005) in South Sudan.
- In the early 1990s, in response to a series of attacks by the Sudan People's Liberation Army (SPLA) on Juba and elsewhere in the Equatoria region, the Sudanese government responded with a brutal crackdown on the civilian population, involving retaliatory killings, arrests and disappearances. The enforced disappearances that occurred during the civil war continue to have impacts in the current setting, both on the families and friends of those who were disappeared as well as on the way institutions function.
- The systematic use of enforced disappearances had both direct and indirect impacts on the families and friends of disappeared persons. The most immediate and direct impact was trauma associated with their fears about the fate of their loved ones. Indirect impacts were caused by a variety of factors, including arbitrary connections the authorities sometimes made between disappeared persons and their associates. This would in turn lead to the social isolation of acquaintances of the disappeared person, as people feared that they would be subject to the same fate.
- Among those responsible for the disappearances were southern Sudanese in government administration. As many of them remained in government after the CPA and independence, the legacies of past authoritarian regimes were thus inherited by new administrations in South Sudan.
- Since conflict erupted in South Sudan in December 2013, numerous enforced disappearances have been documented and evidence suggests that they are becoming increasingly systematic.
- In August 2015, the warring parties in South Sudan signed a peace agreement in an effort to end the conflict. The agreement provides for a Commission on Truth, Reconciliation and Healing (CTRH), which would be responsible for documenting and reporting on human rights abuses over a specified time period in order to develop recommendations for how South Sudan might come to terms with its history of violence. The CTRH and associated mechanisms for promoting truth, justice and reconciliation in the peace agreement represent a break with past peace processes, which have repeatedly failed to address the legacy of human rights abuses in the country.
- In order to address the legacy of enforced disappearances and other human rights abuses that have occurred in South Sudan, the Government must create a conducive environment for public discussion of these emotive and contentious issues.
- While criminal trials may provide an opportunity for some victims to recount their experiences, at least in so far as they relate to the specific claims being alleged in trial, in order to reach a larger number of people, some sort of national truth-

seeking process would be required. Any such effort must be grounded in the experiences and views of the people of South Sudan.

- Institutional reforms are necessary to eliminate the practice of enforced detentions in security and justice sector institutions, including vetting of staff and removal of individuals responsible for human rights violations from these institutions.

Introduction

This briefing paper examines enforced disappearances that occurred in South Sudan in the early 1990s. The findings are based on a series of focus group discussions and key informant interviews that the South Sudan Law Society (SSLS), the University for Peace Centre The Hague and Pax carried out in Juba in January and February 2015 with survivors and witnesses of enforced disappearances. The research is part of a larger study that aims to better understand South Sudanese perceptions of justice, reconciliation and forgiveness, and determine where South Sudanese place their priorities for transitional justice and national reconciliation.¹

Since December 2013, South Sudan has been embroiled in a brutal civil conflict. The two warring parties—the Government of the Republic of South Sudan (GRSS) and the Sudan People’s Liberation Movement-in-Opposition (SPLM-IO)—have both been accused of carrying out acts of brutality against the civilian population, including mass killings, rape, sexual mutilation, sexual slavery, torture, enforced disappearances and recruitment of child soldiers.² The intensity of the violence and the fact that much of it has broken down along inter- and intra-communal lines has prompted a discussion about the role that past human rights abuses have played in driving the conflict.

Peace processes in South Sudan have repeatedly failed to address the legacies of past periods of violence as a component of sustainable peace. Peace talks are typically initiated with offers of blanket amnesties and political and military positions for rebelling forces.³ To date, South Sudan has not made any serious effort to examine past human rights abuses in order to officially acknowledge the role that state and non-state actors have played in violations of international human rights and humanitarian law and develop a plan for ensuring that such acts do not recur.

¹ The project is carried out in cooperation between the University for Peace (UPEACE) Centre The Hague (the Netherlands), the South Sudan Law Society (SSLS), and PAX. It is funded by the Dutch Ministry of Foreign Affairs as a part of the ‘Knowledge Platform Security & Rule of Law’, and is administered by the Netherlands Organisation for Scientific Research (NWO). A short summary of the project, its methods and activities, can be found here:

<http://www.upeace.nl/cp/uploads/publications/One%20Pager%20-%20ITJR%20in%20South%20Sudan.pdf>.

² African Union Commission of Inquiry on South Sudan (AUCISS), *Final Report* (15 Oct. 2014), available at: <http://www.peaceau.org/uploads/auiciss.final.report.pdf>; United Nations Mission in the Republic of South Sudan (UNMISS), *Attacks on Civilians in Bentiu and Bor: April 2014* (9 Jan. 2015), available at: http://www.ohchr.org/Documents/Countries/SS/UNMISS_HRDJanuary2015.pdf; UNMISS, *Special Report: Attack on Bentiu, Unity State, 29 October 2014* (19 Dec. 2014), available at: <https://unmiss.unmissions.org/Portals/unmiss/Documents/Reports/UNMISS%20HRD%20-%20Attack%20on%20Bentiu%20October%202014.pdf>; UNMISS, *Conflict in South Sudan: A Human Rights Report* (8 May 2014), available at <http://www.unmiss.unmissions.org/Portals/unmiss/Human%20Rights%20Reports/UNMISS%20Conflict%20in%20South%20Sudan%20-%20A%20Human%20Rights%20Report.pdf>; Human Rights Watch, *They Burned it All: Destruction of Villages, Killings, and Sexual Violence in South Sudan’s Unity State* (22 Jul. 2015), available at: <https://www.hrw.org/node/279428>; Human Rights Watch, *South Sudan’s New War: Abuses by Government and Opposition Forces* (7 Aug. 2014), available at <http://www.hrw.org/reports/2014/08/07/south-sudan-s-new-war>; Amnesty Int’l, *Nowhere Safe: Civilians Under Attack in South Sudan* (8 May 2014), available at: <http://www.amnesty.org/fr/documents/AFR65/003/2014/en/>; *Interim report of the Panel of Experts on South Sudan established pursuant to Security Council resolution 2206* (2015), available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2015/656.

³ Justice and Security Research Programme, London School of Economics (LSE), *South Sudan: Who got what?*, available at: <http://www.cartoonmovement.com/icomic/73>.

There is some indication that with the return of large-scale conflict to South Sudan, the political establishment is now ready to explore new approaches to dealing with the past. In August 2015, the GRSS, SPLM-IO and other stakeholders signed a peace agreement in an effort to end the conflict. Section V of the agreement provides for a Commission on Truth, Reconciliation and Healing (CTRH), which would be responsible for documenting and reporting on human rights abuses over a specified time period in order to develop recommendations for how South Sudan might come to terms with its history of violence.

As of this writing, the peace agreement is under threat by hardline parties on either side of the political divide and it has yet to be seen whether it can provide a sustainable solution to the crisis. Nonetheless, if South Sudan does move forward with a truth and reconciliation program, whether through the implementation of the agreement or through some other mechanism, certain questions will need to be answered beforehand. Given the decades of conflict and numerous human rights violations and abuses that have taken place in South Sudan, on what time periods should a truth-seeking effort place its focus?⁴ Should the truth-seeking program focus on violations of civil and political rights or explore economic crimes as well, such as abuses associated with oil production or corruption? What are the precise links between human rights abuses committed in past conflicts and the atrocities that we are seeing today in South Sudan?

This briefing paper examines these questions and others through the lens of enforced disappearances that occurred in South Sudan in the early 1990s. As argued in this paper, enforced disappearances that occurred during past conflicts continue to exert a number of impacts in the current situation. These impacts are apparent both in the lives of the family and friends of those who were disappeared as well as in the continued practice of enforced disappearances and the culture of impunity that pervades security sector institutions in the new nation.

The paper is structured in four sections. Section One provides an overview of relevant contextual information, including a definition of enforced disappearances, an overview of the provisions on transitional justice, reconciliation and healing in the recently signed peace agreement, and background information on enforced disappearances in South Sudan. Section Two examines the legacy of enforced disappearances in the current context. The concluding remarks summarize the main findings and present issues to consider in developing a national program for transitional justice and national reconciliation moving forward.

⁴ According to the peace agreement, the CTRH's mandate seems to cover a 10-year period from 2005 to 2015. This would exclude abuses committed during the second Sudanese civil war (1983-2005). Intergovernmental Authority on Development (IGAD), Agreement on the Resolution of the Crisis in South Sudan (ARCISS) (Aug. 2015), available at: <http://www.sudantribune.com/spip.php?article56093>.

Context

Enforced disappearances arise when state actors arrest, detain or abduct people and then refuse to acknowledge the act or conceal the whereabouts or fate of the disappeared person.

What are enforced disappearances?

Enforced disappearances arise when state actors arrest, detain or abduct people and then refuse to acknowledge the act or conceal the whereabouts or fate of the disappeared person.⁵ Enforced disappearances emerged as a specific violation under international human rights law in the 1980s with the establishment of the United Nations (UN) Working Group on Enforced Disappearances, the first thematic human rights mechanism established with a universal mandate.⁶ This was followed by a UN General Assembly declaration on enforced disappearances in 1992, which laid out the contours of the violation.⁷ It was not until 2006, however, that enforced disappearances were firmly embedded in international law with the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPEd) (entered into force in 2010).⁸ The ICCPEd also established a treaty body called the Committee on Enforced Disappearances to monitor state implementation of treaty obligations.⁹

Although referred to as a single violation, enforced disappearances typically involve a cluster of crimes. As Chilean human rights lawyer, José Zalaquett, explains:

“Disappearance, just like other complex crimes such as apartheid or ethnic cleansing, presupposes a cluster of behaviors that are comprised within such elaborate criminal practice. You can identify killing, rape or other criminal components of the practice, but the overall crime is defined by a sense of purpose. The purpose of ethnic cleansing is self-evident; apartheid, of course, was implemented to enforce a regime of institutionalized racial discrimination. The practice of disappearance was devised to get rid of undesirables without leaving traces and without having to account for them.”¹⁰

Enforced disappearances infringe on a range of human rights. Victims of enforced disappearances, which include both disappeared persons and their families, are

⁵ Art. 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICCPEd) defines enforced disappearance as: “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” ICCPEd (2010), Art. 2, <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>.

⁶ United Nations Office of the High Commissioner for Human Rights (UN OHCHR), Working Group on Enforced or Involuntary Disappearances website, <http://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>.

⁷ United Nations General Assembly, Declaration on the Protection of All Persons from Enforced Disappearance, U.N. Doc. A/Res/47/133 (12 Feb. 1993), available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N93/091/18/IMG/N9309118.pdf?OpenElement>.

⁸ ICCPEd

⁹ UN OHCHR, Committee on Enforced Disappearances website, <http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>.

¹⁰ José Zalaquett, Human Rights: *From Practice to Policy, Proceedings of a Research Workshop*, Gerald R. Ford School of Public Policy, University of Michigan (Oct. 2010), available at http://deepblue.lib.umich.edu/bitstream/handle/2027.42/89426/PRACTICE_TO_POLICY.pdf?sequence=4.

denied the protection of the law, violating their right to fair trial. Families are denied information about what happened to their loved ones, violating their right to know or to truth. State denial also prevents victims from obtaining legal remedies that might be available were the detention officially acknowledged, such as pensions or insurance payments. The continuous nature of the crime makes enforced disappearances particularly painful for families of the disappeared individuals.¹¹ So long as the next of kin is denied information about the whereabouts of their family members, their suffering continues.

South Sudan is not party to the ICCPED, nor has it ratified most of the international human rights treaties that proscribe the minimum standards by which states must treat their citizens.¹² Nonetheless, many of the human rights violations associated with enforced disappearances are also prohibited under South Sudanese law. For example, the Transitional Constitution protects the rights to a fair trial and to personal liberty stating, “no person shall be subjected to arrest, detention, deprivation or restriction of his or her liberty except for specified reasons and in accordance with procedures prescribed by law.”¹³ The state may only detain an individual for up to 24 hours as part of an investigation after which the individual must be released on bond or produced in court.¹⁴ Due to weaknesses in the rule of law, these constitutional provisions provide little protection to victims of enforced disappearances.

The role of the CTRH would be to document and report on past human rights violations and abuses and to make recommendations for how the government can address the legacy of these violations.

Proposed Commission on Truth, Reconciliation and Healing

Shortly after the outbreak of violence in December 2013, the Intergovernmental Authority for Development (IGAD) initiated a mediation effort in order to secure a ceasefire and political settlement to the crisis. After more than 20 months of on-again, off-again negotiations, the warring parties finally agreed to the terms of a peace agreement in August 2015. The agreement addresses a range of issues, including: power sharing, security arrangements, humanitarian assistance, economic arrangements, justice and reconciliation, and the parameters of a permanent constitution.¹⁵

Chapter V of the agreement, entitled “Transitional Justice, Accountability, Reconciliation and Healing,” outlines the parties’ plans for how the proposed Transitional Government of National Unity (TGONU) will address the legacy of violence and culture of impunity in the country. Among the proposed institutions is a Commission for Truth, Reconciliation and Healing (CTRH), the role of which would be to document and report on past human rights violations and abuses over a specified time period and to make recommendations for how the government can address the legacy of these violations.¹⁶

¹¹ ICCPED, Art. 17.1 (stating, “Acts constituting enforced disappearance shall be considered a continuing offence as long as perpetrators continue to conceal the fate and whereabouts of persons who have disappeared”).

¹² South Sudan recently ratified CAT, CEDAW and the CRC, but it is still not party to the ICCPR, ICESR or most of the other core human rights treaties.

¹³ Transitional Constitution of the Republic of South Sudan (TCRSS), pt. II, Arts. 12, 19, https://www.constituteproject.org/constitution/South_Sudan_2011.pdf.

¹⁴ Id., Art. 19(4) (stating, “A person arrested by the police as part of an investigation, may be held in detention, for a period not exceeding 24 hours and if not released on bond to be produced in court.”).

¹⁵ ARCISS

¹⁶ Priscilla Hayner, *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions* (2nd ed.) (2011); Public Int’l Law and Policy Group (PILPG), *Truth and Reconciliation Commissions*:

While the signing of the peace agreement is a step forward, many questions about the proposed CTRH remain. The agreement proposes that the institution examine human rights violations from the signing of the CPA and establishment of the regionally autonomous Government of Southern Sudan in 2005 until the signing of the current peace agreement in 2015. This time period would exclude atrocities committed during the second Sudanese civil war (1983-2005). Grievances associated with the civil war continue to breed deep animosities between groups in South Sudan. While the shorter time period may offer advantages in terms of making the CTRH's task more manageable, it also raises questions about the value-added of such an exercise to the extent that it does not address many of the most contentious episodes in South Sudan's past.

If the CTRH were to examine human rights violations committed during the 22-year civil war, it would also have to determine how to relate to violations committed by the Sudanese government in Khartoum. A central purpose of truth commissions is for a state to reflect on its own role in human rights violations, so the CTRH should not allow its focus to fall on abuses committed by the Sudanese regime. Nonetheless, the role of the Sudanese government in perpetrating abuses in South Sudan is a key component of the truth and the CTRH could not entirely avoid the subject.

In the early 1990s, the SPLA launched a series of attacks on Juba. The Sudanese government responded with a brutal crackdown on the civilian population.

Enforced Disappearances in Juba in the 1990s

In the early 1990s, the Sudan People's Liberation Army (SPLA), the main rebel movement in southern Sudan, launched a series of attacks on Juba and other towns in the Greater Equatoria region. The Sudanese government responded by expelling foreign diplomats and aid workers and implementing "a thorough and brutal crackdown" on the civilian population, involving retaliatory killings, arrests and disappearances.¹⁷

These incidents were documented by a number of international human rights organizations. Amnesty International, for example, documented 230 incidents of people being arrested and never accounted for between June and August 1992, in addition to at least 300 civilians that were killed outright.¹⁸ Security forces moved house-to-house, and those resisting arrest were summarily shot. The arrests included prominent civilians, church leaders and youth leaders, as well as security personnel suspected of having collaborated with the SPLA.¹⁹

Core Elements (May 2013), available at: http://syriaaccountability.org/wp-content/uploads/PILPG-Truth-and-Reconciliation-Memo-2012_EN.pdf.

¹⁷ Rone, J., J. Prendergast and K. Sorensen, *Civilian Devastation: Abuses by All Parties in the War in Southern Sudan*, Human Rights Watch (1994), available at:

<http://www.hrw.org/reports/1993/sudan/>; Amnesty International, *Sudan: Deaths and Detentions: The destruction of Juba*, (1992), available at

<http://www.amnesty.org/en/library/info/AFR54/026/1992/en>; Amnesty International, *Sudan: the Ravages of war: political killings and humanitarian disaster* (1993), available at:

<http://www.amnesty.org/en/library/info/AFR54/006/1993/en>; Amnesty International, Sudan, Patterns of repression (1993), available at:

<http://www.amnesty.org/en/library/info/AFR54/029/1993/en>; Donald Bloxham and A. Dirk Moses (eds.), *The Oxford Handbook of Genocide Studies* (2010), at 544.

¹⁸ Amnesty International, *Deaths and Detentions*; Amnesty International, Patterns of repression, p. 7.

¹⁹ Rone, Pendergast & Sorensen, *Civilian Devastation*, p. 58.

The forced disappearances that occurred during the 22-year civil war continue to have impacts in the current setting, both on the families and friends of those who were disappeared as well as on the way institutions function

According to the *Oxford Handbook of Genocide Studies*, “The details of the arrests, detentions, and executions have never come to light. However, they are reliably reported to include thousands of extrajudicial executions.”²⁰ It is believed that those who were ‘disappeared’ were tortured to death, subject to extra-judicial executions, or executed after summary military trials.²¹

Many of those disappeared were taken to a prison in a military barracks on the outskirts of Juba called the ‘White House’, for its white exterior walls. One of the individuals interviewed for this study described how people would be disappeared there:

*“When they go, they go for good. They don’t return. The people in Juba here, especially the Arabs, they started collecting people at night. When they know that you are a Sudanese and you are popular, they just come to your home and collect you and take you to White House where you disappear.”*²²

Another interviewee added: “They [the SPLA] were shelling Juba and everybody went to Juba Town. At night you hear that so-and-so is taken to White House and no return.”²³ A key informant interviewed for this study described how she was able to avoid being disappeared after she was arrested and taken to the White House:

*“At night in the White House, people came. There were three people in uniform. There was no light inside and people, they were mixed, you cannot see who’s who. When they come, they just grab you. If you are lucky, you stand behind those ones, the ones they take first. They are taken at night and they are killed. I stayed there for three days and then one father came, brought for us food, then they released us. After they released us, I used to report morning and evening [to the White House].”*²⁴

The enforced disappearances that occurred during the 22-year civil war continue to have impacts in the current setting, both on the families and friends of those who were disappeared as well as on the way institutions function. Indeed, as discussed in the next section, enforced disappearances in South Sudan are thought to have increased dramatically as a result of the conflict that erupted in December 2013.

Enforced Disappearances in the Current Context

Numerous enforced disappearances have been documented in the current conflict and evidence suggests that they are becoming increasingly systematic. A recent survey that the SSLS conducted on perceptions of truth, justice, reconciliation and healing shed light on the scale of the problem. One-third of the 1,525 people that were surveyed said that a family member had disappeared at some point in their lives. The rates were highest among populations in Upper Nile state, where people have been directly exposed to violence as a result of the conflict that erupted in December 2013. Two-thirds of the respondents in Wau-Shilluk (an IDP settlement about two hours boat ride down the Nile River from Malakal) and 50 percent of

Numerous enforced disappearances have been documented in the current conflict and evidence suggests that they are becoming increasingly systematic.

²⁰ Bloxham & Moses, *Oxford Handbook*, p. 543-44.

²¹ Amnesty International, *Deaths and Detentions*; Amnesty International, *Ravages of war*, p. 16; Amnesty International, *Patterns of repression*, p. 7.

²² Interview with P. in Juba, 18 February 2015.

²³ *Id.*

²⁴ Interview with B.L. in Juba, 10 February 2015.

respondents in the Malakal protection of civilian (POC) site said that a close family member had been disappeared at some point in their lives.²⁵

In addition to the survey data, several incidents of enforced disappearances have been reported in the media in recent years. For example, a South Sudanese journalist named George Livio has been detained for more than a year by the National Security Services (NSS). A spokesperson for the Government recently refused to acknowledge that Livio was even taken into custody. As a lawyer who is investigating the incident observed, “This [Livio] case is an example of abuse of power, impunity, disregard for institutions. It’s arbitrary. It has no justification.”²⁶

More recently, in August 2015, a South Sudanese journalist named Clement Lochio Lormonana was disappeared in Eastern Equatoria State. Relatives said Lormonana and his brother were last seen being loaded onto a military vehicle in Budi County. According to a press release by an association of the Didinga and Buya communities in Canada and the United States, “Nothing has been heard of them ever since. All attempts by the community to secure their release while still in Budi County failed.”²⁷

Individuals who participated in focus group discussions as part of this study directly linked the enforced disappearances that took place during the civil war with those that are happening today. As one participant explained:

“It is happening now. It is continuing. The people are disappearing. People are getting arrested. Where are they kept? The ghost houses are even present now, here in Juba. If you don’t have someone in the army or the government to run to, you are stuck... Today, the security even is above everybody. They can slap you on the street. They can do anything to you. You don’t have any way to question them... Do we ask what happened yesterday when today it is still continuing? We better stop what is happening today than going back.”²⁸

New legislation for the National Security Services (NSS) fails to address the enabling factors of enforced disappearances, such as the prevalence of arbitrary detentions and torture. The legislation has been criticized for expanding the scope of the NSS beyond that of “information gathering, analysis and advice to the relevant authorities,” as provided for in the Transitional Constitution, to include powers of arrest and detention.²⁹ Concerns have also been raised about procedural irregularities that are said to have accompanied the enactment of the legislation.

“It is happening now. It is continuing. The people are disappearing. People are getting arrested. Where are they kept? The ghost houses are even present now, here in Juba. If you don’t have someone in the army or the government to run to, you are stuck.”

²⁵ David K. Deng et al., *Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan*, South Sudan Law Society (SSLS), United Nations Development Programme (UNDP) (Jun. 2015), available at:

<http://www.ss.undp.org/content/dam/southsudan/library/Rule%20of%20Law/Perception%20Survey%20Report%20Transitional%20Justice%20Reconciliation%20and%20Healing%20-.pdf>; David Deng and Matthew Pritchard, *A War Within: Perceptions of Truth, Justice, Reconciliation and Healing in Malakal POC*, South Sudan Law Society (SSLS) and the United States Agency for Int’l Development (USAID) (forthcoming).

²⁶ Patinkin, J. (2015) “Radio Silenced in the World’s Newest Country.” In: *Foreign Policy*, 26 August 2015, available at: <https://foreignpolicy.com/2015/08/26/radio-silenced-in-the-worlds-newest-country-press-freedom-south-sudan/>.

²⁷ Sudan Tribune (2015) *Fears as South Sudanese journalist disappears for weeks*, 29 Aug. 2015, available at: <http://sudantribune.com/spip.php?article56224>.

²⁸ Focus group with male survivors and witnesses in Juba, 6 February 2015.

²⁹ TCRSS, pt. 10, ch. I, Art. 159(3); Human Rights Watch (2014) *South Sudan: Abusive Security Bill*, available at: <https://www.hrw.org/news/2014/10/15/south-sudan-abusive-security-bill>.

Given the pervasive fear to speak publicly about issues such as enforced disappearances in the current context, any effort to examine past human rights abuses will have to overcome many obstacles. The next section delves deeper into enforced disappearances that occurred in the 1990s in order to better understand what impacts they are having in contemporary South Sudan and what survivors think needs to be done to address those impacts.

Legacies of Enforced Disappearances in South Sudan

Past peace processes in the Sudans have repeated failed to address the legacy of human rights abuses.

Relevance to Peace Processes

As noted above, past peace processes in the Sudans have repeatedly failed to address the legacy of human rights abuses in the country, whether committed by northern Sudanese against southern Sudanese or by southern Sudanese against one another. In the 2005 Comprehensive Peace Agreement (CPA), the Sudan People's Liberation Movement (SPLM) and the Government of Sudan agreed, "to initiate a comprehensive process of national reconciliation and healing throughout the country as part of the peace building process."³⁰ However, after its establishment in 2005, the regionally autonomous Government of Southern Sudan largely ignored the reconciliation and healing agenda so as to focus on the 2011 self-determination and possible secession of South Sudan.

According to several focus group participants, the CPA's failure to address past human rights violations contributed to a culture of impunity in the Government of Southern Sudan:

"After the CPA agreement, the international community has forgotten what has happened. Are there answers? You go to police station, you don't have an answer. You go to the court, you don't have an answer. You go to the government offices, you don't have an answer. Impunity is the order of the day."³¹

Focus group participants also feared that the mistakes that characterized the CPA process would repeat themselves in the peace talks in Addis Ababa. The negotiating parties' preoccupation with power sharing was cited as a sign that they were not prepared to devote sufficient attention to the legacies of conflict-related abuses:

"This all went back to the CPA agreement. People were insisting on the truth to be brought forward so that people could get answers, because the SPLA did the same atrocities that the Arabs did in the liberated areas. Others used to sleep with your own wife on your top, which is inhuman. They felt it was very hard for the truth to come out, so they agreed that this thing should not be told out. And it was that way during the CPA, and it has repeated itself in

³⁰ Comprehensive Peace Agreement between the Republic of Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, 9 January 2005, available at: <http://unmis.unmissions.org/Portals/UNMIS/Documents/General/cpa-en.pdf>.

³¹ Focus group with male survivors and witnesses in Juba, 6 February 2015.

The recently signed peace agreement provides an opportunity to correct some of the mistakes of past peace processes.

The systematic use of enforced disappearances during the civil war had both direct and indirect impacts on the families and friends of disappeared persons.

*Addis Ababa. Now they are talking of power sharing. They are not talking about what happened to the people of Southern Sudan.*³²

The recently signed peace agreement and its provision for a comprehensive process of transitional justice and national reconciliation provides an opportunity to correct some of the mistakes of past peace processes. Since many key actors on both sides of the political divide were directly involved with abuses that took place during the last civil war, the implementation of these provisions will require a high level of commitment by the leadership on either side.

Impacts on Families and Friends During the Civil War

The systematic use of enforced disappearances during the civil war had both direct and indirect impacts on the families and friends of disappeared persons. The most immediate and direct impact was trauma associated with their fears about the fate of their loved ones. The fact that the disappeared person's remains are never found is particularly painful in the South Sudanese context, where cultural norms place great importance on traditional burial rites. As a key informant whose husband was disappeared in the 1990s observed: "That thing does not go very easily like that. You know why? Because their remains, up to now, it's not there. It's not identified to us."³³ Another focus group participant noted that any effort to acknowledge the death of the individual would risk generating suspicion:

*"In our cultural belief, there is something like prayers to be conducted. But, actually, it may become hard for somebody to conduct any prayers in the house because if you attempt to do that, you will be asked, 'Who did you lose? Who told you that they were killed?' Our fathers, they got lost and there is no prayers that has been done like in our culture. So, this is a great impact."*³⁴

Enforced disappearances also had indirect impacts on the family and friends of the disappeared. The authorities would sometimes make arbitrary connections between disappeared persons and their associates. This would in turn lead to the social isolation of acquaintances of the disappeared person, as people feared that they would be subject to the same fate. As a focus group participant explained:

*"If you are related to the person that is taken, you will also be at high risk of being taken to the White House. You will not go and visit their family because they are suspected. They might say that you have been meeting together and you are also part of it."*³⁵

Family members who inquired too closely into the whereabouts of their loved ones also faced risks of reprisal:

*"At that time people were powerless. If you talk much about the disappearing people, they will say, 'Who told you? You come and show us the tomb where they buried these people.'"*³⁶

³² *Id.*

³³ Focus group with female survivors and witnesses in Juba, 23 January 2015.

³⁴ *Id.*

³⁵ *Id.*

³⁶ Interview with P. in Juba, 18 February 2015.

The fear that enforced disappearances generate at the family level also had broader implications for society and the way people related to the state:

“Some people saw it like a miracle. We have a friend today that tomorrow is not found. The impact was first people were living in panic. You don’t know when you are going to be picked and you can’t live at ease. You think, why should I remain in South Sudan? And later you cross the border to be safe.”³⁷

In order to implement its campaign of enforced disappearances, the security apparatus gathered intelligence through a network of informants in the civilian population. Interviewees for this study described the paranoia and suspicions that such an inwardly focused intelligence service generated:

“There were spies there with the people. When you go to a tea place or beer place or dancing hall or hotel, when they suspect you or you talk to a girl who is a friend to the spy, they arrest you and then you go and disappear there.”³⁸

Focus group participants also described how individuals sometimes informed to the authorities in order to settle old scores. One interviewee narrated a story about how he was turned into the authorities by someone who was jealous of his success as a businessman:

“So, I was arrested and then they asked me only to go and report. When they saw me, they said, ‘No. These people are accusing this man for nothing.’ They said, ‘I know you. You just report here tomorrow and next tomorrow and so on.’ And then they left me. That is why I survived up to today.”³⁹

As discussed in the next section, these experiences have left an indelible mark on the family and friends of disappeared individuals that is still felt to this day.

While many enforced disappearances happened decades ago, they continue to have a devastating impact on the families and friends of the disappeared individuals.

Impact on Families and Friends in the Current Context

Although many of the most egregious incidents of enforced disappearance happened decades ago, they continue to have a profound impact on the families and friends of the disappeared individuals. Not knowing the fate of their loved ones is source of continual suffering for many survivors. According to a female focus group participant:

“These are some of the things which has really made some of us become mad. So many widows among us died because nobody tells you where your husband is taken. And if you get somebody who may answer you, he’ll say, ‘These people are in Khartoum. They are taken for investigation.’ ...So, at least, that day, you will sleep thinking that maybe he’s in the prison, and that maybe he will come one day if you get somebody who may sympathize with you.”⁴⁰

Another interviewee described the grief she still feels after witnessing the burial of people who were disappeared and then killed:

³⁷ Interview with B.A. in Juba, 9 Feb. 2015.

³⁸ Interview with P. in Juba, 18 February 2015.

³⁹ *Id.*

⁴⁰ Focus group with female survivors and witnesses in Juba, 23 January 2015.

Groups of widows who lost their husbands to enforced disappearances in Juba in the 1990s have made some effort to raise the profile of this issue and secure assistance from the Government of South Sudan, to no avail

*"No one knows. Up to now, they don't know where they are. They used to say maybe that person went for exile or they run away or went to Khartoum because that time many people, they are running to Khartoum and some of them going to their village. But that person was buried and we saw it. That person was buried up to now. I know the grief. I'm sure, the bones, they are still there."*⁴¹

The difficulties are especially acute for the wives of men who are disappeared. Not only do they have to live with the loss of a loved one, by they lose access to marital income and are often forced to raise children without support:

*"A women left without her husband is the hardest incident. Some of the families have got discouraged because there's nobody who's taking responsibility. There's no one who is caring for them."*⁴²

Another focus group participant added:

*"We were followed on all our movements. They want to know where this woman is going and whom is she is talking to. It was so difficult to bring up children. It was very hard for us, but God helped us, some of us. Some family like my boys did okay. Some boys died of drinks and some were killed."*⁴³

Groups of widows who lost their husbands to enforced disappearances in Juba in the 1990s have made some effort to raise the profile of this issue and secure assistance from the Government of South Sudan, to no avail. According to one interviewee:

*"Certain families can feel the impact of the disappearance of their relatives, especially women who are left with children. They thought the present government who would come and relieve some of the problems they have, but now also people are struggling their own way, and there is no help at all."*⁴⁴

Impacts such as those described by interviewees and focus group participants do not heal on their own. Remedying the harm that systematic human rights abuses have on the population requires an acknowledgement that the abuses took place, an analysis of why the abuses took place based on a thorough understand of the facts and circumstances of the abuses, and a plan for how to address the legacy of the abuses. When states deny that the abuses ever took place and suppress public discussion about them, the abusive practices have a tendency to become institutionalized, as explored further in the next section.

Impact on Institutions

In many cases, the southern Sudanese administrators responsible for disappearances during the period of northern rule remained in government after the signing of the CPA in 2005 and independence in 2011. This is not only a source of resentment for the

⁴¹ Interview with B.L. in Juba, 10 February 2015.

⁴² Focus group with female survivors and witnesses in Juba, 23 January 2015.

⁴³ *Id.*

⁴⁴ Interview with P. in Juba, 18 February 2015.

families of those disappeared, but also serves to suppress public discussion about the issue. According to a male focus group participant:

The legacies of past authoritarian regimes are inherited by new administrations in South Sudan.

“Those who are actually involved in killing and isolating people are still the same people running the machinery of this country. These people should have been brought to books. But again, the same people are now put to run the country. Now even if there are other atrocities now or people are being also taken, how do you now talk? You cannot say anything. Many things happened and people are now fearing. Because you are seeing somebody who behaved like this before, but he is still in the system. And now if you say something, what do you expect out of this thing?”⁴⁵

The legacies of past authoritarian regimes are thus inherited by new administrations in South Sudan. Focus group participants made a direct link between the forced disappearances that occurred during the civil war and the resurgence of the practice in relation to the current crisis. As one focus group participant explained:

“Forced disappearances that happened during that time was by Southerners themselves. Southerners were betraying each other out of jealousy. It has repeated itself today in the December crisis. There are those that also indicated themselves to the regime, by betraying innocent others and it has repeated itself... So as we go deep into the individuals that disappeared, we’ve got testimony of living people who have been in the White House. They’re present. They’re living. But in this situation, people are beating around the bush, because they don’t even have answers.”⁴⁶

Institutional reforms are necessary to eliminate the practice of enforced detentions in security and justice sector institutions

Institutional reforms are necessary to eliminate the practice of enforced detentions in security and justice sector institutions. One way other countries have embarked on such a reform process is through the vetting of staff in these institutions to remove individuals responsible for human rights violations. To protect the rights of accused persons, any such vetting should be done through a carefully designed mechanism that affords people suspected of involvement in human rights abuses an opportunity to refute the claims.

Truth, Justice and Accountability

In any society, justice is a complex concept that cannot be compartmentalized in a purely legal definition that focuses on criminal accountability. For some people, simply having the chance to tell their story may be a form of justice. As one focus group participant explained: “For us, justice isn’t about the court. For us, justice is to find out. We must grieve.”⁴⁷ Other interviewees stressed the importance of official inquiries and legal processes in relation to past disappearances:

“You cannot just forgive anybody. If justice came out, we can forgive that party who has killed our husband. If they are brought to court and they accept that they did it, this is the time you can forgive and this is the time you can maybe reconcile with them. But you cannot just forgive anybody.”⁴⁸

⁴⁵ Focus group with male survivors and witnesses in Juba, 6 February 2015.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

A number of interviewees pointed to the impact of accountability in terms of deterring those who would do similar acts today:

“This thing, it happened once, but it may happen again. We need to remind it, to recount it, to prevent it and it is only by talking about it, bringing people to justice, that’s the only the way you can prevent it from happening.”⁴⁹

Another participant added:

“For me, those who are responsible, I want them to be arrested. But they are moving around. No one is asking them. There is no justice, so maybe they will continue doing the same.”⁵⁰

While criminal trials may provide an opportunity for some victims to recount their experiences, at least in so far as they relate to the specific claims being alleged in trial, in order to reach a larger number of people and better understand the broader context in which human rights abuses took place, some sort of national truth-seeking process would be required. One interviewee highlighted the significance that participating in such a process would have for her:

“I have never had a chance to tell my story. I have a lot of history tell take me from morning up to evening but no one given me that chance to talk about it.”⁵¹

People’s views on truth-seeking were deeply connected to their views on forgiveness and reconciliation, in that many focus group participants viewed the truth-seeking process to be a necessary prerequisite for genuine reconciliation. As one interviewee explained:

“In fact, up to now, people they still put fear in me. ...Me, I want to tell the truth. After I tell them the truth, from there, I will see what they are going to tell me for me to forgive them.”⁵²

The truth, in this sense, was seen as an important means of preventing a recurrence of the harmful acts. As a focus group participant explained:

“If we go back to the truth, we shall forgive. But if we don’t see the truth, the same thing will continue. It is continuing. People are disappearing in Juba today. Every day people are disappearing. Law is not taking its course. Where are we?”⁵³

Some interviewees were very adamant that they would want to personally share their stories with others, as the following exchange with a survivor of enforced disappearances highlights:

Interviewer: What do you think would help you to come to terms with this experience?

⁴⁹ Interview with K. in Juba, 22 March 2015.

⁵⁰ Interview with B.L. in Juba, 10 February 2015.

⁵¹ *Id.*

⁵² *Id.*

⁵³ Focus group with male survivors and witnesses in Juba, 6 February 2015.

In order for the transitional justice and national reconciliation program to be successful, it must be grounded in the experiences and views of the people of South Sudan.

Most interviewees required certain concessions from those who were responsible for the disappearances, such as an admission of guilt and an apology, before they would be willing to forgive.

Interviewee: If I tell the truth in the public and people know the truth.

Interviewer: You have no fear?

Interviewee: I will not fear. I will tell the truth. From there, I will be free. If they kill me, it is fine. But the truth remains the truth.⁵⁴

In order for the transitional justice and national reconciliation program to be successful, it must be grounded in the experiences and views of the people of South Sudan. The findings from this study suggest that there is considerable demand for such a program among populations in the country. The challenge for policy-makers is to understand South Sudanese perceptions of truth, justice and reconciliation and develop programs that reflect local priorities and build on existing practices.

Forgiveness and Reconciliation

Individuals interviewed for this study were divided between those who were willing to forgive as a means of alleviating themselves of the burden they carry as a result of their loved ones being disappeared and those for whom forgiveness was not an option. Some interviewees were willing to forgive with no strings attached. As one individual explained:

“The people who disappeared were taken and slayed in cold blood without any struggle. Many others were killed for cause not known to them. They were killed just because of some hatred between X and Y then X go on and accuse Y to those people who were picking individuals, for nothing. So, the best thing is to forgive and forget. If we won’t forgive and we are still remembering that, ‘This is Mr. X who did this to me,’ we will go nowhere in South Sudan. You are not going to develop an inch forward.”⁵⁵

Others pointed to their religious convictions and the healing impact that forgiveness can have for their loss:

“If you forgive and forget then we are doing the word of God. But, if we say we forgive and remember, this is what is not taking us anywhere. When you mean to forgive, then forgive and forget. That is the meaning of forgiveness, according to me.”⁵⁶

Another focus group participant added:

“My brother was killed. I can’t take revenge, because I don’t have a gun. It is better for us to go back to God and say, ‘God, forgive us and change the hearts of these people. Let us become one because a person is born in one day so we have to forgive each other.’”⁵⁷

Most interviewees required certain concessions from those who were responsible for the disappearances, such as an admission of guilt and an apology, before they would be willing to forgive:

⁵⁴ Interview with B.L. in Juba, 10 February 2015.

⁵⁵ Interview with B.A. in Juba, 9 Feb. 2015.

⁵⁶ *Id.*

⁵⁷ Focus group with male survivors and witnesses in Juba, 6 February 2015.

“Forgiveness comes when you have abused me and then we come together and I tell my problem, that so-and-so has done this to me. Then when you recognize that you have done wrong and ask for pardon and I accept your mistake, then you can make forgiveness. But we cannot just say in absentia that we have forgiven those people while they are going ahead with their crap.”⁵⁸

Another interviewee elaborated:

“Definitely an apology will help. If somebody apologizes, you can always forgive, but you cannot forget. It happened and people know it so people should not forget it, but forgiveness is a difficult thing when you are convinced that somebody did something wrong to you. If they apologize then definitely you can forgive them, but if they don’t, why should you?”⁵⁹

Several participants highlighted the importance of contrition in the perpetrator’s apology, as seen in the following exchange during a focus group discussion:

Moderator: Would you be willing to forgive those responsible for the disappearance of your loved ones?

Participant: I would say no, why should I forgive? If they can’t stop to confess, why should I forgive?

Moderator: So if they confess to you and apologize, will you be able to forgive them?

Participant: That is something I will judge from the tone of how he comes. The sound of reconciliation, that is a sound I don’t know how to picture.⁶⁰

Given the scale of the human rights violations that have occurred in current and past conflicts in South Sudan, forgiveness will be an important part of any comprehensive solution. The state cannot prosecute everyone who is responsible for human rights violations. The transitional justice and national reconciliation program can create a conducive environment for forgiveness by providing forums in which perpetrators can confess to what they have done and ask for forgiveness, after which opportunities can be explored for remedying the harms they have done to their victims and reintegrating them into society. However, since forgiveness is a personal decision, the state should be careful to avoid framing it as an obligation for victims. If an individual is not willing to forgive those who have harmed him or her, he or she cannot be forced to do so.

The Way Forward

In order to address the legacy of enforced disappearances and other human rights abuses that have occurred in South Sudan, the Government must create a conducive environment for public discussion of these emotive and contentious issues. In this sense, the proposed Commission for Truth, Reconciliation and Healing (CTRH)

In order to address the legacy of enforced disappearances and other human rights abuses that have occurred in South Sudan, the Government must create a conducive environment for public discussion of these emotive and contentious issues.

⁵⁸ Interview with P. in Juba, 18 February 2015.

⁵⁹ Interview with K. in Juba, 22 March 2015.

⁶⁰ Focus group with female survivors and witnesses in Juba, 23 January 2015.

provides the Government with an opportunity to break with the abusive practices of the past and demonstrate to the people of South Sudan that it is committed to establishing a culture of respect for human rights and rule of law.

A number of interviewees expressed skepticism that the Government would allow public discussions about issues such as enforced disappearances to freely take place. As one interviewee observed: "At the moment we are not sure of the Government. If you talk freely, they will hunt you down and then you'll also disappear."⁶¹ Other interviewees were adamant that they would want to confront those who are responsible for past human rights abuses:

*"Now that peace comes to the country, at least the truth has to be told. Me myself, I can stand and talk about what happened. For me, it's good for the ones that did those things to be punished because up to now, they're still there and no one has arrested them. No one asks them about it."*⁶²

Several participants highlighted the importance of memorials as forms of symbolic reparations to help victims deal with the loss of their loved ones and help to prevent a recurrence of similar acts among future generations:

*"For me, I wanted people to have to do a memorial. For example, like in Rwanda. After the peace in Rwanda, they brought people together in the local villages. People came together and they tell the truth and they arrested them. At least they are put inside. For me, I wanted the same thing to happen in southern Sudan. Not all people are hiding. There are people there, they have the truth but they fear to talk. But me, I cannot fear to talk. I can talk the truth. I can mention the places. That's what I want. It's no good to be hiding."*⁶³

Another focus group participant added:

*"We should always remember those people who are victim of the struggle. We are enjoying freedom today, so we should continue to remember these kind of events, in the right context, to save the country, so that we never go through such horrendous crimes again."*⁶⁴

Interviewees also pointed to the importance of documenting what happened as a lesson to future generations:

*"For the time being, the only thing that we need to do is documentation, because other people are living with the pain. There are people that have been killed as a family. The whole family is destroyed. It can happen and even now. We can document them for the future."*⁶⁵

As the topics of truth, justice and reconciliation are relatively new for South Sudan, the Government and other stakeholders will need to invest efforts into raising

⁶¹ Interview with P. in Juba, 18 February 2015.

⁶² Interview with B.L. in Juba, 10 February 2015.

⁶³ *Id.*

⁶⁴ Interview with K. in Juba, 22 March 2015.

⁶⁵ Focus group with male survivors and witnesses in Juba, 6 February 2015.

awareness about the available options. From there, a program that addresses the core problems can be developed in response to local priorities.

Concluding Remarks

In 2007, a group of widows whose husbands were disappeared in Juba during the government crackdown of 1992 organized a public gathering in which they demanded to know what has happened to their loved ones. In response to their demands, the Governor of Central Equatoria State promised to ask the government to inform on the fate of those missing and issue death certificates. He also declared that the government would build a monument in memory of the victims of 1992.⁶⁶ The widows interviewed for this study have yet to receive any information about the fate of their husbands.

The enforced disappearances that occurred in Juba in the 1990s are now decades old, but they continue to have impacts today. Not only are the families of those disappeared made to live with the pain of not knowing what happened to their loved ones, but the institutional culture that allowed these serious human rights violations to occur still remains. Indeed, the increase in enforced disappearances as a result of the current conflict clearly demonstrates the interconnectedness of the historical and contemporary experience with enforced disappearances.

Efforts to address past human rights violations in the context of the peace process provide a promising starting point, but until the Government creates a conducive environment for public discussion about the legacies of violence in the country and South Sudanese take ownership over efforts to address those legacies, South Sudan will remain a victim of its tortured past.

⁶⁶ Isaac Vuni, *Widows demand to know fate of Husbands disappeared in Juba Incidents*, Sudan Tribune (20 Jul. 2007), available at: <http://www.sudantribune.com/spip.php?article22943>; Sudan People's Liberation Movement (SPLM), *Victims of 1992 Juba Incident remembered*, SPLM Today (6 Jul. 2010), available at: <http://www.splmtoday.com/index.php/component/content/article/481-victims-of-1992-juba-incident-remembered>.

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