



## Digital Rights in South Sudan, UPR Submission, Session 40

**Submitted by:** Small Media, DefyHateNow, Collaboration on International ICT Policy for East and Southern Africa (CIPESA),

**Supported by:** Rise Initiative for Women’s Rights Advocacy (RiWA), ICT4D Network, Freedom of Expression Hub, Koneta hub, Okay Africa Foundation, Anataban Initiative, IamPeace, Internet Governance Forum (IGF) South Sudan, Information Communication Technology for Development (ICT4D) Network.

## Introduction

1. Digital rights and freedoms should be accorded the same protection as offline rights and freedoms.<sup>1</sup> Protection of freedom of expression, access to information, data protection and privacy have been guaranteed in international and regional instruments to which South Sudan is a party. Consequently, they must be considered in the recommendations made to South Sudan during the third cycle of the UPR.
2. In the second cycle of the UPR in 2016, South Sudan received 233 recommendations from 85 countries with 11 of those recommendations made in reference to the right to freedom of expression and media.<sup>2</sup>
3. The International Telecommunications Union (ITU) estimated that as of June 2018, only 8% of individuals use the Internet in South Sudan<sup>3</sup> — twice the number who had access in 2014 which was 3.8%.<sup>4</sup> While this percentage might seem low, it is important to note that South Sudan has faced many protracted political and economic challenges since it became a country in 2011. This gradual growth presents the need for South Sudan to harness human rights gains by ensuring that they are protected both offline and online. South Sudan has obligations to protect the right to privacy and freedom of opinion and expression as provided for under Articles 17 and 19 of the International Covenant on Civil and Political Rights (ICCPR) which it has recently ratified<sup>5</sup> and the right to freedom of expression as provided for under Article 9 of the African Charter on Human and Peoples’ Rights (ACHPR).

<sup>1</sup> Human Rights Council, ‘Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development: The promotion, protection and enjoyment of human rights on the Internet’ <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G16/131/89/PDF/G1613189.pdf?OpenElement> , Last Accessed 15 June 2021.

<sup>2</sup> Office of the High Commissioner for Human Rights (OHCHR), ‘Report of the Working Group on the Universal Periodic Review - South Sudan’ [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/34/13](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/13), Last Accessed 30 June 2021.

<sup>3</sup> ITU, ‘Measuring the Information Society Report 2018: South Sudan’ [https://www.itu.int/en/ITU-D/LDCs/Documents/2017/Country%20Profiles/Country%20Profile\\_South-Sudan.pdf](https://www.itu.int/en/ITU-D/LDCs/Documents/2017/Country%20Profiles/Country%20Profile_South-Sudan.pdf), Last Accessed 30 June 2021.

<sup>4</sup> The World Bank, ‘Individuals using the Internet (% of population) - South Sudan’ <https://data.worldbank.org/indicator/IT.NET.USER.ZS?locations=SS>, Last Accessed 30 June 2021.

<sup>5</sup> OHCHR, ‘Press briefing on South Sudan’ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24683&LangID=E>, Last Accessed 30 June 2021.



## Updates since previous review

4. According to the ITU, as of 2018, 12 out of every 100 inhabitants have access to mobile broadband subscriptions in South Sudan. In addition, only 1.1 out of every 100 inhabitants have an active mobile broadband subscription.<sup>6</sup>
5. In 2016, President Salva Kiir Mayardit gave citizens assurance to freely express their views and opinions.<sup>7</sup> Kiir was speaking at a national dialogue on ensuring peace and harmony among communities and rebuilding citizens’ trust in the government. Despite the president’s assurances, freedom of expression and the media remains restricted in the country.
6. In a 2018 report, the United Nations Mission in South Sudan (UNMISS) together with the Office of the United Nations High Commissioner for Human Rights (OHCHR) concluded that despite the government’s enactment of laws, the free speech landscape (offline and online) was still faced with challenges including harassment, intimidation, arbitrary arrest and detention of journalists, critics and human rights defenders. Furthermore, the government appears to have adopted measures to intentionally prevent access to, or the dissemination of information online through media outlet closures and blocking of websites.<sup>8</sup>

## Freedom of expression and opinion

7. Article 24 of the Transitional Constitution of Republic of South Sudan (TCSS)<sup>9</sup> provides that ‘every citizen shall have the right to 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 further states that ‘all levels of government shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.’
8. Clause 6(13)(a) of the Media Authority Act, 2013 provides for the right to press freedom and independent media. Clause 6(14)(a) of the same Act also stipulates that the use of Internet and new media shall include the promotion of freedom of expression, open standards and open access to the Internet and new media. Additionally, Clause 6(14)(i) of the Act also provides that Internet Service Providers (ISPs) shall not be liable for any aspect of the content which they transmit in their function of providing data carriage.<sup>10</sup> The

<sup>6</sup> *ibid.*

<sup>7</sup> The President, ‘Speech of His Excellency Announcing the Commencement of National Dialogue’ <https://paanluelwel2011.files.wordpress.com/2016/12/president-kiir-address-to-the-nation-the-call-for-national-dialogue-initiative-in-south-sudan.pdf>, Last Accessed 30 June 2021.

<sup>8</sup> United Nations Mission in South Sudan (UNMISS) & OHCHR, ‘Report on the right to freedom of opinion and expression in South Sudan since the July 2016 crises’ [https://www.ohchr.org/Documents/Countries/SS/UNMISS-OHCHR\\_Freedom\\_of\\_Expression.pdf](https://www.ohchr.org/Documents/Countries/SS/UNMISS-OHCHR_Freedom_of_Expression.pdf), Last accessed 28 June 2021.

<sup>9</sup> The Transitional Constitution of the Republic of South Sudan (TCSS) 2011, <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=531469ee6>, Last Accessed 16 June 2021.

<sup>10</sup> The Media Authority Act of 2013, <https://docs.southsudannngoforum.org/sites/default/files/2017-09/Media%20Authority%20Act%202013.pdf>, Last Accessed 25 June 2021.



media law also protects the media from censorship by any official or non-official authority under Clause 13 (b).

9. The 2013 Media Authority Act further criminalises defamation, hate speech and incitement to violence under clauses 28 and 29 respectively. Complaints are made to the Press and Broadcast Council which is tasked with the investigation and resolution of matters through mediation and negotiation. Sanctions for defamation include a requirement for the false information to be corrected and compensation. Regarding hate speech and incitement, possible sanctions include publication of a correction or apology, compensation, a fine, warning, suspension or the termination of a broadcast license, and the seizure of equipment, among others. Fines and compensation amounts are not specified. For hate speech and incitement cases deemed ‘serious’, and where ‘malicious intent or recklessness is shown’, a prison term of up to five years may be imposed.
10. In its 2021 World Press Index, Reporters Without Borders (RSF) ranked South Sudan 139 out of 180 countries - a drop by 15 positions from 124 to 139 when it was first ranked in 2013.<sup>11</sup> According to Freedom House’s Freedom in the World 2020 report, which assesses civil and political liberties, South Sudan was ranked as ‘Not Free’ with a score of 2 out of 100. Among the assessment indicators is freedom of expression.<sup>12</sup>
11. In a January 2020 statement at the launch of the fifth report by the United Nations (UN) Commission on Human Rights in South Sudan, Yasmin Sooka, the Chair of the Commission noted that the use of criminal defamation charges has created a chilling effect and caused self-censorship.<sup>13</sup> Sooka also noted that state security actors have ‘unlawfully detained, tortured, harassed, intimidated, disappeared, or murdered journalists and human rights defenders whom they perceive to be critical of the Government.
12. In September 2020, journalist Zachariah Makuach Maror was arrested on charges of defamation under section 289 of the Penal Code Act for an article on corruption published by *The Dawn Newspaper* in January 2020. The journalist purportedly also used social media platforms to advance his corruption allegations. Maror’s arrest followed a complaint by Salvatore Garang Mabiordit Wol, the then Minister of Finance and Economic Planning.’ In its ruling on the case, the Juba County Court stated that Maror lacked evidence to prove the corruption allegations against Wol and was therefore sentenced to one year in jail.<sup>14</sup>

<sup>11</sup> Reporters Without Borders, ‘South Sudan’ <https://rsf.org/en/south-sudan>, Last Accessed 16 June 2021.

<sup>12</sup>Freedom House, ‘Freedom in the World 2020: South Sudan’ <https://freedomhouse.org/country/south-sudan/freedom-world/2020>, Last Accessed 23 June 2021.

<sup>13</sup> OHCHR, ‘Statement by Yasmin Sooka, Chair of the UN Commission on Human Rights in South Sudan’ <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26762&LangID=E>, 23 June 2021.

<sup>14</sup> Eye Radio, ‘Family of a Journalist to appeal court rulling in favour of finance minister’ <https://eyeradio.org/family-of-a-journalist-to-appeal-court-ruling-in-favor-of-finance-minister/>, Last Accessed 25 June 2021.



13. In February 2021, artist Larson Angok Garang was arrested by officers of the Criminal Investigative Directory (CID) over social media posts on the state of governance in the country. He was held for weeks and later released on bail without charge.<sup>15</sup>
14. Even though no journalist has been killed in South Sudan since 2017, on several occasions journalists have been detained or questioned against reporting perspectives of those in opposition or rebel factions.<sup>16</sup> The country has also expelled foreign journalists under unclear circumstances.<sup>17</sup>
15. The National Security Service (NSS) has severally been cited and accused of violating media rights and freedoms. Notable incidents include:
- The April and May 2019 removal of articles criticising the government from *Al-Mougif*, an Arabic Daily Newspaper.<sup>18</sup>
  - The September 2020 arrest of Jackson Ochaya for allegedly quoting a rebel spokesperson.<sup>19</sup>
  - The January 2020, arrest of Voice of Eastern Equatorial Radio journalist Ijoo Bosco for sharing news on sanctions by the United States government against the Vice President, Taban Deng Gai for human rights abuses.<sup>20</sup> Ijoo has previously been arrested and detained for six days, for failure to broadcast a pro-government story on military efforts.<sup>21</sup>
  - Public proclamations and intimidation of journalists by government officials urging them not to ‘cross the redline’ in their coverage.<sup>22</sup>

<sup>15</sup> Morning Post, ‘Popular South Sudan Musician has been released on bail’ <https://ncmorningpost.com/popular-s-sudan-musician-larson-angok-has-been-released-on-bail/>, Last accessed 28 June 2021.

<sup>16</sup> European Journalism Centre ‘Media Landscapes: Expert analyses on the state of the media: South Sudan’ <https://medialandscapes.org/country/south-suda>, Last Accessed 23 June 2021.

<sup>17</sup> Reporters Without Borders, ‘South Sudan expels another journalist, second in two weeks’ <https://rsf.org/en/news/south-sudan-expels-another-journalist-second-two-weeks>, Last Accessed 16 June 2021.

<sup>18</sup> Obal Okuj, *Al-Mougif* newspaper condemns national security of censorship’ May 21,2019; <https://everadio.org/al-mougif-daily-newspaper-condemns-national-security-of-censorship/>, Last Accessed 15 July 2021.

<sup>19</sup> Radio Tamazuj, ‘Journalist detained for allegedly quoting rebels spokesperson’ <https://radiotamazuj.org/en/news/article/journalist-detained-for-allegedly-quoting-rebel-spokesperson>, Last Accessed 28 June 2021.

<sup>20</sup> Radio Tamazuj, ‘Journalist jailed in Torit released after six days’ <https://radiotamazuj.org/en/news/article/journalist-jailed-in-torit-released-after-six-days>, Last Accessed 28 June 2021.

<sup>21</sup> Radio Tamazul, ‘Journalist jailed in Torit released after six days’ <https://radiotamazuj.org/en/news/article/journalist-jailed-in-torit-released-after-six-days>, Last Accessed 28 June 2021.

<sup>22</sup> Radio Tamajuz, ‘Redline for journalists’ <https://radiotamazuj.org/uploads/media/58efabae6230f.mp>, Last Accessed 30 June 2021; Radio Tamajuz, ‘Transcript: South Sudan minister of information warns press’ <https://radiotamazuj.org/en/news/article/transcript-south-sudan-information-minister-warns-press>, Last Accessed 30 June 2021.



16. During 2017, websites of two regional organisations, Radio Tamazuj, the Sudan Tribune, as well as two blogs Paanluel Wel and Nyamilepedia, were blocked on instructions of the South Sudan National Communication Authority (SSNCA).<sup>23</sup> According to the 2018 UNMISS and OHCHR report, notifications to the affected outlets indicated that the blockages were on grounds that the websites were disseminating ‘non-peace’ messages considered not to be ‘in the best interest of peace building in this country.’

17. Social media platforms have often been criticized for fueling ethnic tension and spreading false news. Since 2016, #Defyhatenow has been spearheading efforts in digital literacy to mobilize civic action against hate speech, dangerous speech, misinformation and disinformation both online and offline in a bid to curb possible rise in violent extremism.<sup>24</sup>

### Freedom of information

18. Access to information is provided for under Article 32 of the TCSS which states: ‘Every citizen has the right of access to official information and records, including electronic records in the possession of any level of government or any organ or agency thereof, except where the release of such information is likely to prejudice public security or the right to privacy of any other person.’

19. The Right to Access Information Act 2013 gives effect to citizens’ constitutional right to access information and promotes disclosure in the interest of the public. Under Article 22 of the Act, information that ‘may harm protected interests’ is exempt from disclosure. The burden of proof of potential harm lies with the relevant public or private agency. The Article further states that information is not exempt from access “merely on the basis of its classification status.’

20. Despite the provisions of Section 17 of the Act on the duty of public bodies to annually publish and disseminate key information about their functions, responses to information requests and proactive disclosures, such reports are not available in the public domain.

21. As highlighted in the freedom of expression section above, there are repressive measures to censor individuals and journalists that criticise the government. The broadcast media landscape is not diverse with the main TV station being the state owned South Sudan Broadcasting Corporation (SSBC). Another TV station — Equator Broadcasting Corporation (EBC) TV is owned by the Central Equatoria State government and only broadcasts during select hours of the day. Private TV stations like Citizen TV and 360 had to shut down due to excessive government interference and limitation of funds. Most privately

<sup>23</sup> Committee to Protect Journalists (CPJ), South Sudan authorities block access to at least four media websites <https://cpj.org/2017/07/south-sudan-authorities-block-access-to-at-least-f/>, 14 July 2021; Reporters Without Borders (RSF), South Sudan blocks two news websites <https://rsf.org/en/news/south-sudan-blocks-two-news-websites>, Last Accessed 14 July 2021.

<sup>24</sup> DefyHateNow, <https://defyhatenow.org/>, Last Accessed 14 July 2021.



owned radio stations steer clear of political programming and opt for entertainment broadcasts thus leaving government owned media as the dominant actor in the media industry in South Sudan.<sup>25</sup>

### Internet access and digital equality

- 22. Access to the Internet is limited in terms of reach and affordability. There are only three mobile broadband service providers — MTN, Digitel and Zain (which has the lion's share of the market). The cost of data is high, compared to average income. Currently, the average cost of 100 megabytes of data is approximately US\$1.11 daily while 1GB weekly is estimated at approximately US\$5.5. Unlimited internet for an individual costs US\$125 per month. According to the recent estimates by the World Bank, 82% of South Sudanese live below US\$1.90 a day.<sup>26</sup>
- 23. Meanwhile, Internet access is limited to the capital Juba and few major towns, leaving out the vast majority of South Sudanese living in the rural areas. A third telecom company — Digitel only started operating in April 2021 and there are hopes that this might drive competitiveness towards improved and affordable Internet services.

### Data protection and privacy on the internet

- 24. Article 22 of South Sudan’s constitution guarantees citizens the right to privacy of home, family and correspondence. ‘Unreasonable’ disclosure of personal information is prohibited under Article 25 of the Right to Information Act. However, under the same article, a court may order the disclosure of personal information if it determines that it is in the interest of the public. The country has no data protection law.
- 25. Article 13 of the National Security Services Act of 2014 allows the NSS to, amongst other things, ‘monitor frequencies, wireless systems, publications, broadcasting stations and postal services in respect to security interests so as to prevent misuse by users.’ without judicial oversight. Further, the authority has the power to ‘request any information, statement, document, or any relevant material from any suspect and potential witness for perusal or examination, keep or take necessary or appropriate measures in respect of such information, statement, document or relevant material.’ Under Article 32, the NSS also has the power to ‘gather and retain information related to any person, persons or institutions as is necessary for carrying out its duties and functions.’
- 26. There have been reports of the NSS expanding ‘its surveillance and infiltration beyond security institutions, to civil society organisations, media houses, and universities countrywide.’<sup>27</sup>

<sup>25</sup> See 15 above.

<sup>26</sup> World Bank, ‘South Sudan Overview’ <https://www.worldbank.org/en/country/southsudan/overview>, Last accessed 14 July 2021.

<sup>27</sup> See 13 above.



27. In a 2018 report published by Haaretz, South Sudan was listed as one of the countries that *Verint*, an Israeli company sold surveillance equipment to support monitoring and interception of communications of regime critics.<sup>28</sup>
28. Haaretz’s findings are corroborated by a report by Amnesty International titled ‘These walls have ears: The chilling effect of surveillance in South Sudan’, which found that government actors deploy various rights-averse and privacy-threatening equipment to monitor human rights activists, journalists and critics.<sup>29</sup>
29. South Sudan, is the only African country that made a user information request to Twitter between July and December 2012. The request was denied.<sup>30</sup>
30. SIM Card registration is in force in the country. Requirements for subscriber registration include a valid identity document, such as a national ID, passport or voter’s card.<sup>31</sup>

<sup>28</sup> Hagar Shezaf and Jonathan Jacobson, ‘Revealed: Israel’s Cyber-spy Industry Helps World Dictators Hunt Dissidents and Gays’ <https://www.haaretz.com/israel-news/.premium.MAGAZINE-israel-s-cyber-spy-industry-aids-dictators-hunt-dissidents-and-gays-1.6573027>, Last Accessed 30 June 2021.

<sup>29</sup> Amnesty International ‘These walls have ears: The chilling effect of surveillance in South Sudan’ <https://www.amnesty.org/download/Documents/AFR6535772021ENGLISH.pdf>, Last Accessed 30 June 2021.

<sup>30</sup> Twitter, ‘Insights into information requests and removal requests originating from South Sudan’ <https://transparency.twitter.com/en/reports/countries/ss.html>, Last Accessed 30 June 2021.

<sup>31</sup> Privacy International, ‘Africa: SIM Card Registration Only Increases Monitoring and Exclusion’ <https://privacyinternational.org/long-read/3109/africa-sim-card-registration-only-increases-monitoring-and-exclusion>, Last Access 30 June 2021.



## Proposed recommendations

**31.** Given this background on South Sudan's record on freedom of opinion and expression, freedom of information and censorship of content, and the right to data protection and privacy on the Internet, the submitting organisations propose the following recommendations:

- a.** Amend the provisions of Article 13 of the National Security Act of 2014 to allow for independent judicial oversight over surveillance requests.
- b.** Decriminalise defamation by:
  - i. Repealing the provisions of Article 289 of the Penal Code Act, 2008
  - ii. Repealing the provisions of Clause 28 of the Media Authority Act
- c.** Uphold Clause 6 and 13 (b) of the Media Authority Act which protects media from censorship by any official or non official authority, desist from arbitrary arrests, torture and intimidation of journalists, human rights activists, and government critics, and hold to account those found in violation.
- d.** Adhere to the provisions of Section 17 of the Right of Access to Information Act on proactive disclosures of public information.
- e.** Put measures in place to reduce the cost of Internet access and ensure its affordability.
- f.** Enact a data protection and privacy law in line with international and regional standards.