



**Examining the role of freedom of expression and press freedom in the
democratisation of South Sudan**

**Mini-dissertation submitted in partial fulfilment of the requirements of the Master of
Laws degree in Human Rights and Democratisation in Africa**

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DEDICATION

I dedicate this research to the late Professor Christof Heyns, the visionary founder of the Centre for Human Rights at the University of Pretoria. His remarkable leadership, steadfast commitment to human rights, and pivotal role in establishing the Centre have opened doors for numerous scholars and practitioners, me included, to champion human dignity, justice, and equality across Africa and beyond. His legacy continues to inspire and guide our pursuit of universal human rights. I also dedicate this work to all victims of human rights violations in South Sudan and across Africa.

Furthermore, I dedicate this research to my late grandmother, Amiir Akot Pariak, whose endless encouragement, motivation, and inspiration profoundly impacted my life before her passing in 2012. Without her, my journey would have been vastly different, and I would not have reached where I am today. This work is also dedicated to my parents, Arek Kuc Bil and Mangok Ruop Mayen, and my beloved siblings, Mary Nyaruon Mangok, Daniel Monychinrin Mangok, Asunta Achut Mangok, and Luke Lual Mangok. Your unwavering encouragement, love, and support made it possible for me to achieve this milestone. Lastly, I dedicate this project to God Almighty, my creator, my steadfast pillar, and the source of my blessings, guidance, inspiration, wisdom, and knowledge.

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ACRONYMS AND ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACTHPR	African Court on Human and Peoples' Rights
AU	African Union
CHRSS	The Commission for Human Rights South Sudan
EACJ	East African Court of Justice
ECOWAS	Economic Community of West African States
ICCPR	International Covenant on Civil and Political Rights
NGOs	Non-Governmental Organisations
SPLA	Sudan People Liberation Army
SPLM-IG	Sudan People Liberation Movement in Government
SPLM-IO	Sudan People Liberation Movement in Opposition
SSBC	South Sudan Broadcasting Corporation
SSNCA	South Sudan National Communication Authority
SSNSS	South Sudan National Security Service
SSPDF	South Sudan Peoples' Defence Forces
TNLA	Transitional National Legislative Assembly
UNHRC	United Nations Human Rights Committee
UNMISS -	United Nations Mission in South Sudan
UNESCO	United Nations Educational, Scientific, and Cultural Organisation

CHAPTER ONE

1. INTRODUCTION

1.1. Background

The right to freedom of expression and freedom of press, encompassing access to information, stands as a fundamental cornerstone crucial for the full and effective achievement of all human rights and democratisation.¹ It does not only enhances societal awareness and fosters active participation but also serves as a mechanism for holding the state accountable, thereby thwarting corruption that thrives in environments of secrecy and restricted political discourse.² South Sudan has been grappling with the challenges of democratisation since gaining independence in 2011. Amidst political instability, conflict that erupted in 2013 and 2016 between government forces and Machar's rebel forces, and socio-economic hardships, the role of freedom of expression and press freedom has emerged as a crucial factor in shaping the country's democratisation process.

Contrary to the constitutional and international human rights obligations, the regulatory authorities such as South Sudan National Security Service (SSNSS) and South Sudan National Communications Authority (SSNCA) are implicated by many reports of media censorship, suspending and shutting down media outlets, seizing newspaper outlets, blocking access to the news websites as well as revoking or denying accreditation to foreign journalists.³ The government uses the regulatory institutions such as SSNSS and SSNCA to spy on people using equipment likely provided by telecommunication companies.⁴ In addition, the SSNSS conducts physical surveillance through a wide-reaching, cross-border network of informants and

¹ C Agnès 'Accountability, transparency, and freedom of expression in Africa' (2010) *Social Research: An International Quarterly* 4 1211-1240.

² Agnes, n 1 above, 1211-1240.

³ Committee to Protect Journalists 'South Sudan authorities block access to at least four media websites' 2017, <https://cpj.org/2017/07/south-sudan-authorities-block-access-to-at-least-f/> (accessed 24 April 2024).

⁴ Amnesty International, 'These Walls Have Ears: The Chilling Effect of Surveillance in South Sudan' (2021) Index: AFR/65/3577/2021 <https://www.amnesty.org/en/documents/afr65/3577/2021/en/> (24 April 2024).

agents.⁵ In addition, the SSNSS uses a vast, international network of informants and agents to carry out physical surveillance. This entails strict monitoring on media and social media activities and compelling event planners secure consent before hosting public events like workshops and civil society meetings.⁶ These unlawful surveillance practices infringe on individuals' right to privacy and are employed to carry out arbitrary arrests, detentions, and to suppress media freedom, freedom of expression, and assembly. SSNSS agents detained and investigated eight journalists and human rights advocate a press briefing at the Revitalised Transitional National Legislative Assembly (R-TNLA) hosted by Sudan People Liberation Movement (SPLM-IO) members which was held on 22 February 2024.⁷ The Chair of the Information Committee and TNLA spokesperson, defended the SSNSS's actions, stating on 23 February 2024 that the Transitional Constitution requires prior approval from his committee or the Media Authority for lawmakers to hold press conferences.⁸ On 2 March 2023, Woja Emmanuel, a journalist for Eye Radio, was abducted at gunpoint, interrogated, and accused of ties to the National Salvation Front.⁹ He escaped during a skirmish and resigned from his position in April due to the ordeal.¹⁰

In addition, the security agents detained nine journalists in Juba on 13 June 2023, confiscating their equipment and ordering them to delete the images and recordings taken during the event.¹¹ The security forces cited the journalists' coverage of Sudan People Liberation Movement in Opposition (SPLM-IO) press conference at parliament as justification for their detention. As the country heads for much anticipated elections in December 2026, safeguarding the freedom of expression and press freedom is

⁵ Amnesty International Journalists at risk ahead of unity government Press Release' (2019) <https://www.amnesty.org/en/latest/news/2019/11/south-sudan-journalists-at-risk-ahead-of-unity-government/> (accessed 25 April 2024).

⁶ Amnesty International, (n 5 above).

⁷ 'South Sudan Country Report on Human Rights Practices' United States Department of State, Bureau of Democracy, Human Rights and Labour (2022) <https://www.state.gov/reports/2022countryreportsonhumanrightspractices/southsudan/#:~:text=The%20Transitional%20constitution%20provides%20for,the%20name%20of%20national%20security> (accessed 25 April 2024).

⁸ Amnesty International, (n 5 as above).

⁹ United States Department of State report, (n 7 as above).

¹⁰ Amnesty International (n 5 as above).

¹¹ Amnesty International, (n 5 as above).

critical for the fairness, credibility and integrity of the electoral process and the consolidation of democratic standards.

1.2. Problem statement

The Transitional Constitution of the Republic of South Sudan guarantees the right freedom of expression, reception and dissemination of information, publication, and access to the press and provides for limitation on grounds of “public order, safety or morals as prescribed by law.”¹² Sub-article 2 of the Transitional Constitution sets an obligation on the government at all levels to respect, promote and fulfil that right. However, the government through its apparatus frequently violates these rights invoking ambiguous grounds such as the national security contrary to its clear obligations as stipulated in the Constitution and relevant international law instruments.¹³ The regulatory authorities such as the SSNSS and SSNCA are implicated by many reports of media censorship, suspending and shutting down media outlets, seizing newspaper outlets, blocking access to the news websites as well as revoking or denying accreditation to foreign journalists.¹⁴ The government employs its agencies such as SSNSS, SSNCA to engage in surveillance activities, using equipment likely provided by telecommunication companies.¹⁵ In addition, the SSNSS conducts physical surveillance through a wide-reaching, cross-border network of informants and agents.¹⁶ The Commission for Human Rights South Sudan (CHRSS) described South Sudan as one of the most dangerous places in the world for journalists with many journalists killed, harassment, assault and accused of propagating Western agendas concluding that this has had stifling effect on media freedom”.¹⁷ In the 2024 World Press Freedom Index, “South Sudan is ranked 136th out of 180 countries, with a score of 42.57, highlighting its status as one of the notorious places for journalists.”¹⁸ This research aims to assess the extent to which freedom of expression and press freedom are safeguarded under the existing legal and institutional frameworks in South Sudan.

¹² The Transitional Constitution of South Sudan 2011 as amended art 24(1).

¹³ The Universal Declaration of Human Rights art 19.

¹⁴ United States Department of State report (n 7 as above).

¹⁵ United States Department of State report (n 7 as above).

¹⁶ United States Department of State report (n 7 as above).

¹⁷ The Commission for Human Rights South Sudan Report (2018) para 63 www.ohchr.org/en/hrbodies/hrc/cohsouthsudan/pages/index.aspx (accessed 24 April 2024).

¹⁸ World Press Freedom Ranking (2024) <https://rsf.org/en/country/south-sudan> (accessed 3 July 2024).

1.3. The research questions

1.3.1. The main question

To what extent are freedom of expression and press freedom protected under the legal and institutional frameworks in South Sudan?

1.3.2. Sub-questions

- (i) What are the main challenges encountered by journalists, media outlets, Civil Society organisations and critics of government policies and actions in South Sudan?
- (ii) What is the impact of the clampdown of the freedom of expression and press freedom on human rights and democratisation of South Sudan? Is there a link between media freedom and freedom of expression vis-à-vis the democracy?
- (iii) What recommendations can be proposed to protect freedom of expression and media freedom in South Sudan, with an emphasis on fostering an environment conducive for a functioning democracy?

1.4. The research objectives

1.4.1. Main objective

To assess the extent to which freedom of expression and press freedom are protected within the legal and institutional frameworks of South Sudan.

1.4.2. Specific Objectives

- i. To assess the extent to which freedom of expression and press freedom are protected within the legal and institutional frameworks of South Sudan.
- ii. Investigate the main challenges faced by journalists, media outlets, Civil Society organisations and critics of government policies and actions in South Sudan.
- iii. Analyse the impacts and consequences of restrictions of freedom of expression and press freedom on human rights and democratisation in South Sudan. Assess link and significance of media freedom and freedom of expression to the democratic dispensation.
- iv. Examine specific instances of press freedom violations and their broader implications on the democratic governance and human rights.

- v. Formulate recommendations to strengthen freedom of expression and media freedoms, ensuring the protection and promotion of human rights and the advancement of democratisation in South Sudan.

1.5. Literature review

This literature review synthesises key insights from existing scholarship, policy documents, and reports to provide a complete understanding of the state of freedom of expression and media in South Sudan, with a focus on its implications on the democratisation of South Sudan. The gaps, shortcomings, and biases are highlighted in those findings and recommendations for future study.

1.5.1. The role of media in a democracy

Stier explored how regime types, including democracy and other categories of autocracy stifle the press freedom.¹⁹ The study posited that the legitimacy and governance of a regime influence media policies in autocratic systems. Hypothesis regarding media freedom and regime type are tested using an analysis of statistical data covering 149 countries from 1993 to 2010. The findings suggest that democracies tend to foster greater media freedom compared to autocracies. However, the current study will only focus on South Sudan without doing a comparative analysis with other countries.

Plattner concluded that modern democracies cannot work without media and civil society and that they have profound effects upon the quality and sustainability of democracy.²⁰ The current research extends this discussion by examining the impact of press freedom clampdown on key aspects of human rights and democratisation in South Sudan.

Adegoke conducted research on the "internet, social media gagging and participatory democracy in the Horn of Africa" and Africa at large need to address various transnational issues concerning the use of social media, security, and

¹⁹ S Sebastian 'Democracy, autocracy and the news: the impact of regime type on media freedom' (2015) *Democratisation* 7 1273-1295.

²⁰ S Bhattacharyya & R Hodler 'Media freedom and democracy in the fight against corruption' (2015) 39 *European Journal of Political Economy* 13-24.

development.²¹ They should adopt a more transparent security approach to ensure that citizens' rights to privacy, freedom of expression and access to information are protected.²² While the Adegoke's research focused on social media vis a vis security and development in the Horn of Africa; the current research will focus on the effect of government's clampdown of press freedom in South Sudan with specific focus on human rights and democratisation.

1.5.2. Media freedom, socio-political stability, and investment

Nabamita and others conducted a study examining "the relationship between media freedom, socio-political stability, and investment". Their research found that media freedom can enhance socio-political stability by encouraging governments to become more receptive to the people's demands. In turn, this socio-political stability creates a positive business environment, which fosters increased investment.²³ However, the study by Nabamita and others did not feature socio-political stability on media freedom. Their study suggests that media freedom can promote socio-political stability, which, in turn, fosters a favourable business climate and encourages investment. While the current research does not directly address the impact on business and investment, it contributes to the understanding of how government actions affecting press freedom can influence socio-political stability and democratisation in South Sudan.

Damilola conducted research on the role of democratisation and media freedom in combating political corruption and concluded that the battle against political corruption cannot be effectively won through democratization alone or solely by promoting a free and independent media. Both elements are crucial and must work together for meaningful progress.²⁴ A successful strategy must include both robust democratic institutions and a free media. The present study aimed to explore the impact of socio-political stability on media freedom. Damilola study underscored the

²¹ D Adegoke 'The internet, social media gagging and participatory democracy in the Horn of Africa' (2017) 2 *Leadership and Developing Societies* 1-6.

²² Adegoke n 24 above, 4.

²³ D Nabamita, S Pal & Roy 'Media freedom, socio-political stability and economic growth' (2011) *Unpublished Research*.

²⁴ A Damilola 'The Internet, social media gagging and participatory democracy in the Horn of Africa' (2017) 2-9 *Leadership and Developing Societies*.

importance of both democratisation and free media in combating political corruption. This research paper addresses the role of media freedom in South Sudan, providing insights into how press freedom can contribute to democratisation efforts in South Sudan. However, this study will not address the issue of corruption, as it falls outside the scope and limitations of the research.

1.5.3. Challenges faced by journalists and their impact on democratisation

Bafana examined how journalists in Zimbabwe are frequently persecuted and charged with crimes for reporting on corruption and violations of human rights.²⁵ Despite the freedom of expression and the media being protected under the law, journalists are frequently arbitrarily detained, imprisoned, and involved in legal disputes simply for doing their jobs. Similarly, Serite expressed his experience in criticising press freedom in Botswana, claiming that while journalists were silenced and imprisoned, newspapers and radio stations were penalised by not receiving government advertising funds.²⁶ Serite also highlighted that, by 2018, government-owned media in Botswana, including radio, television, and newspapers, were censored, and lacked editorial independence. The accounts of journalists facing persecution and censorship in Zimbabwe and Botswana, as described by Bafana and Serite respectively, serve as poignant reminders of the challenges to press freedom in African countries.²⁷ The current research adds to this narrative by examining the specific dynamics of press freedom and government clampdowns in that context of South Sudan.

Generally, the gap in the literature this research intends to address is the specific examination of how government actions affecting press freedom in South Sudan influence socio-political stability and democratisation. While existing studies have explored media freedom in different contexts, including comparisons between regime types, the role media plays in enhancing the democracy, and the challenges faced by journalists, there is a lack of focused research on how press freedom impacts the democratisation process in South Sudan specifically. The study addresses this by

²⁵ B Bafana 'Muzzling the media in Zimbabwe: With the country heading towards a general election, the clampdown on press freedom is an attack on democracy itself' (2022) 540 *New Internationalist* 48-51.

²⁶ S Serite 'Challenges to media freedoms: Government channels and information flows in Botswana' (2018) 2 *The Round Table* 225-227.

²⁷ Serite n 29 above, 226.

investigating the consequences of press freedom clampdowns on human rights and democratisation in South Sudan, filling a gap in the existing scholarship that has not been thoroughly explored. Since the country gained independence in 2011, academic freedom continues to be restricted and no researcher has ever dared to investigate sensitive topics like press freedom. Therefore, this research is unique in the sense that it will be one of its kind in questioning the role of institutions like the SSNSS and SSNCA.

1.6. Research methodology

The study uses a doctrinal research methodology. This involves the analysis of the existing literature and the qualitative information collected from the legal primary data such as the Constitution, legislation, treaties, and case law. It also entails analysis of the secondary sources such as, books, policies, journal articles, conference papers, speeches, newspapers, and reports. The data collected has been properly summarised, paraphrased, analysed, and synthesised in an attempt to successfully answer the research questions. Therefore, in coming up with the conclusions and the recommendations, analytical modes of research were used.

1.7. Theoretical framework

The theoretical framework for this research provides a structured perspective by which to examine the role of freedom of expression and press freedom in the democratisation of South Sudan. This part integrates theories of democracy and human rights to analyse how these freedoms contribute to or hinder the democratisation process. The following theories were used to guide the researcher in answering the research questions and justifying the objectives of the paper.

1.7.1. The natural rights theory

This developed by prominent figure of enlightenment, John Locke, who asserts that people have inherent rights only by virtue of being human.²⁸ These rights are inherent to every person and are not granted by any government or authority.²⁹ Locke in his work, "*Two treatises of government*" (1690) argued that civil government should be

²⁸ J Waldron 'Dignity, rights, and responsibilities' (2011) 43 *Arizona State Law Journal* 1107-1136.

²⁹ Waldron n 31 above, 1135.

limited in two ways:³⁰ it should be subject to the law and not above it, and its authority should be restricted to certain areas of human affairs. Locke expressed this through the doctrine of natural rights, which he defined as individuals' rights to their "lives, liberties, and property".³¹ The primary role of civil government, therefore, was to secure and protect these rights. If the government persistently and deliberately failed in this duty or exceeded its legitimate bounds, the people had the right to resist, as the relationship between the government and the governed was contractual and based on trust in fulfilling the contract's terms.³² This theory is important to this study because it will help analyse whether the legal framework and regulatory bodies in South Sudan uphold freedom of expression and press freedom. According to Locke's theory, freedom of expression and the press are essential to the democratisation since they are basic to human nature and required for a fair and democratic society to function. The natural rights argument can be applied to South Sudan to support the claim that freedom of expression and press freedom must be safeguarded as essential human rights. Any attempts by the state to curtail these rights and freedoms would be viewed as a clear breach of the natural rights, thereby hindering the democratisation process. This theory reinforces the argument that for South Sudan to progress toward a true democracy, these natural rights should be "respected, protected, promoted, and fulfilled" by the government.

1.7.2. The social contract theory

This theory as articulated by Hobbes, Locke, and Rousseau, posits that the state emerged from an agreement made by individuals who initially lived without any form of government or organized authority.³³ According to Locke in his work, "*Two treatises of government*" (1690), people collectively agree to establish a government in order to better defend their inherent rights and freedoms.³⁴ While the state of nature provides individuals with natural rights, Locke acknowledges that this condition can

³⁰ Turner, P Norris & G Gaus 'John Locke (1632–1704): Second Treatise of Government (1690)' (2017) 1 *Public Reason in Political Philosophy* Routledge 108-147.

³¹ Turner and others n 33 above, 120.

³² Turner and others, n 32 above, 140.

³³ DJ Foa 'Between history and nature: Social contract theory in Locke and the founders' (1996) 58 *The Journal of Politics* 985-1009.

³⁴ Foa, n 34 above, 986-990.

be precarious.³⁵ Without a common authority to resolve disputes and enforce laws, individuals may find it difficult to fully secure their rights. To address this, Locke introduces the concept of the social contract.³⁶ This agreement, known as the social contract, involves consenting to a political society governed by laws. By entering into this contract, individuals agree to let go of some of their inherent rights and submit to the authority of the state to enhance security and safeguard their rights and freedoms.³⁷ The primary role of government, as theorised by Locke, is to safeguard the natural rights of its citizens.³⁸ The government exists to ensure that life, liberty, and property are protected from infringement by others. If a government fails to fulfil this purpose, it loses its legitimacy and the consent of the governed.³⁹ The Transitional Constitution of South Sudan explicitly stipulates social contract theory under article 9(1) which provides that:

The Bill of Rights is a covenant among the people of South Sudan and between them and their government at every level and a commitment to respect and promote human rights and fundamental freedoms enshrined in this Constitution; it is the cornerstone of social justice, equality, and democracy.⁴⁰

The implication of this provision is that the people of South Sudan surrendered their rights and freedoms to the government in form of a social contract. The purpose of the government according to Locke and others is the protection of those inherent rights and freedoms stipulated in the Transitional Constitution including freedom of expression and press freedom. In the context of South Sudan, the social contract theory is crucial in understanding the legitimacy of state power in South Sudan. The state's responsibility to protect citizens' rights, including freedom of expression and press freedom, is a fundamental aspect of the social contract. The failure to uphold these freedoms may be seen as a breach of this contract, undermining the legitimacy of the state and its democratic processes. In a country where democratic institutions are still developing like South Sudan, Locke's social contract can be used to argue that the state has a duty to guarantee those rights and freedoms essential to the

³⁵ Foa, n 34 above, 1000.

³⁶ Foa, n 34 above, 1001.

³⁷ Foa, n 34 above, 1003.

³⁸ Foa, n 34 above, 1004.

³⁹ Foa, n 34 above, 1005-1009.

⁴⁰ Transitional Constitution, n 13 above, art 9(1).

democratic governance. Violations of these freedoms can be viewed as violations of the social contract, which can lead to civil unrest or loss of trust in the government.

1.7.3. Participatory democracy theory

The liberal democracy outlined by American political philosophers such as Robert Dahl and practiced in nations like the United States throughout the 1960s and 1970s was viewed as an alternative to the participatory democratic theory and practice.⁴¹ "Participatory democracy" refers to the certain democratic theory that originated from Arnold Kaufman's concept of "participatory politics".⁴² Influenced by thinkers like John Dewey, Wright Mills, and Paul Goodman, it posits that participatory politics benefits the development of human capacities for thought, feeling, and action.⁴³ The earliest comprehensive description of "participatory democracy" by a political philosopher is found in Carole Pateman's "*participation and democratic theory*".⁴⁴ Drawing from the political ideas of Jean-Jacques Rousseau, John Stuart Mill and George Douglas Howard, concluded that "active participation allows the citizens to self-develop and fosters positive psychological effects such as feelings of political efficacy".⁴⁵ Moreover, Pateman argued that the concept of a participatory society demands expanding the definition of "political" to include areas beyond the national government.⁴⁶ Her research suggests that participatory democracy can yield socio-political and economic benefits, exemplified by the "political system" where a certain sector, like industry, is relatively democratised, and citizens gain education and empowerment through workplace democratic participation.⁴⁷ This theory is relevant for this study because participatory democracy requires citizens to be actively involved in social, economic and political spheres. This cannot be possible if citizens are not afforded the fundamental guarantees that enhance their effective involvement such as press freedom and freedom of expression and citizen's access to information. A free and diverse media landscape is seen as crucial for enabling

⁴¹ JD Hilmer 'The State of participatory democratic theory' (2010) 32 *1 New Political Science* 43-63.

⁴² AS Kaufman 'Human nature and participatory politics' in WE Connolly (eds) *The Bias of Pluralism* (1960) Atherton Press 178-200.

⁴³ RB Westbrooke 'John Dewey and American Democracy' (1991) *Cornell University Press* 549-550.

⁴⁴ C Pateman 'Participation and democratic theory' (1970) *Cambridge University Press*.

⁴⁵ Pateman, n 45 above, 104-105.

⁴⁶ Pateman, n 45 above, 106.

⁴⁷ Pateman, n 45 above, 107.

public debate and active citizen engagement. In South Sudan, freedom of expression and press freedom are central to participatory democracy. They enable citizens to engage in open dialogue, access information, and express their opinions, which are essential for informed participation in the democratic dispensation. In a country where political participation is often limited due to various barriers, promoting freedom of expression and press freedom can enhance citizens' ability to engage in democratic processes. These freedoms enable a more inclusive and participatory form of democracy, where diverse voices and opinions can be heard, contributing to the overall democratization of the country.

Therefore, the social contract theory, participatory democracy theory, and natural rights theory collectively provide a robust theoretical framework for examining the role of freedom of expression and press freedom in democratisation of South Sudan. These theories highlight the necessity of protecting these freedoms as essential to the legitimacy of the state, the participation of citizens in the democratic process, and the recognition of fundamental human rights.

1.8. The overview of chapters

Chapter one covers the topic of the research, provides a brief background to the study, and states the research problem to be investigated by the researcher. The chapter also contains the research questions the researcher intends to answer. The chapter also reviews the relevant literature conducted by the previous studies to point out strengths and weaknesses in their studies and highlight gaps left out by those studies which the researcher intends to remedy. Finally, the chapter contains the research methodology that will be adopted for data collection and analysis. Chapter two critically analyses the legal, institutional and policy frameworks on freedom of expression and press freedom in South Sudan. It also identifies and analysis the roles and obligations of the institutions that are constitutionally mandated to regulate and safeguard the press media in South Sudan. These institutions include the SSNCA, the South Sudan Media Authority (SSMA), SSNSS, and the South Sudan National Human Rights Commission (SSNHRC). It examines the domestic and international regimes ratified and acceded to by the Republic of South Sudan to examine the level of legal protection accorded by the law on the freedom of expression and press freedom. Chapter three explores challenges and threats encountered by journalists, media outlets, civil society organisations, and critics of government policies and actions in South Sudan. The last chapter covers the conclusion, summary of findings, and

recommendations that can be adopted by South Sudan in achieving the right of freedom of expression.

1.9. Significance of the study

This research is significant as it contributes to the growing body of literature on media freedom and freedom of expression, democratisation, and conflict resolution in fragile state like South Sudan. By shedding light on the role of freedom of expression and press freedom in the democratisation process, the findings of this study informs policy decisions, enhance media development initiatives, and strengthen democratic governance in South Sudan.

1.10. Hypotheses

This research is based on the hypotheses that:

- (i) The freedom of expression and press freedom are inadequately protected under South Sudan's existing legal, policy, and institutional frameworks, resulting in inconsistent enforcement and frequent violations of these rights.
- (ii) Stifling freedom of expression and press freedom significantly hinder the process of democratisation by limiting public discourse, suppressing dissent, and undermining citizens' ability to participate fully in democratic processes.

1.11. Limitations of study

This research project only focuses on the freedom of expression and press freedom and its impact on the democratisation of South Sudan. The research explores all the aspects of democratisation but only specific aspects such as the right of access to information and its implications on good governance, and elections. The study only gathers data from secondary sources. The data collection techniques will not use primary sources of information like questionnaires, focus groups, or surveys.

CHAPTER TWO

2. THE REGIMES ON THE FREEDOM OF EXPRESSION AND PRESS FREEDOM IN SOUTH SUDAN.

*"Human rights are not a privilege granted to the few, they are a liberty entitled to all, and human rights, by definition, include the rights of all humans, those in the dawn of life, the dusk of life, or the shadows of life"*¹ Kay Granger

2.1. Introduction

South Sudan's regimes on freedom of expression and press freedom are enshrined in the Constitution of South Sudan and further supported by several sector-specific statutes and policies. It also comprises of international instruments on freedom of expression and press freedom. Treaty law has been imported into South Sudan's legal regime pursuant to article 9(3) of the Transitional Constitution which provides as follows:

All rights and freedoms enshrined in international human rights treaties, covenants, and instruments ratified or acceded to by the Republic of South Sudan shall be an integral part of the laws of South Sudan.

Therefore, this chapter examines international and domestic instruments on the freedom of expression and press freedom. The chapter also highlights the administrative or institutional and policy arrangements on freedom of expression and press freedom. The role of those institutions in advancing the freedom of expression and guaranteeing an independent media landscape will be discussed. The gaps and weaknesses in the law are pointed out, and recommendations made for future improvement.

2.2. International legal frameworks

2.2.1. The Universal Declaration of Human Rights, 1948

This was adopted by the UN General Assembly through its resolution 217 of 10 December 1948. Article 1 provides that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". In addition, article 2 guarantees the

¹ <https://www.aqquotes.com/quote/692340> (accessed 25 September 2024).

rights of all human beings without discrimination of any kind. Furthermore, article 3 guarantees the right of “everyone has the right to life, liberty and security of person”. Most importantly, it “ensures the right of all individuals to freedom of opinion and expression, which includes the ability to hold opinions without interference”, as well as to “seek, receive, and disseminate information and ideas through any medium, irrespective of borders”.²

2.2.2. The Convention Against Torture, 1984

South Sudan became a state party to the Convention Against Torture and its Optional Protocol upon ratification of both instruments on 30 April 2015. Article 2 of the Convention “unequivocally forbids the torture or mistreatment of individuals, including journalists and others exercising their freedom of expression”. This prohibition is absolute and cannot be derogated from by the state. This means that no exceptional circumstances, such as war or national security emergencies, can be used to justify torture or ill-treatment.³

2.2.3. The Geneva Conventions and their Additional Protocols

South Sudan has incorporated the Four Geneva Conventions and their Additional Protocols into its domestic legal system.⁴ This means parties involved in South Sudan's armed conflict are obligated to adhere to international humanitarian law as outlined under the 1949 Geneva Conventions and their additional protocols. Moreover, the country is also subject to customary international humanitarian law, which provides protection to journalists and other civilians. Therefore, it is against international humanitarian law to intentionally attack civilians, including journalists, or to fail to take the necessary precautions to protect them.⁵ In addition, article 79 of the Additional Protocol I provide stipulates that the journalists in non-international armed conflicts are

² Universal Declaration art 19.

³ Committee against Torture, General Comment 2: Implementation of article 2 by States Parties 2007.

⁴ South Sudan acceded to the four Geneva Conventions, the two 1977 Additional Protocols, and the 2005 Additional Protocol on 25 January 2013, International Committee of the Red Cross 'Treaties, states parties and commentaries: South Sudan' <https://ihl-databases.icrc.org/en/ihl-treaties/treaties-and-states-parties> (accessed 13 August 2024).

⁵ Additional Protocol II of the Geneva Conventions art 13(2).

afforded the same safeguards as those granted to journalists during international armed conflicts under the customary international law.⁶

2.2.4. International Covenant on Civil and Political Rights (ICCPR)

South Sudan is yet to formally ratify the ICCPR. Nonetheless, the nation appears to have fulfilled the requirements to join the Covenant under its domestic law. The Office of the President declared on 23 February 2023, that South Sudan had joined the ICCPR and other important human rights agreements.⁷ This announcement came after the TNLA unanimously approved joining the Covenant in June 2019. The state-owned media (SSBC) reported that the leader of the TNLA was present when the President signed the documents allowing accession to the treaties. However, the country was yet to be a full member of the treaty as of the end of September 2023 as the State has not yet delivered its instruments of accession to the UN Secretary-General. The State must, however, behave in good faith and refrain from taking any acts that might compromise the goals and purpose of the treaty after expressing its intention to abide by its provisions.⁸ Article 19 compliments the language of the Universal Declaration but includes specific grounds for limiting the right: It is states that:

1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

⁶ International Committee of the Red Cross <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule34> (accessed 13 August 2024).

⁷ Facebook page of the Office of the President of the Republic of South Sudan, "President Kiir accedes international covenants into law," 24 February 2023, <https://www.facebook.com/StateHouseJ1/posts/pfbid0Hys3nntGCvY3cCBRtS6ySj8GasJVpisp8ZV> (accessed 20 August 2024).

⁸ Vienna Convention on the Law of Treaties art 18.

2.2.5. The African Charter on Human and Peoples' Rights, 1981

South Sudan is a signatory to the African Charter on Human and Peoples' Rights, having deposited its instruments of adherence as required by article 63(2) of the Charter on 19 May 2016. The Charter guarantees "rights to life, personal integrity, the prohibition of cruel and inhuman treatment, and protections against arbitrary arrest and detention". The Charter further explicitly affirms the "right of access to information and the right to express and share opinions within the bounds of the law"⁹. In *Media Rights Agenda and Others v Nigeria*, the African Commission on Human and Peoples' Rights has identified actions such as arbitrarily arresting and detaining journalists, censoring critical articles, closing media outlets, and imposing restrictive registration requirements (like high registration fees for news publications) as violations of the African Charter.¹⁰

2.2.6. African Charter on Democracy, Elections, and Governance, 2012

South Sudan is one the state parties to this instrument having ratified it on 26 January 2014 and deposited its instruments of ratification on 13 April 2015.¹¹ The Charter encourages each state party to adhere to the "universal values and principles of democracy," as well as to ensure respect for human rights.¹² It obliges the member states to "uphold democracy, the principle of the rule of law and human rights which include freedom of expression and press freedom".¹³ In addition, the charter sets up the framework to promote "the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs".¹⁴

⁹ African Charter on Human & Peoples' Rights art 9.

¹⁰ *Media Rights Agenda and Others v Nigeria*, African Commission on Human and Peoples' Rights, Communication 105/93, 128/94, 130/94 and 152/96 (1998) paras 70-74.

¹¹ <https://au.int/en/treaties/african-charter-democracy-elections-and-governance> (accessed 15 August 2024).

¹² African Charter on Democracy, Elections and Governance art 2(1).

¹³ African Charter on Democracy, Elections and Governance, n 12 above, art 3(1) & 4(1).

¹⁴ African Charter on Democracy, Elections and Governance, n 12 above, art 2(10).

2.2.7. The East African Community Treaty, 1999

South Sudan officially joined the East African Community as a full member on 5 September 2016.¹⁵ While the treaty does not stipulate any explicit provision on the freedom of expression and press freedom, article 6(d) is crucial for the protection human rights and democratic governance. It stipulates the key principles governing the attainment of the Community's objectives by the Partner states as follows:¹⁶

Good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights.

2.3. Soft law instruments

There are several key frameworks designed by the African Commission and United Nations to enhance transparency, accountability, and the free flow of information across the continent. These instruments guide African governments on how to enact and implement legislations pertaining to access to information, protect freedom of speech, and protect citizens' rights to information, especially during election procedures. Although not legally binding, these instruments are influential in guiding the development of democratic practices and protection of human rights in Africa.

2.3.1. The Revised Declaration of Principles on Freedom of Expression and Access to Information in Africa, 2019

This declaration reaffirms the African Charter's dedication to upholding press freedom and safeguarding the rights of journalists.¹⁷ It also incorporates principles on access to information, including online access. One of the fundamental aspects of this declaration involve setting forth principles regarding the rights to freedom of expression and access to information, in alignment with Article 9 of the African Charter.¹⁸ It addresses the principles of self-regulation and co-regulation, the

¹⁵ <https://www.eac.int/eac-partner-states/south-sudan> (accessed 15 August 2024).

¹⁶ The East African Community Treaty sec 6(d).

¹⁷ The Revised Declaration of Principles on Freedom of Expression and Access to Information in Africa principle 1.

¹⁸ The Revised Declaration of Principles, n 17 above, principle 10.

protection of sources and journalistic materials,¹⁹ and freedom of expression, including the safety of media workers and journalists.²⁰ The need of proactive disclosure, maximum disclosure, and the duty to produce, maintain, and organise information are all emphasised, as is the right of access to information.²¹ The declaration also covers other aspects such as “internet access,²² privacy,²³ and the safeguarding of personal information”.²⁴

2.3.2. African Declaration on Internet Rights and Freedoms, 2014

This framework was adopted following a civil society-driven campaign to advance human rights norms and values for an open and free internet across Africa.²⁵ It protects the right to due process in connection with any legal claims or violations involving the Internet and guarantees people's freedom to express their thoughts without hindrance.²⁶

2.3.3. The Model Law on Access to Information for Africa, 2013

The Model Law on Access to Information for Africa establishes a framework designed to advance and protect the right to access information, serving as a guideline for African states to adopt legislation that ensures transparency, accountability, and enhance access to information. It states that everyone has the right to prompt access to data that is kept by relevant private organizations and public agencies.²⁷ In addition, it entitles every individual to quickly and affordably access information from private bodies that could help in exercising or protecting their rights.²⁸ Furthermore, it obliges the public bodies and relevant private entities are required to proactively

¹⁹ The Revised Declaration of Principles, n 17 above, principle 25.

²⁰ The Revised Declaration of Principles, n 17 above, principle 19 & 20.

²¹ The Revised Declaration of Principles, n 17 above, principle 16.

²² The Revised Declaration of Principles, n 17 above, principle 37.

²³ The Revised Declaration of Principles, n 17 above, principle 40.

²⁴ The Revised Declaration of Principles, n 17 above, principle 42.

²⁵ African Declaration on Internet Rights and Freedoms principle 3.

²⁶ African Declaration on Internet Rights and Freedoms, n 25 above, principle 11.

²⁷ The Model Law on Access to Information for Africa principle 2(a).

²⁸ The Model Law on Access to Information for Africa, n 27 above, principle 2(b).

disclose information.²⁹ Another crucial provision is that the framework prohibits the penalisation of anyone for releasing information in good faith.³⁰

2.3.4. Guidelines on Access to Information and Elections in Africa, 2017

In an effort to improve democratic governance in Africa, the African Commission approved these rules at its 61st Ordinary Session to provide guidance on guaranteeing information access during election procedures in Africa. One of the key elements of this framework includes:

Proactive information sharing by interested parties, including political parties, law enforcement, and election management organizations;³¹ Whistleblowers are shielded from any legal, social, administrative, or employment-related penalties;³² the duty to produce, preserve, and efficiently handle information.³³

2.3.5. Resolution on the protection of women against digital violence in Africa, 2022

This resolution obligates African states to put policies in place to protect female journalists from internet assault.³⁴ This involves providing training on digital security and media literacy that is gender sensitive. In addition, the resolution also set further obligation states to eliminate ambiguous and too expansive surveillance legislation that put female journalists at greater risk.³⁵

2.3.6. The General Comment 34 (2011) on freedoms of opinion and expression

The UN Human Rights Committee's General Comment guarantees and protect all opinions, whether political, scientific, historical, moral, or religious.³⁶ States parties are required to respect the freedom of expression, which encompasses the freedom to look for, accept, and share information and ideas across national boundaries.³⁷ Most importantly, discourages states parties in the criminalising of expression of opinion,

²⁹ The Model Law on Access to Information for Africa, n 27 above, principle 2(f).

³⁰ The Model Law on Access to Information for Africa, n 27 above, principle 2(g).

³¹ Guidelines on Access to Information and Elections in Africa principle 3.

³² Guidelines on Access to Information and Elections in Africa, n 31 above, principle 11.

³³ Guidelines on Access to Information and Elections in Africa, n 31 above, principle 4.

³⁴ Resolution on the Protection of Women Against Digital Violence in Africa ACHPR/Resolution 522 (LXXII) 2022 <https://achpr.au.int/en/adopted-resolutions/522-resolution-protection-women-against-digital-violence-africa-achpr> (accessed 20 August 2024).

³⁵ Resolution 522 (LXXII) 2022, (n 34 as above).

³⁶ The General comment 34 2011 on freedoms of opinion and expression para 9.

³⁷ The General comment 34 n 36 above, para 7.

particularly “harassment, intimidation, or stigmatisation, including arrest, detention, trial, or imprisonment due to an individual's opinions”, violate article 19 of ICCPR.³⁸ The Committee laid down the conditions under which restrictions may be imposed are explicitly defined, and only under these conditions can such restrictions be justified:

they must be “provided by law”; they can only be imposed for one of the reasons outlined in subparagraphs (a) and (b) of paragraph 3; and they must meet strict tests of necessity and proportionality.³⁹

The Committee further stated that “any restrictions must be carefully applied for the purposes for which they are intended and must be directly and clearly related to the particular need that they are intended to address”. It concludes by stating that restrictions cannot be made for reasons not specifically mentioned in paragraph 3 even if they support restrictions on other rights protected by the Covenant-protected rights.

2.4. The national legal frameworks

2.4.1. The Transitional Constitution, 2011

Fundamental to the protection of freedom of expression, press freedom and democracy is the preamble of the Constitution, which stipulates that the nation is “determined to lay the foundation for a united, peaceful and prosperous society based on justice, equality, respect for human rights and the rule of law”.⁴⁰ Another protection of freedom of expression in the Constitution is the Bill of Rights enshrined in chapter two. The Bill of Rights serves as an agreement the government and its subjects, reflecting a “commitment to respect and promote human rights and fundamental freedoms enshrined in the Constitution”.⁴¹ Article 9(2) of the Constitution states that all rights and freedoms “shall be respected, upheld and promoted by all organs and agencies of government and by all persons”.⁴² It makes it clear that “no derogations from the rights and freedoms it contains are allowed unless a valid state of emergency is declared”.⁴³ The Bill safeguards inherent rights and freedoms, including but not

³⁸ The General comment 34, n 36 above, para 23.

³⁹ The General comment 34, n 36 above, para 22.

⁴⁰ Transitional Constitution of South Sudan of 2011 (as amended) the preamble.

⁴¹ Transitional Constitution n 40 above, art 9(1).

⁴² Transitional Constitution n 40 above, art 9(1).

⁴³ Transitional Constitution n 40 above, art 188.

limited to “the right to life and human dignity,⁴⁴ freedom from torture and cruel or inhuman treatment,⁴⁵ the right to a fair trial,⁴⁶ and freedom of expression and media”.⁴⁷ Article 24(1) provides that “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 further sets an obligation under paragraph 2 on “all tiers of government to guarantee press freedom to be regulated in accordance with the law in a democratic society”. Furthermore, the Constitution guarantees the right to information under Article 32. It provides that:

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.⁴⁸

This provision allows for restrictions on information based on public security and privacy rights but does not provide clear definitions for these terms, which is essential for the law's effective enforcement. The consequence is that when there is an information crucial for public consumption especially on corruption, the government invokes this clawback clause in the law to conceal information.

2.4.2. The Media Authority Act, 2013

In December 2013, President Kiir signed into law the Media Authority Act, the Broadcasting Corporation Act, and the Right of Access to Information Act, collectively referred to as the “media laws”. These instruments form part of the domestic legal frameworks freedom of expression, press freedom and access to information in South Sudan. The Media Authority Act establishes an independent regulatory authority tasked with overseeing, developing, and promoting a diverse and autonomous media industry in South Sudan.⁴⁹ Section 6 of the Media Authority Act outlines a number of guiding principles, several of which are pertinent to freedom

⁴⁴ Transitional Constitution n 40 above, art 11.

⁴⁵ Transitional Constitution n 40 above, art 18.

⁴⁶ Transitional Constitution n 40 above, art 19.

⁴⁷ Transitional Constitution n 40 above, arts 24 (1) (2) & (3).

⁴⁸ Transitional Constitution, n 40 above, art 32.

⁴⁹ The Media Authority Act of 2013 sec 3 (1) (2).

of expression and freedom of the media.⁵⁰ The Act emphasises the protection of press freedom and independent media. It states that "free media representing all groups and divisions of society shall be promoted as essential to democracy, providing independent scrutiny and commentary on the actions of government and institutions, serving as the public watchdog and advocate, and ensuring a free flow of information and diverse opinions".⁵¹ Furthermore, it ensures that the mass media is safeguarded from being censored by any official or an unofficial authority.⁵²

The Act also safeguards freedom of expression on the internet and "new media".⁵³ In addition to encouraging open standards and open access to these platforms, it contends that the usage of the internet and new media should support the advancement of freedom of expression.⁵⁴

By referring to the Penal Code Act, section 5 of the Media Authority Act defines the defamation cases as the criminal matters. This contradicts section 28 of the same Act, which empowers the Press and Broadcast Complaints Council to handle defamation charges as civil matters. This discrepancy raises questions about who should handle defamation claims against media organizations and journalists, namely whether the Press and Broadcast Complaints Council under the Media Authority or criminal courts should handle these cases. The Media Authority Act provides for a category of provisions pertaining to hate speech and incitement to violence which are aligned with international human rights standards.⁵⁵ Under the pretence of outlawing hate speech, this clause seeks to stop the needless limitation of derogatory or offensive words. The Press and Broadcast Complaints Council and the Media Appeals Board are responsible for looking into complaints against media organizations related to hate speech or incitement to violence, which are considered civil offenses under the Media Authority Act. Section 9(5) gives the Press and Broadcast Complaints Council the authority to administer administrative sanctions. However, if "malicious intent or

⁵⁰ The Media Authority Act, n 49 above, Sec 6.

⁵¹ The Media Authority Act, n 49 above, sec 6(13) (a).

⁵² The Media Authority Act, n 49 above, Sec 6(13)(b).

⁵³ The Media Authority Act, n 49 above, sec 6(14).

⁵⁴ The Media Authority Act, n 49 above, Sec 6(14)(a).

⁵⁵ The Media Authority Act, n 49 above, secs 5 & 29.

recklessness is established and the harm caused is substantial, offenders may face a prison sentence of up to five years, as determined by a competent court".⁵⁶

2.4.3. The Broadcasting Corporation Act, 2013

Enacted in 2012, this law became operative on December 9, 2013, following the president's approval. Through the creation of the South Sudan Broadcasting Corporation (SSBC), the Act's main goals were to guarantee the independence of the public broadcasting service and improve high-quality broadcasting, thereby promoting the free flow of information.⁵⁷ Section 7(3)(a) states that the "Broadcasting Corporation should aim to provide a service that is independent from political and economic control of the government and reflects editorial integrity". However, editorial and broadcasting independence remain a theoretical manifestation, but the practice demonstrates interference and manipulation from the government. The state-owned media (South Sudan Broadcasting Corporation) and every media outlet in South Sudan have a designated security personal assigned to monitor, supervise and audit all stories before they are published.⁵⁸ Their purpose is not to protect those institutions but monitor them so that if the story is against government, the broadcasters will be ordered to bring it down. For example, in 2022, the National Security agents distorted the appointment of Deng Chol Chirilo who was appointed to be the Commissioner of Tonj South County. The security agents assigned to the SSBC ordered the news anchor to alter the decree and announced a name which did not even exist. Mr. Deng was one of the critics of the former Spy Chief, General Akol Kour Kuc who was recently sacked by President after 13 years as a Director General of the National Security Service.

2.4.4. The Right of Access to Information Act, 2013

This was enacted in 2013 with "the purpose of giving effect to the constitutional right of access to information; to promote maximum disclosure of information in the public interest; to establish effective mechanisms to secure that right; and to provide for incidental matters".⁵⁹ This law includes provision addressing the manner in which an

⁵⁶ The Media Authority Act, n 49 above, 29 (6).

⁵⁷ The Broadcasting Corporation Act of 2013 sec 3.

⁵⁸ USAID South Sudan Report 'Strengthening free and independent media in South Sudan (i-STREAM)' (2017) 56.

⁵⁹ The Right of Access to Information Act of 2013 sec 3.

information requested by the public is received and handled,⁶⁰ as well as provisions for restrictions or non-disclosure.⁶¹ Section 6 provides that "every citizen shall have the right to freedom of information".

2.4.5. The National Security Service Act of 2014

The NSS Act provides the State with extensive powers to "pre-empt and control any situation that may threaten national interests," leading to significant restrictions on freedom of expression. In the instances where national interests may be at jeopardy, the Act gives the National Security Service (NSS) considerable power over monitoring, arrests, and detention.⁶² In addition, it gives security officers the ability to conduct arrests without a warrant—a clause that has been used to suppress journalists and other people who are expressing their lawful right to free speech. In reality, many detainees are often held without access to the legal system, despite the NSS Act's requirement that those apprehended and detained by the SSNSS be "presented before a magistrate within 24 hours". A decade after the enactment of the National Security Act, the lawmakers passed a controversial amendment bill on 3 July 2024, which grants the security agency unlimited powers to arrest suspected criminals without a warrant.⁶³ The lawmakers retained the two contentious sections, 54 and 55, in the Bill, which provide the security agency with unlimited and unrestricted powers of arrest without a warrant.⁶⁴ If the President signs the Bill into law, it will pose a significant threat to the foundational principles of democracy and the protection of human rights in South Sudan, particularly regarding freedom of expression and press freedom. According to the Transitional Constitution, it states that a bill passed by the National Legislature cannot become law until the President signs it and gives his or her assent.⁶⁵ The bill in question is considered to have been assented to if the President

⁶⁰ The Right of Access to Information Act, n 59 above, sec 7.

⁶¹ The Right of Access to Information Act, n 59 above, sec 8.

⁶² The National Security Service Act of 2014 secs 6 and 18.

⁶³ Eye Radio 'Revitalised National Legislative Assembly retains National Security Service's power to arrest without warrant' 3 July 2024, <https://www.eyeradio.org/r-tnla-retains-nsss-power-to-arrest-without-warrant/> (accessed 3 July 2024).

⁶⁴ Transitional Constitution n 40, Amendment Bill 2024 secs 54 and 55 give the National Security Agency unrestricted powers to arrest people without any warrant.

⁶⁵ Transitional Constitution, n 40 above, art 85(1).

declines to sign it for thirty days without providing an explanation.⁶⁶ The law must be sent back to the National Legislature for reconsideration in light of the President's views, though, if he declines to sign it and gives an explanation within the allotted thirty days. According to South Sudan's constitutional provisions above, the National Security Service Act 2014 (2024 Amendment Bill) is set to automatically become law following its approval by the TNLA and submission to President Salva Kiir. The Bill, which was passed on 3 July and sent to the President on 12 July, has become law after the President neither signed nor rejected it within 30 days just like the National Security Act of 2014. Speaking to the Eye Radio on 14 August 2024, the Spokesperson of the Parliament, Honourable Oliver Mori Benjamin confirmed that the Bill has become law with immediate effect.⁶⁷ Therefore, it poses a serious threat to the foundational principles of democracy and the protection of human rights in South Sudan, notably, with respect to freedom of expression in general and freedom of press in particular.⁶⁸

2.4.6. The Penal Code of 2008

This instrument is an important legislation to discuss in the context of this research as it continues to restrict the freedom of expression and media freedom through the criminalisation of defamation and libel cases. The problematic provisions include sections 75, 76, 289, 291 and 292 which will be discussed in chapter three under the criminalisation of defamation as a threat to the media freedom and freedom of expression in South Sudan. Criminalising defamation poses a significant threat to freedom of expression and media freedom by fostering a culture of self-censorship and fear, impeding public scrutiny of policies, and the clampdown of media space. The fear of criminal prosecution deters individuals and journalists from expressing their opinions or reporting matters of public benefit. This has led to self-censorship, where people avoid speaking out on controversial issues or criticising public figures to avoid legal consequences.

⁶⁶ Transitional Constitution, n 40 above, art 85(2).

⁶⁷ Eye Radio 'National Security Service Bill 2024 now law' 14 August 2024, <https://www.eyeradio.org/national-security-service-bill-2024-now-in-effect-hon-mori/> (accessed 14 August 2024).

⁶⁸ Human Rights Watch 'South Sudan: damaging security law revisions adopted' 4 July 2024, <https://www.hrw.org/news/2024/07/04/south-sudan-damaging-security-law-revisions-adopted> (accessed 14 August 2024).

2.5. The limitation clauses and their impacts on the freedom of expression and press freedom

The right to freedom of expression is not absolute. It can be limited by law on principles of necessity to achieve a legitimate purpose and proportionality. Freedom of expression and press freedom are stipulated under article 24(1) of the Constitution. However, the same provision provides for the limitation on grounds of “public order, safety or morals as prescribed by law”. However, the Constitution does not explicitly and clearly explain what amounts to “public order, safety, or morals”. This clawback clause has been used as an excuse by the security agents to clampdown press freedom and freedom of expression. Under the international human rights norms and standards, the limitations provided for in the South Sudan Constitution are echoed in the same language. However, proper definition and scope is provided in the interpretation developed by the human rights bodies such as UN Human Rights Committee, African Commission, and the African Court. Article 19(3) of the ICCPR, article 27(2) of the African Charter and article 29(2) of the Universal Declaration all provide for the limitation of rights on the grounds of “national security or of public order, or of public health or morals”. The African Court on Human and Peoples’ Rights (ACtHPR) in *Konaté v Burkina Faso* and the African Commission in *Constitutional Rights Project v Nigeria* have provided a clear interpretation of what amounts to “national security or of public order, or of public health or morals”. Any limitations imposed must be strictly proportional and necessary to achieve the intended benefits.⁶⁹ Importantly, these restrictions must not undermine the right to the extent that it becomes meaningless.⁷⁰ Both cases affirm that article 27(2) of the African Charter provides for the only grounds for limiting article 9 of the same charter. They include circumstances the necessary to protect the common interest, maintain morality, guarantee collective security, and respect the rights of others.⁷¹ The Human Rights Committee in the General Comment 34 makes it clear on how freedom of expression can be limited. It states that:

⁶⁹ *Constitutional Rights Project v Nigeria*, communication, the African Commission on Human & Peoples’ Rights, 105/93-128/94-130/94-152/96 par 41.

⁷⁰ *Constitutional Rights Project case*, n 69 above, para 42.

⁷¹ *Konaté v Burkina Faso*, The African Court on Human & Peoples’ Rights communication 004/2013 par 35 *Konaté case*, n 71 above, para 68.

When a state party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.⁷²

South Sudan's approach to limiting freedom of expression does not satisfy the standard established by international human rights standards. The measures employed by the state especially security agents often lack the necessary safeguards of legality, legitimacy, necessity, and proportionality, resulting in an environment where freedom of expression is significantly curtailed.

2.6. National Institutional frameworks for the protection of human rights particularly freedom of expression and press freedom

In addition to the Constitution and the enabling legislations such as Media Authority Act, the Right of Access to Information Act and the National Broadcasting Corporation Act, there are a couple of institutions with the constitutional mandate to protect the press freedom and freedom of expression. These institutions are constitutionally mandated to “respect, protect, promote” human rights including freedom of expression and press freedom. Article 9(1) of the Constitution states that “all rights and freedoms shall be respected, upheld and promoted by all organs and agencies of Government and by all persons”.

2.6.1. The South Sudan Media Authority

The Media Authority was established in 2016 and began its operations in 2017. Its main objective is to “regulate, develop, and promote an independent and diverse media that serves the public interest”.⁷³ The Act also mandates the Media Authority to create and collaborate with a Press and Broadcast Complaints Council, which is responsible for addressing ethical and legal complaints related to journalism.⁷⁴ However, up to date, this Council is still not operational. In 2018, the Authority implemented regulations regarding journalist accreditation, making it voluntary for nationals but mandatory for foreigners, in accordance with the Act.⁷⁵ According to the regulations, candidates for

⁷² Konaté case, n 71 above, par 35.

⁷³ The Media Authority Act, n 49 above, sec 3(1).

⁷⁴ The Media Authority Act, n 49 above, sec 19(1)(f).

⁷⁵ The Media Authority Regulations on Accreditation of Journalists of 2018 chapters 2 and 3.

accreditation must have a bachelor's degree in journalism or a similar discipline and have completed at least a year of training or an internship at a media company.⁷⁶ For many practicing and prospective journalists, this criterion poses a significant barrier to their accreditation and practice in the country.

2.6.2. South Sudan Human Rights Commission

The Commission was established in 2009 through chapter vi of the 2011 Constitution⁷⁷ as an independent institution tasked to “protect, promote and fulfil human rights.”⁷⁸ It draws its mandate from the constitution and the enabling legislation, the South Sudan Human Rights Commission Act, 2009. In addition, it serves as the primary mechanism for safeguarding rights in South Sudan, with its functions outlined in article 146 of the Transitional Constitution. The functions include the “monitoring the application and enforcement of the rights and freedoms enshrined in the Constitution, investigating complaints from individuals or groups concerning human rights violations. Other mandate includes These, protection, promotion and advocating for human rights standards as enshrined in national constitution and international human rights treaties. However, since its establishment, the Commission has not litigated neither appearing as amicus curia in any case involving human rights violations despite being one of its fundamental roles and mandates under the Act.⁷⁹ The Commission faces many challenges including but not limited to political interference from the government, resources constraints and lack of trained personnel.

2.6.3. The South Sudan National Communication Authority (SSNCA)

The SSNNCA serves as South Sudan's regulatory body for ICT and telecommunications.⁸⁰ Its primary responsibility is to oversee all communication activities within the country to promote socio-economic development for the benefit of South Sudan.⁸¹ In fulfilling this role, the SSNCA implements government policies related to communication, and it monitors, inspects, and regulates all communication

⁷⁶ The Media Authority Regulations, n 75 above, sec 6(1) (b) & 6(1) (c).

⁷⁷ Transitional Constitution, n 40 above, art 145(1).

⁷⁸ Transitional Constitution, n 40 above, art 146.

⁷⁹ The South Sudan Human Rights Commission Act of 2009 sec 7(1) (b).

⁸⁰ The National Communication Authority Act of 2012 sec 7(1).

⁸¹ The National Communication Authority Act, n 80 above, sec 8.

operations across the Republic of South Sudan.⁸² However, contrary to its constitutional mandate, the Authority has been constantly implicated in many reports to have played a fundamental role in spying, surveillance, and blockage of websites of media outlets.⁸³ For example, on 17 July 2017, the SSNCA blocked the websites of Radio Tamazuj, Sudan Tribune, and the blogs Paanluel Wel and Nyamilepedia, citing that they were spreading messages deemed harmful to peacebuilding. The affected outlets reported that they were not informed by the government about the block.⁸⁴

2.6.4. The South Sudan National Security Service (SSNSS)

The SSNSS is part of the law enforcement agencies charged by the constitution to protect the people of South Sudan, enforce law and order. It was established as an advisory and intelligence-gathering body with strict mandate of information gathering, analysis and advice to the relevant authorities.⁸⁵ However, over the recent years, the Agency has significantly broadened its powers and mandates to arrest without warrant as discussed in the SSNSS Amendment Bill above. The Agency is guided by a set of fundamental principles that ensure its alignment with democratic values, the rule of law, and respect for human rights. It should be bound by the Constitution and the law, remains under civilian control, upholds democratic principles and human rights, and is committed to diversity in recruitment.⁸⁶ These principles work together to create a security system that is accountable, inclusive, and protective of the rights and freedoms of all citizens. However, since its establishment, the agency has operated contrary to those principles. The agency is among the key institutions central to the clampdown of freedom of expression by threatening and harassing journalists, surveillance, and closure of media outlets outside their constitutional mandate.⁸⁷

⁸² The National Communication Authority Act, n 80 above, sec 9.

⁸³ United Nations Human Rights Office of the High Commission Report 'the right to freedom of opinion and expression in South Sudan since the July 2016 crisis' (2018) 16.

⁸⁴ United Nations Human Rights Office of the High Commission Report, n 83, 17.

⁸⁵ Transitional Constitution, n 40 above, art 159(e).

⁸⁶ Transitional Constitution, n 40 above, art 159 (a-d).

⁸⁷ United Nations Human Rights Office of the High Commission Report, n 83 above, 56.

2.7. Conclusion

South Sudan's Transitional Constitution of 2011 guarantees freedom of expression and press freedom. However, these rights are often constrained by other laws and practices. The government is commended for establishing a progressive legal framework through various policy reforms. For example, the Media Authority Act (2013), the Broadcasting Corporation Act (2013), and the Right of Access to Information Act (2014) which offer some opportunities for promoting press freedom and access to information. However, these legislative frameworks stand in sharp contrast to the Penal Code Act 2008 and the National Security Act 2014 which restricts the media's ability to operate freely and criminalises defamation and libel. Despite the presence of these progressive laws, there are clear gaps that need to be aligned with the international human rights norms and standards particularly the provisions on criminalisation of defamation and limitations clauses.

CHAPTER THREE

3. CHALLENGES FACED BY JOURNALISTS, MEDIA OUTLETS, CIVIL SOCIETY AND GOVERNMENT CRITICS.

“The moment we no longer have a free press, anything can happen. What makes it possible for a totalitarian or any other dictatorship to rule is that people are not informed; how can you have an opinion if you are not informed? if everybody always lies to you, the consequence is not that you believe the lies, but rather that nobody believes anything any longer”.¹ Hannah Arendt

3.1. Introduction

In South Sudan, the exercise of freedom of expression is fraught with significant challenges and threats, particularly for journalists, media organisations, and individuals expressing their opinions about the government policies and actions. Despite constitutional guarantees and international obligations, those who speak out against government policies or report on sensitive issues often face intimidation, harassment, and violence.² The volatile political climate, coupled with restrictive legal frameworks and a pervasive culture of impunity, has created an environment where press freedom is severely compromised. This chapter explores the obstacles that hinder the free flow of information and the challenges encountered by journalists, civil society organisations, media outlets, human rights defenders, and individuals exercising freedom of expression in South Sudan. It will finally assess the impact of the clampdown of the freedom of expression and press freedom on human rights and democratisation of South Sudan

¹ LW Reed 'Hannah Arendt's chilling thesis on evil' (2022) American Institute for Economic Research <https://www.aier.org/article/hannah-arendts-chilling-thesis-on-evil/> (accessed 5 October 2024).

² USAID Report 'Democracy, Human Rights, and governance assessments task order' South Sudan (2020).

3.2. Challenges faced by journalists, media outlets, civil society and government critics.

3.2.1. Violation of right to life, personal security, and liberty of journalists

According to the Eye Radio, at least 12 journalists have been killed since 2012 without any accountability for those killings.³ For example, Christopher Allen, an American freelance reporter, who was killed in Kaya, Central Equatoria, while covering clashes between the SPLA and SPLA in Opposition on 26 August 2017.⁴ By the end of 2017, the circumstances surrounding the incident remained unclear, and there was no indication that anyone had been held accountable. In fact, the government declared in 2022 that they cannot continue investigating Allen's death because he was killed in a rebel-controlled area.⁵ Numerous organisations and foreign governments in South Sudan and globally condemned the journalist's killing, urging the conflict parties to respect press freedom.⁶

In July 2021, Alfred Angasi, a reporter for the state-run South Sudan Broadcasting Corporation (SSBC), was arbitrarily arrested and detained for over two weeks after refusing to read a section of a presidential decree during a news broadcast.⁷ Similarly, in 21 October 2021, Ayuel Chan, a news anchor at the same station, was arrested and detained for reporting on the alleged harassment and intimidation of members of the Sudan People's Liberation Army-in-Opposition (SPLM-IO) in Warrap State.⁸ On 27 August 2021, the National Security Service (NSS) shut down Radio Jonglei, a community radio station. Three of its journalists, Matuor Mabior Anyang, Ayuen

³ Eye Radio '12 Journalists murders remain unresolved in South Sudan since 2012' 3 October 2023 <https://www.eyeradio.org/12-journalists-murders-remain-unresolved-in-south-sudan-since-2012/> (accessed 5 September 2024).

⁴ L'Osservatorio.org 'American journalist among 19 killed in South Sudan' 20 September 2017 <https://www.losservatorio.org/en/civilians-in-conflict/web-review/item/949-american-journalist-among-19-killed-in-south-sudan> (accessed 2 September 2024).

⁵ Pachodo.org 'Govt cannot investigate journalist Allen's death' 5 November 2022 <https://pachodo.org/news-from-various-sources/37914-%E2%80%98govt-cannot-investigate-journalist-allen%E2%80%99s-death%E2%80%99-deputy-minister> (accessed 7 September 2024).

⁶ Sudan Tribune 'U.S "strongly" condemns South Sudan minister over slain journalist' 4 November 2022 <https://sudantribune.com/article266333/> (accessed 7 September 2024).

⁷ ARTICLE 19, Free Press Unlimited 'South Sudan: Ensure accountability for attacks on media' (2022) <https://www.article19.org/resources/south-sudan-stop-attacks-on-media/> (accessed 5 October 2024).

⁸ ARTICLE 19, Free Press Unlimited, (n 7 as above).

Garang Kur, and Deng Gai Deng were briefly detained, and their mobile phones were confiscated after broadcasting an announcement for anti-corruption protests scheduled for 30 August.⁹

Furthermore, the South Sudan Defence Forces (SSPDF) soldiers arbitrarily arrested and detained a journalist working for the United Nations Mission in South Sudan (UNMISS)-sponsored Radio Miraya on 24 January 2024.¹⁰ The journalist was assigned to cover the delivery of medical assistance by Moroccan military doctors at the John Garang Mausoleum in Juba. Upon arrival, he showed his ID and explained his assignment to the SPLA soldiers stationed there. However, the soldiers informed him that his ID was insufficient for access and that he needed authorisation from the Ministry of Information or the Ministry of Health. The journalist was detained for five hours, first at the Mausoleum and then at the SPLA Giada military facility in Juba. He was interrogated about his presence at the site and accused of attempting to gather information about the SPLA. Upon release, the soldiers confiscated his USB flash drive. On the same day, two other journalists and their driver, covering the same topic for Eye Radio, were similarly arrested by SPLA soldiers but were released after a few hours.¹¹

Journalists continued to face threats from authorities due to articles published by their employers, with these threats delivered both via phone calls and in person. For example, on 2 March 2023, Woja Emmanuel, a journalist for Eye Radio, was abducted at gunpoint, interrogated, and accused of ties to the National Salvation Front.¹² He escaped during a skirmish and resigned from his position in April due to the ordeal.¹³

Furthermore, security forces detained nine journalists in Juba on 13 June 2023, confiscating their equipment and ordering them to delete recordings and photos

⁹ ARTICLE 19, Free Press Unlimited, (n 7 as above).

¹⁰ United Nations Mission in South Sudan 'report on the right to freedom of opinion and expression in South Sudan since the July 2016 crisis' (2016) 21.

¹¹ South Sudan Country Report on Human Rights Practices' United States Department of State, Bureau of Democracy, Human Rights and Labour (2022) <https://www.state.gov/reports/2022countryreportsonhumanrightspractices/southsudan/#:~:text=The%20transitional%20constitution%20provides%20for,the%20name%20of%20national%20security> (accessed 5 October 2024).

¹² United States Department of State report, (n 11 as above).

¹³ United States Department of State report (n 11 as above).

from their devices.¹⁴ The security forces cited the journalists' coverage of Sudan People Liberation Movement in Opposition (SPLM-IO) press conference at parliament as justification for their detention. As the country heads for much anticipated December 2024 elections, ensuring the protection of freedom of expression and press freedom is crucial for the integrity of the electoral process and the consolidation of democratic standards. All these actions constitute violations of national and international human rights norms and standards. None of these incidents have been investigated by the government, highlighting the serious challenge of accountability for human rights violations in South Sudan. Section 6(13)(p) of South Sudan's Media Authority Act 2013 stipulates that:

The unlawful arrest, detention, harassment, intimidation, and torture of journalists, including photojournalists accredited to media organizations shall be prohibited. Any existing laws shall be applied to the extent that they do not contradict the principle stated in this section.

The African Commission on Human and Peoples' Rights' Declaration of Principles on Freedom of Expression states that:

1. Attacks such as murder, kidnapping, intimidation, and threats against media practitioners and others exercising their right to freedom of expression, as well as the destruction of communication facilities, undermine independent journalism, freedom of expression, and the free flow of information to the public. 2. States have an obligation to take effective measures to prevent such attacks, and when they do occur, to investigate them, punish the perpetrators, and ensure that victims have access to effective remedies.

In the case of the murdered journalist Norbert Zongo, the ACHPR determined that Burkina Faso "failed to act with due diligence in pursuing, prosecuting, and judging the assassins of Norbert Zongo and his companions," which resulted in a violation of "the Applicants' rights to be heard by competent national courts".¹⁵ This "failure in

¹⁴ United States Department of State report, (n 11 as above).

¹⁵ Claimants of Late Norbert Zongo, Abdoulaye Nikiema alias Ablasse, Ernest Zongo and Blaise Libouido and the Burkinabe Movement on Human and Peoples' Rights v Burkina Faso, application 013/2011 (2014) para 156.

investigating and prosecuting the murderers of Rorbert Zongo instilled fear and concern within media circles".¹⁶

3.2.2. Cyber-attacks, hackings, and website blockages

Since South Sudan gained independence in 2011, the government has employed cyberattacks, hackings and website blockages as one of the ways to stifle freedom of expression and control media space. One of the notable instances of websites blocking by South Sudan authorities happened involved Radio Tamazuj, Sudan Tribune, and Paanluel Wel and Nyamilepedia. The government blocked their websites in July 2017, citing that they were spreading messages deemed harmful to peacebuilding.¹⁷ The affected outlets reported that they were not informed by the government about the block.¹⁸

The Qurium Media Foundation helped bypass the blockages of these media outlets, including Sudans Post, which was also blocked in 2020.¹⁹ However, these publications continue to experience cyberattacks, including hacked social media accounts and altered content. The SSNSS pressures online media, demanding content removal, and has been linked to these attacks. An analysis traced the source of these attacks to government offices, including the SSNSS and the SSNCA with increased efforts by the government to control internet communications.²⁰ Mandatory blocking of entire websites is a severe form of censorship that can only be justified under international human rights law. The Special Rapporteur on Freedom of Expression states that any restriction on freedom of expression through website blocking must be based on a careful assessment of the potential threat posed by the content.²¹ Furthermore,

¹⁶ Robert Zongo case, n 15 above para 156.

¹⁷ USAID South Sudan Report 'Strengthening free and independent media in South Sudan (i-STREAM)' (2017) 56.

¹⁸ USAID South Sudan Report, n 67 above, 17.

¹⁹ Qurium Media Foundation 'Sudans Post' gets blocked after receiving personal threats from NSS – transcript revealed' (2020) "["Sudans Post" gets blocked after receiving personal threats from NSS – transcript revealed – Qurium Media Foundation](#)" (accessed 3 September 2024).

²⁰ Qurium Media Foundation, (n 157 as above).

²¹ United Nations Special Rapporteur on Freedom of Expression 'Promotion and protection of the right to freedom of opinion and expression' (2011) para 37 A/66/290/General Assembly <https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/A.66.290.pdf> (accessed 8 September 2024).

website blocking should meet certain minimum standards, including providing an explanation on the affected websites for why they were blocked. The decision to block content should be made by a competent judicial authority or an independent body.²² The Human Rights Committee in its General Comment 34 further stated that:

Restrictions on websites, blogs, or internet systems are permissible only if they comply with paragraph 3 of article 19. Such restrictions should target specific content, while broad bans on entire websites or systems are not allowed. It is also inconsistent with paragraph 3 to prevent a website or information platform from publishing content solely because it may be critical of the government or its political or social system.²³

When these media outlets asked the concerned authorities to avail an information on the content they believed to be supporting "non-peace messages," they don't receive any response. There was not any explanation from the government to justify that these criteria were not met in the blocking of the four websites, but the government just want to control media, stifle dissent, and curtail citizen's access to critical information.

3.2.3. Abuse of media registration and journalist accreditation rules

According to the 2013 Media Authority Act and the 2018 Media Authority Regulations on Accreditation of Journalists, journalists in South Sudan are not required to be accredited. However, the way the accreditation process has been implemented contradicts this law. Previously required only for the foreign journalists, the Media Authority began the accreditation procedure for South Sudanese journalists in October 2022.²⁴ The Authority announced the accreditation process at a press conference.²⁵ In March 2023, the Authority set 30 June 2023, as the deadline for journalist accreditation, with no mention of the voluntary nature of the process. The Commission voiced concerns that the accreditation procedure was being misused as a tool to stifle free speech and control the media space restricting access to government activities.²⁶

²² United Nations Special Rapporteur on Freedom of Expression, n 159 above, para 38.

²³ General Comment 34, n 37 above, para 43.

²⁴ Commission on Human Rights in South Sudan Report 'Entrenched repression: systematic curtailment of the democratic and civic space in South Sudan' (2023) para 98.

²⁵ Commission on Human Rights in South Sudan Report, n 24 above, para 99.

²⁶ Commission on Human Rights in South Sudan Report, n 124 above, para 99.

The government through the Minister of Information Journalists without accreditation would not be allowed to attend any government events.²⁷ Officials usually refuse to participate outside of government press conferences despite journalists having to rely on them in order to obtain information and statements. Independent media need the chance to question public authorities because incorporating government viewpoints is essential for accurate and fair reporting. This ideal is compromised when journalists are denied access to officials, and media organizations run the danger of retaliation if they are perceived as being anti-state. It was determined by the Commission that the accreditation process for journalists in South Sudan is being used as a means for the State to exert control over the media, which goes against the principle of voluntary accreditation and violates legal protections for media freedom.²⁸ This approach is more likely to weaken than to advance the country's independent and plural media environment, further restricting information availability, ahead of the 2026 elections. According to the 2013 Media Authority Act, the non-broadcast media is supposed to be regulate itself. Sections 6(13)(h) and (j) explicitly states that practicing journalism in South Sudan does not require a license.²⁹ Publications, whether in print or online, do not need to register, except for compliance with regulations governing profit and non-profit activities.³⁰ However, it is a general rule that every journalist is expected to follow the code of ethics.³¹ Despite its clear obligations under domestic law and international human rights norms, the Media Authority forced media organizations and associations to register with it by threatening closure and using coercion. Shortly after starting operations, in June 2017, the Media Authority ordered all media, including newspapers and associations, to register and threatened to penalize noncompliance.³² Consequently, media outlets and associations registered under threat and intimidation to continue their work.³³ They endure an annual registration renewal process, during which they receive criticisms and editorial directives from the Authority and SSNSS agents.³⁴ Moreover, industry associations organising events, such

²⁷ Commission on Human Rights in South Sudan Report, n 24 above, para 100.

²⁸ Commission on Human Rights in South Sudan Report, n 24 above, para 105.

²⁹ The Media Authority Act of 2013, sec 13(h & j).

³⁰ The Media Authority Act, n 29 above, sec 13(h & j).

³¹ The Media Authority Act, n 29 above, sec 13(h).

³² Commission on Human Rights in South Sudan Report, n 24 above, para 107.

³³ Commission on Human Rights in South Sudan Report, n 24 above, para 107.

³⁴ Commission on Human Rights in South Sudan Report, n 24 above, para 108.

as trainings and forums, are required to seek prior authorisation from the Authority, are often issued the so-called "no objection certificate".³⁵ Any organisation that does not provide the said certificate above, the hotels and venue owners would not allow the place to be booked, and events run the risk of being cancelled. Providing complete event details, including the agenda and participant list, is necessary to secure the certificate; approval may occasionally be contingent on the exclusion of particular persons.³⁶ As a control mechanism, the Media Authority illegally required independent media outlets and associations to register, working with the SSNSS to do so. As a control mechanism, the Media Authority with support from SSNSS illegally required independent media outlets and associations to register.³⁷ This has resulted in additional, unlawful bureaucracy and complications for the media, with the Authority taking over functions previously handled by the SSNSS while the SSNSS continues its censorship activities.

3.2.4. Abuse of broadcasting licensing rules

The local radio stations must apply for a license from the Media Authority, which is normally renewed once a year, unlike print media.³⁸ However, a thorough examination of the station's prior news coverage is frequently required as part of the licensing and renewal procedures. As part of this examination, Authority representatives may provide editorial instructions as a requirement for awarding or renewing licenses and criticize the station's coverage of material deemed detrimental to the government. Instead of serving only as an administrative procedure as required by law, the government uses these license requirements as a tool for censorship and control. Section 7(3)(a) of the "Broadcasting Corporation Act of 2013 states that the "Broadcasting Corporation should aim to provide a service that is independent from political and economic control of the government and reflects editorial integrity".³⁹ For example, the Editor of *The Citizen* and owner of Citizen TV, Mr. Nhial Bol Aken was forced to go into exile due to being placed under strict surveillance by security

³⁵ Commission on Human Rights in South Sudan Report, n 24 above, para 109.

³⁶ Commission on Human Rights in South Sudan Report, n 24 above, para 109.

³⁷ Commission on Human Rights in South Sudan Report, n 24 above, para 110.

³⁸ The Media Authority Act, n 29 above, sec 13(k).

³⁹ The Broadcasting Corporation Act of 2013 sec 7(3) (a).

agencies for allegedly broadcasting and publishing content critical of the ruling party, Sudan People Liberation Movement in Government (SPLM-IG)'s performance.⁴⁰

3.2.5. Confiscation of publications and media equipment

There are many instances where authorities interfere and confiscate publications or media equipment. For example, in August 2021, three journalists working in the local radio in Bor Town had their gadgets including mobile phones confiscated after the National Security Officers stormed the radio station.⁴¹ On 30 August 2021, the government shut down the internet nationwide in anticipation of the planned anti-corruption protests, which were ultimately prevented by the armed forces. That same day, during President Kiir's speech at the opening of parliament, an official from South Sudan's Media Authority confiscated the equipment of three journalists. Al Jazeera reporter Ajou Luol was briefly detained following an argument with security agents, while Maura Ajak and Yom Manas were threatened and physically assaulted after protesting Luol's detention.

3.2.6. Weaponisation of defamation laws against journalists

Despite a global shift toward decriminalisation, 160 countries still maintain criminal defamation laws.⁴² These laws are often justified as targeting disinformation, misinformation, cybercrime, or hate speech. However, they frequently include vague language or impose disproportionate punishments, which can negatively impact media freedom and pose a broader threat to freedom of expression. While a few African countries have adopted the decriminalisation regimes, many countries still maintain strict defamation laws. In South Sudan, criminal defamation is frequently used for stifling journalists and restrict press freedom, thereby obstructing the nation's democratisation efforts.

⁴⁰ The Sudan Tribune 'S. Sudan newspaper editor says under threat for publishing critical views' 13 July 2013 <https://sudantribune.com/article46359/> (accessed 1 September 2024).

⁴¹ Eye Radio 'Union of Journalists of South Sudan (UJOSS) demands return of confiscated media equipment' 29 August 2021 <https://www.eyeradio.org/ujoss-demands-return-of-confiscated-media-equipment/> (accessed 1 September 2024).

⁴² UNESCO Global Report 'Journalism is a public good: World trends in freedom of expression and media development 2021-2022' <https://unesdoc.unesco.org/ark:/48223/pf0000380618?4=null&queryId=df4713bc-6576-4f29895b1d77a6d77c40> (accessed 6 September 2024).

3.2.6.1. Overview of defamation laws and their implications in South Sudan

Defamation in South Sudan is governed by the Media Authority Act 2013 and the Penal Code Act 2008. Section 75 of the Penal Code Act criminalises publishing or communicating information deemed "prejudicial to South Sudan," including false statements or those that could incite disorder, harm public services, affect national defence or economy, undermine confidence in law enforcement, or disrupt essential services.⁴³ Section 76 imposes additional restrictions on statements about the President or Acting President, particularly those that could incite hostility, cause ridicule, or involve abusive or obscene language.⁴⁴ Article 289 defines criminal defamation as making statements intended to harm someone's reputation, punishable by up to two years in prison, a fine, or both.⁴⁵

Section 28 of the Media Authority Act allows individuals and legal entities to sue organisations or journalists for defamation.⁴⁶ It sets criteria for defamation claims, including public statements, identification of the complainant, the defamatory nature of the statement, its falsity, and resulting harm.⁴⁷ The Act distinguishes between private complainants, who must show negligence, and public officials, who must prove malice. Defamation is treated as a civil offense, with complaints first handled by the Press and Broadcast Complaints Council.⁴⁸ However, section 5 of the Act contradicts this by defining defamation as criminal matter in line with the Penal Code, creating a conflict with the Act's earlier version that treated defamation solely as a civil matter.⁴⁹ The current practice is that defamation cases against journalists and media outlets are adjudicated by the criminal courts contrary to the law.

Defamation laws in South Sudan are misused, including baseless prosecutions against journalists covering corruption. One notable instance is the case of Zachariah Makuach Maror, who reported on corruption allegations involving the then-Minister of

⁴³ The Penal Code Act of 2008 sec 75.

⁴⁴ The Penal Code Act, n 43 above, sec 76.

⁴⁵ The Penal Code Act, n 43 above, sec 289.

⁴⁶ The Media Authority Act, n 29 above, sec 28(1).

⁴⁷ The Media Authority Act, n 29 above, sec 28(6).

⁴⁸ The Media Authority Act, n 29 above, sec 28(4).

⁴⁹ The Media Authority Act, n 29 above, sec 5. Section 5 defines the meaning of defamation to the meaning assigned to it by the Penal Code Act 2008 which criminalises defamation under section 289.

Finance, Hon. Salvatore Garang Mabiordit.⁵⁰ In September 2020, he was prosecuted and convicted of defamation, but was acquitted two months later after the President dismissed the Minister.⁵¹ Another example is the defamation case of Honourable Awut Deng Achuil, the current Minister of General Education and Instructions who filed a defamation lawsuit against the three youths representing Luacjang Community of Tonj, Warrap State.⁵² In February 2021, a group of youths from the Luanjang Community, led by interim youth chairperson Marcelo Deng Magon, wrote a letter to President Salva Kiir accusing Minister Awut of deliberately preventing primary eight students from Tonj East County in Warrap State from taking the 2021 Primary Leaving Examinations, citing insecurity as the reason.⁵³ In response, the general education minister filed a lawsuit in February 2022 against Machiek Dongrin, Marcelo Deng Magon, the Interim Chairman of the Luangjang Youth Union, and Tinjok Ruben Dhal, a medical student from Bahr El Ghazal University, in a Juba court.⁵⁴ The case is before County Court of Juba pending final determination.

In the case of *Konaté v Burkina Faso*, the ACHPR concluded that the criminal penalties imposed by Burkina Faso's defamation laws were disproportionate.⁵⁵ It further argued that criminal penalties might be categorically inappropriate for defamation cases, as civil remedies are sufficient to prevent the publication of defamatory content.⁵⁶ In its final judgment, the Court ruled that Burkina Faso had breached its obligations under article 9 of the African Charter on Human and Peoples' Rights, article 19 of the International Covenant on Civil and Political Rights, and article 66(2)(c) of the

⁵⁰ Eye Radio 'Zachariah Makuach Maror released after three years' 16 December 2020 <https://www.eyeradio.org/journalist-zachariah-released-after-three-months/> (accessed 10 September 2024).

⁵¹ Eye Radio, (n 50 as above).

⁵² Radio Tamazuj 'Juba Court starts hearing Minister Awut's defamation case' (2024) <https://www.radiotamazuj.org/en/news/article/juba-court-starts-hearing-minister-awuts-defamation-case> (accessed 5 October 2024).

⁵³ Radio Tamazuj, (n 51 s above).

⁵⁴ Radio Tamazuj, (n 51 as above).

⁵⁵ *Konaté v Burkina Faso*, The African Court on Human & Peoples' Rights communication 004/2013 para 164-165.

⁵⁶ *Konaté case*, n 55, para 166.

Economic Community of West African States (ECOWAS) Treaty.⁵⁷ The Court ordered Burkina Faso to amend its domestic law to reflect that criminal penalties for defamation are not permissible.⁵⁸ In addition, Mr Konaté was entitled to seek reparations from Burkina Faso, subject to the submission of a brief on the matter.⁵⁹ The lessons for South Sudan from this landmark ruling is that governments should not criminalise defamation. It is the first case in Africa to set such a high benchmark for freedom of expression, creating a significant precedent for the continent. The *Konaté* case emphasised that criminal penalties for defamation are disproportionate and civil remedies are sufficient. As a State party to the African Charter, South Sudan should decriminalise defamation, shifting it from a criminal to a civil matter to avoid using criminal sanctions to silence dissent. Various international and regional bodies advocate for replacing criminal defamation laws with civil laws, arguing that civil laws adequately protect reputations without threatening freedom of expression. They highlight that criminal defamation laws, especially those involving imprisonment, pose a significant risk to free speech. The African Commission's Resolution 169 calls for the repeal of such laws that impede free speech, urging adherence to regional and international freedom of expression standards.⁶⁰ The UN Human Rights Committee (UNHRC) in its General Comment 34 stressed that:

Laws on defamation must be carefully formulated so as to ensure that they meet the necessity requirement in paragraph 3 and that they should not be used in practice to stifle the freedom of expression.⁶¹

The Committee further recommends the decriminalisation of defamation, stressing that criminal defamation should be reserved for the most severe cases, with imprisonment never being an appropriate penalty, as delays in these cases can have a chilling effect on free expression.⁶² Therefore, it is important that South Sudan aligns its legal frameworks with international and regional human rights standards.

⁵⁷ Konaté case, n 55, para 176.

⁵⁸ Konaté case, n 55, para 176.

⁵⁹ Konaté case, n 55, para 172.

⁶⁰ Resolution on repealing criminal defamation laws in Africa - ACHPR/Res 169 10 <https://achpr.au.int/en/adopted-resolutions/169-resolution-repealing-criminal-defamation-laws-africa-achprres169xlvij> (accessed 10 September 2024).

⁶¹ The General comment 34 2011 on freedoms of opinion and expression, para 33.

⁶² Resolution ACHPR/Res 169 10, (n 60 as above).

3.3. Challenges encountered by individuals, human rights defenders and civil society organisations who critique government policies and activities

Since the country gained independence in 2011, civil society organisations, activists, human rights defenders, and individuals who express views critical of government policies and actions often face significant threats, surveillance, harassment, and intimidation. Such actions create a climate of fear, discouraging open dialogue and stifling freedom of expression, which are crucial for the country's democratic development. The pervasive atmosphere of intimidation not only undermines human rights but also hampers efforts to hold the government accountable and foster transparency. In all parts of the country, SSNSS authorisation is required to hold public events, significantly impacting NGOs and the United Nations.⁶³ For instance, in April 2017, SSNSS verbally instructed a civil society representative in the Greater Equatoria region that civil society organizations must seek its approval before conducting any activities in the state.⁶⁴ SSNSS also demanded a list of national and international staff employed by these organisations, along with their planned travel movements between the state and Juba.⁶⁵ Additionally, an August 2016 directive in the same region required hotel managers to ensure that no conference or workshop takes place in their venues unless the organisations obtained SSNSS clearance at least 72 hours before the event.⁶⁶

The government, through its security agencies, closely monitors those who speak out against it, often leading to arbitrary arrests, detentions, and even forced exile. For example, in January 2023, the former Minister of Finance, Charles Kisanga was kidnapped by the armed men in uniforms following his criticism of the Speaker of Parliament Right Honourable Jemba Nunu Kumba characterising her as "unfit" for the role and calling for her resignation.⁶⁷ In April 2023, Mr Daniel Juol Nhomngek, a young opposition member of parliament was suspended from the parliament after he publicly criticised the alleged misappropriation and mismanagement of funds by the

⁶³ Commission on Human Rights in South Sudan Report, n 24 above, para 132-135.

⁶⁴ Commission on Human Rights in South Sudan Report, n 24 above, para 136.

⁶⁵ Commission on Human Rights in South Sudan Report, n 24 above, para 137.

⁶⁶ Commission on Human Rights in South Sudan Report, n 24 above, para 136.

⁶⁷ Sudans Post 'Ex-minister kidnapped in Juba after criticising Kiir ally Nunu Kumba' 12 January 2023, <https://www.sudanspost.com/ex-minister-kidnapped-in-juba-after-criticizing-kiir-allynunu-kumba/> (accessed 5 September 2024).

parliamentary leadership, delays in paying members of parliament's benefits, and other practices that seemingly hinder MPs from effectively fulfilling their duties. His suspension was eventually lifted in August 2023. He has filed a case with the East African Community Court of Justice (EACJ) awaiting determination.⁶⁸ Moses Mabior Awikjok, a former state officer and outspoken critic of the former Director General of the Internal Security Bureau, fled to Nairobi in 2021 due to multiple threats on his life. On 4 February 2023, a joint operation involving a Kenyan police officer and a tactical team from the Anti-Police Terrorism Unit, along with a South Sudanese man in civilian clothing, reportedly entered his home and forcefully took him to Juba where he was held *incommunicado* without trial.⁶⁹

3.4. The impact of the clampdown of the freedom of expression and press freedom on the democratisation of South Sudan

Before discussing the impact of the clampdown of the freedom of expression and press freedom on the democratisation, it is very important to highlight the significance of freedom of expression and press freedom in the democratic dispensation. The close connection between press freedom and democracy is undeniable.⁷⁰ Nations that achieve balanced social development and democratic stability are those that uphold fundamental human rights, such as freedom of speech and press.⁷¹

Freedom of speech stems from the autonomy of thought and conscience, allowing individuals to form their own ideas, share them, and use them to pursue development for themselves, their families, and their communities.⁷² It has a dual nature: individually, it enables people to seek, receive, and share information of any kind by any means;

⁶⁸ The Radio Community 'MP Juol to sue South Sudan Government in East Africa court' 29 April 2023 <https://theradiocommunity.org/mp-juol-to-sue-south-sudan-government-in-east-africa-court> (accessed 5 September 2024).

⁶⁹ Amnesty International 'South Sudan: Forcefully returned critic held incommunicado' 4 February 2024 <https://www.amnesty.org.uk/urgent-actions/forcefully-returned-critic-held-incommunicado> (accessed 6 September 2024).

⁷⁰ R Dumas 'Freedom of Expression and Democracy' May (2022) <https://www.freiheit.org/latin-america/freedom-expression-and-democracy> (accessed 12 September 2024).

⁷¹ Dumas, (n 70 above).

⁷² S Repucci 'Media Freedom: A Downward Spiral' (2019) *Freedom House* <https://freedomhouse.org/report/freedom-and-media/2019/media-freedom-downward-spiral> (accessed 12 September 2024).

socially, it encompasses the population's right to access information, particularly when it pertains to the public interest.⁷³ In recent decades, both aspects have expanded significantly due to the rise of digital platforms, which have also increased the availability of public information.⁷⁴ This availability is crucial for social auditing, accountability, combating corruption, ensuring transparency in public resource management, and other key elements of effective governance that promote the common good and drive equitable human development.⁷⁵

The African Commission has delivered several significant rulings on freedom of expression, underscoring its crucial role in democracy. For example, in the case of *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe*, the African Commission affirmed that freedom of expression is a fundamental human right essential for personal development, political awareness, and participation in public affairs. Individuals cannot fully and fairly engage in society if they fear persecution by state authorities for exercising their right to free speech. For a state to genuinely commit to democracy and good governance, it must uphold, protect, and guarantee this right.⁷⁶ The EACJ has affirmed that "the principles of democracy must necessarily include respect for press freedom, as a free press is closely linked to the principles of accountability and transparency".⁷⁷

The UNHRC in its General Comment 34 which provides an authoritative interpretation of article 19 of ICCPR stated that:

The Covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output.... As a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive

⁷³ Repucci, (n 72 as above).

⁷⁴ Repucci, (n 72 as above).

⁷⁵ Repucci, (n 72 as above).

⁷⁶ *Zimbabwe Lawyers for Human Rights and Associated Newspapers of Zimbabwe v Zimbabwe*, Communication 284/03 (2009) para 92.

⁷⁷ *East African Court of Justice (EACJ) Burundi Journalists' Union v Attorney-General of the Republic of Burundi* communication 7 2015 paras 82-83.

a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media.⁷⁸

Furthermore, article 1 of the Declaration of Principles on Freedom of Expression asserts that "freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Furthermore, it is an indispensable requirement for the very existence of a democratic society." The preamble also emphasizes that "the consolidation and development of democracy depend upon the existence of freedom of expression; any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process; and guaranteeing the right to access information held by the State ensures greater transparency, accountability of governmental activities, and the strengthening of democratic institutions".

3.4.1. Censorship and self-censorship

One of the implications of the clampdown of the media space is that it results into a culture of censorship and self-censorship due to fear, threats, harassment, and intimidation of media practitioners. Newsrooms in South Sudan face a widespread, systematic, and illegal censorship regime, mainly enforced by the NSS in collaboration with other authorities.⁷⁹ Almost all newspapers are compelled to accommodate one or more SSNSS officers who scrutinize all content before it is published, issuing directives such as modifying text, removing articles, or even withdrawing entire print editions. If the story being published is against the government, then it will be censored by the security agents.⁸⁰ For example, the Media Authority suspended the *No.1 Citizen* newspaper in December 2021, allegedly in retaliation for its coverage of an armed opposition group's views.⁸¹ Furthermore, the Eye Radio was forced to publicly apologize after its Chief Editor was summoned by the Media Authority over an article based on a Twitter post in January 2022.⁸² Radio stations also face scrutiny within their studios, and the Commission received reports that discussions on human rights issues

⁷⁸ General Comment 34 n 61 above, para 20.

⁷⁹ Commission on Human Rights in South Sudan Report, n 24 above, para 88.

⁸⁰ Commission on Human Rights in South Sudan Report, n 24 above, para 89.

⁸¹ Commission on Human Rights in South Sudan Report, n 24 above, para 90.

⁸² Commission on Human Rights in South Sudan Report, n 24 above, para 90.

were abruptly halted by SSNS officers while they were being broadcast.⁸³ The repressive environment has caused some news publishers to adopt self-censorship to remain financially viable and operational.⁸⁴ Senior news editors are always aware of topics likely to face censorship, spark defamation cases and cause harassment and intimidation from the authorities.⁸⁵ This dictates their editorial decisions, including the selection of investigative priorities, story assignments, article framing, and content prominence. Media outlets relying on advertising fear losing clients who don't want to be linked with publications unpopular with the government. As a result, some media outlets and journalists have moved away from independent reporting, instead reproducing government-issued content, and focusing more on lifestyle and entertainment coverage.⁸⁶ This undermines accountability and transparency, lack of citizen's access to critical information.

3.4.2. Undermining electoral democracy

The clampdown of freedom of expression and press freedom is a big slap on the face of electoral and citizen's right to political participation. Press freedom and freedom of expression are fundamental pillars of democratic elections. A free press ensures that citizens have access to accurate, timely, and diverse information, enabling them to make informed decisions at the ballot box.⁸⁷ Freedom of expression allows for open debate and the exchange of ideas, which are essential for a healthy democratic process. Together, these freedoms empower voters to hold candidates and government officials accountable, ensure transparency in electoral processes, and foster public trust in the legitimacy of the election outcomes.⁸⁸ Without these freedoms, elections can be easily manipulated, leading to misinformation, voter suppression, and the erosion of democratic institutions.⁸⁹ Safeguarding freedom of

⁸³ Commission on Human Rights in South Sudan Report, n 24 above, para 90.

⁸⁴ Commission on Human Rights in South Sudan Report, n 24 above, para 93.

⁸⁵ Commission on Human Rights in South Sudan Report n 24 above, para 94.

⁸⁶ Commission on Human Rights in South Sudan Report, n 24 above, para 94.

⁸⁷ United Nations Educational, Scientific and Cultural Organisation (UNESCO) 'Media and Elections' (2021) <https://www.unesco.org/en/freedom-expression-rule-law/media-elections> (accessed 10 September 2024).

⁸⁸ McGonagle and others 'Elections and media in digital times' (2019) 40 UNESCO <http://en.unesco.org/open-access/terms-use-ccbysa-en> (accessed 11 September 2024).

⁸⁹ McGonagle and others, n 88 above, 40.

expression and access to information is crucial for democracy because the information will be accurate, widely available, and accessible enabling a credible, free and fair elections.⁹⁰ The international human rights instruments emphasise about a free press and freedom of expression as catalysts for a transparent and credible elections. For example, article 19(2) of ICCPR and article 19 of Universal Declaration emphasises the connection between freedom of expression, access to information, and media freedom, demonstrating the interdependence of human rights.⁹¹ Freedom of expression is closely tied to the right to access information and media freedom, and it also facilitates other rights, such as the right to political participation. For effective political participation, the electorate must have avenues to express opinions and engage in debates about the democratic process.⁹² An independent and impartial media plays a vital role in ensuring this by serving as a platform for campaigns and as a watchdog on the electoral process, promoting transparency and accountability.⁹³ UNHRC in its General Comment 34 emphasises that the free exchange of information and ideas on public and political matters among citizens, candidates, and elected officials is crucial.⁹⁴ This necessitates a free press and media that can comment on such issues without censorship, ensuring that public opinion is informed. Similarly, in General Comment 25, the Committee further highlighted that to fully enjoy the rights under article 25, freedom of expression, peaceful assembly, and political participation must be respected.⁹⁵ It stressed that voters must be able to form opinions and vote without coercion or manipulation, and any restrictions on campaign spending should aim to maintain fairness in the democratic process.⁹⁶

Furthermore, article 9 of the African Charter on Human and Peoples' Rights reinforces the right to receive information and express opinions within the law. The Guidelines on Access to Information and Elections in Africa are also part of the frameworks that

⁹⁰ McGonagle and others, n 88 above, 41.

⁹¹ MA Simiyu 'Freedom of expression and African elections: Mitigating the insidious effect of emerging approaches to addressing the false news threat' (2022) 84 *African Human Rights Law Journal* 76-107.

⁹² Simiyu, n 145 above. T McGonagle & Y Donders (eds) *The United Nations and freedom of expression and information* (2015) 1 *Cambridge University Press*.

⁹³ Simiyu, n 145 above. Human Rights Committee General Comment 25 'The right to participate in public affairs, voting rights and the right of equal access to public service' paras 11 & 12.

⁹⁴ General Comment 34, n 61 above, para 13.

⁹⁵ Human Rights Committee General Comment 25 (57) on article 40 paragraph 4 of the ICCPR para 25.

⁹⁶ General Comment 25, n 95 above, para 19.

emphasis on the importance of free press and freedom of expression. The guidelines were created to promote access to information during the electoral cycle in Africa. They advise states on the proactive disclosure of information during elections to ensure free, fair, and transparent processes. This principle of proactive disclosure encourages public interest information holders to provide such information without being asked, thus promoting transparency and accountability in governance.

The Guidelines also stress the need for access to accurate, credible, and reliable information throughout the electoral cycle. This ensures that African democracies have an informed electorate capable of exercising their right to vote, which is crucial for free, fair, and credible elections. The Guidelines are aimed at key electoral stakeholders, including election management bodies, political parties, law enforcement, election observers, the media, and civil society. Media and internet regulatory bodies are required to implement regulations that guarantee fair and balanced coverage of the electoral process, ensuring transparency in political advertising both online and offline.

3.4.3. The chilling effect on Civil Society and public discourse

According to the NGO Act, 2016:

Civil Society means a non-governmental and a non-profit Organisation that has presence in the public life, expressing the interests and values of their members or others, based on ethical, cultural, scientific, religious or philanthropic consideration.⁹⁷

However, section 7 is overly narrow and does not adequately encompass advocacy organisations as well as restricting the definition of a CSO to only an organisation.⁹⁸ The Transitional Constitution guarantees the right of assembly and association.⁹⁹

However, despite the constitutional guarantees and protection, the civil society space has been shrinking over the years since the conflict started in 2013. The conflict started when President Kiir dismissed his deputy, Dr Machar in 2013, leading to the

⁹⁷ Non-Governmental Organisations Act of 2016 sec 5.

⁹⁸ NGOs Act n 97 above, sec 7.

⁹⁹ Transitional Constitution of South Sudan of 2011 (as amended), article 25 (1) which states that "The right to peaceful assembly is recognised and guaranteed; every person shall have the right to freedom of association with others, including the right to form or join political parties, associations and trade or professional unions for the protection of his or her interests".

outbreak of civil war in December.¹⁰⁰ The conflict, driven by ethnic violence and political rivalry, saw the SPLA splinter along ethnic lines, causing widespread brutality, food shortages, and the deaths of nearly 400,000 people.¹⁰¹ The war fractured the SPLM into three factions, deepening divisions. International pressure, including from the African Union, led to the signing of the 2015 peace agreement (ARCSS), which aimed to integrate forces and adopt a permanent constitution, but implementation faltered.¹⁰² Renewed clashes in 2016 marked the war's second phase, with mass atrocities, corruption, and human rights abuses committed by both government and opposition forces.¹⁰³ In 2018, the Revitalized Agreement (R-ARCSS) was signed, focusing on power sharing, state boundaries, and constitutional reform.¹⁰⁴ However, the parties have failed to implement the agreement leading to unpopular extension of the lifespan of the Unity Government for the third time in 6 years.¹⁰⁵

Civil society activists are frequently harassed and detained for reporting or advocating on issues that state authorities consider to be against their interests.¹⁰⁶ The stifling of free expression and press freedom is a significant contributor to the choking of civil society and public discourse in South Sudan. Civil society organisations, activists and human rights defenders frequently use media to inform public opinion on critical social issues, lobby for policy changes and contest government decisions. However, in a context where dissenting can be responded with intimidation and violence, the actors of civil society frequently self-censor themselves or live under threats. The absence of a public sphere or space for free association has become one of the key

¹⁰⁰ Human Rights Watch 'South Sudan at a cross-roads: Challenges and hopes 10 years after independence' (2021) <https://www.hrw.org/news/2021/07/09/south-sudan-crossroads> (accessed 5 October 2024).

¹⁰¹ United States Holocaust Memorial Museum 'South Sudan: Ethnic conflict and civil war' (2018) <https://www.ushmm.org/genocide-prevention/countries/south-sudan/case-study> (accessed 5 October 2024).

¹⁰² United States Holocaust Memorial Museum, (n 100 as above).

¹⁰³ United States Holocaust Memorial Museum, (n 100 as above).

¹⁰⁴ United States Holocaust Memorial Museum, (n 100 as above).

¹⁰⁵ Anadolu News Agency 'South Sudan extends transitional government by 2 years, pushing election to 2026' (2024) <https://www.aa.com.tr/en/africa/south-sudan-extends-transitional-government-by-2-years-pushing-election-to-2026/3329855#> (accessed 5 October 2024).

¹⁰⁶ <https://www.icnl.org/resources/civic-freedom-monitor/south-sudan> 9 April 2021 (accessed 12 September 2024).

reasons why vibrant civil society remains weak in South Sudan. Dialogue is practically non-existent in the public forums minus a handful of brave citizens who make it their life duty to stay woke. When there is no open discussion, alternative standpoints are never allowed to surface.¹⁰⁷

3.5. Conclusion

The challenges faced by journalists, media outlets, and the government critiques in South Sudan demonstrate the country's restrictive measures on freedom of expression and press freedom. Despite the constitutional protection and international obligations, the government critiques are normally subjected to the threat of violence, harassment, physical danger, and fake prosecution charges. This chapter clearly highlighted clear examples arbitrary arrest and killing of journalists, government censorship, cyberattacks on independent outlets, and the misuse of defamation laws to silence critics. Additionally, the state's control over media accreditation and licensing exacerbates the suppression of media space, with serious implications on citizens' right of access to information and the entire democratic process. The continued crackdown on free speech undermines democratic progress by encouraging a climate of censorship, diminishing accountability, and restricting citizens' access to essential information. Furthermore, it constitutes a direct assault on the electoral democratic culture because transparent elections and political participation cannot occur without free press.

¹⁰⁷ Transparency International 'CPI 2023 for Sub-Saharan Africa: Impunity for corrupt officials, restricted civic space & limited access to justice' January 2024 <https://www.transparency.org/en/news/cpi-2023-sub-saharan-africa-corruption-impunity-civic-space-access-justice> (accessed 5 September 2024).

CHAPTER FOUR

4. SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

4.1. Introduction

This chapter has three objectives, namely, general conclusion based on each chapter, the summary of findings the research has discovered and recommendations that can be adopted by South Sudan in enhancing a free press that allows citizen's access to information, free expression of opinions which are basic tenets of democracy.

4.2. Summary of findings and conclusion

Having carried out research on freedom of expression and press freedom and democratisation in South Sudan, the following findings are made:

This research has comprehensively explored the critical issue of press freedom and freedom of expression in South Sudan, highlighting their importance in promoting democracy and human rights. Across the chapters, the study has analysed South Sudan's legal framework, policy regulations, the challenges faced by journalists, and the media's role in democratic governance. The research findings have also proven the hypotheses, objectives and questions in the following ways;

The research examined South Sudan's legal, policy, and institutional frameworks on freedom expression and press freedom; and has discovered that there is an institutional interference in the media space and freedom of expression. Furthermore, the research appreciated the establishment of media laws which includes the Media Authority Act (2013), the Broadcasting Corporation Act (2013), and the Right of Access to Information Act (2014) which offer some opportunities for promoting press freedom and access to information. However, the research has discovered that these legislative frameworks stand in sharp contrast to the Penal Code Act 2008 and the National Security Act 2014 which restrict the media's ability to operate freely and criminalises defamation and libel. Despite the presence of these laws, there are clear gaps and flaws that need to be aligned with the international human rights standards particularly the provisions on criminalisation of defamation and limitation clauses.

The research also examined the challenges encountered by journalists, media outlets, civil society organisations, human rights defenders and individuals who critique the

government policies and actions in South Sudan. The research discovered that despite constitutional protections and guarantees, government actions such as arbitrary arrests, harassments, intimidations, unnecessary bureaucracies, censorship, and defamation laws continue to limit these freedoms.

The research further examined the importance of media in the democratic dispensation and assessed the impact of the clampdown of freedom of expression and press freedom on the democratisation. The study revealed media freedom and freedom of expression are key pillars of a democracy. Finally, the research discovered that the restrictive media environment not only impedes democratic participation but also hinders the flow of information necessary for transparency and accountability in governance.

4.3. Recommendations

Based on the findings in the general study discovered by this research, the following specific recommendations are made:

- (a) Review and repeal legislation that conflict with the right to freedom of expression, particularly the following:
 - (i) Repeal and align Section 5 with Section 28 of the Media Authority Act.
 - (ii) Amend the National Security Service Act to ensure that the powers given to the SSNSS concerning surveillance, arrest without warrant and arbitrary detention are in accordance with the Transitional Constitution of South Sudan and relevant international, regional, and national human rights standards.
- (b) Accede to all the key international human rights treaties and put in place proper reporting mechanisms to conduct periodic reports. The government of South Sudan has a culture of not ratifying human rights treaties and submitting instruments of ratification. Even the few they have adopted; they don't abide by the obligations created by those treaties neither do they conduct periodic reports.
- (c) Ensure that any restrictions on freedom of expression are limited to exceptional circumstances, grounded in law, and meet the criteria of necessity and proportionality.
- (d) The Government of South Sudan should decriminalise defamation, treating it as a civil matter, which provides sufficient protection.

- (e) Defamation is treated as a civil offense, with complaints first handled by the Press and Broadcast Complaints Council under section 28(4) of the Media Authority Act of 2013. However, the practice is that these cases are presided over by the criminal courts contrary to the law. Therefore, this research recommends that they fully support and fund the Press and Broadcast Complaints Council so that it adjudicates the defamation suits against journalists. The body was set up in 2016 but it is rendered dysfunctional due to challenges of funding, lack of political will to expediate its operation and political interference from the executive especially the security agencies.
- (f) The government must ensure that media outlets can operate independently and freely without interference from state authorities. Accreditation processes should be transparent, and no undue influence should be exerted on media content.
- (g) The Civil society and the media should be supported and protected to foster a free, open, and vibrant public sphere, where citizens can engage in discussions, voice dissenting opinions, and hold the government accountable without fear of persecution.
- (h) The government must ensure accountability by conducting timely and comprehensive investigations into all violations of freedom of expression, particularly those targeting journalists and civil society members, and prosecute the alleged offenders. Specifically:
- i. Ensure that victims have access to effective remedies;
 - ii. Ensure that individuals detained for exercising their legitimate right to freedom of expression are either immediately released or, where necessary, brought before a competent judicial authority without further delay.
 - iii. Finally, his research recommends for the judicial reforms to enhance an independent, transparent, and efficient judiciary that protects democratic system, ensuring that laws are upheld fairly and that all citizens have access to justice.

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