



ARTICLE 19 Individual Submission to the Universal Periodic Review of South Sudan

**For consideration at the 26th session of the UPR Working Group
to be held from October/November 2016**

Executive summary

1. ARTICLE 19 welcomes the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of South Sudan. This submission focuses on its compliance with obligations under international human rights law to protect and promote the right to freedom of expression and information, with a focus on the legal framework and impunity for attacks on journalists.
2. During the first UPR cycle, the delegation of South Sudan only noted two recommendations on freedom of expression:
 - Draft their Constitution in an inclusive process with the participation of civil society, women and minorities. Also, ensure that the new Constitution includes a catalogue of human rights, in particular the freedom of speech and assembly, and take the multi-ethnic and multi-religious background of their population into account (Austria)
 - Respect the rights to freedom of expression, association and assembly by allowing human rights defenders, political dissidents and journalists to express their views freely in line with international human rights law (United Kingdom)
3. ARTICLE 19 observes that little progress has been made to protect freedom of expression in South Sudan. Authorities, especially the National Security Service (NSS) continue to harass, intimidate, and arbitrarily detain journalists. As a result, freedom of expression has been increasingly eroded in South Sudan since independence in 2011, a situation which escalated following the outbreak of internal armed conflict in mid-December 2013.
4. We welcome that South Sudan is among the five countries that are implementing the UN Action Plan on Safety of Journalists and the Issue of Impunity following the approval of the same by the UN General Assembly in 2012¹. The implementation of the UN Action Plan includes building capacity and identifying and implementing mechanisms that can provide safety and protection to journalists and media workers in countries marked by conflict and organised violence. Country interventions envisaged under the UN Plan of Action include the development of a national approach and related strategic interventions to safety and legal protection.
5. Journalists working in South Sudan continue to face threats and attacks and credible investigations are rarely carried out to hold perpetrators accountable. Accordingly, freedom of expression in South Sudan is facing one of its most dangerous periods in the country's short history. The existing media related laws have not improved matters and state agencies, especially security agencies regularly violate journalists' rights, on the pretext of national security.

Impunity for attacks against journalists

¹http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/import/ReviewReportUNPlan_of_Action_on_Safety_of_Journalist_Fin.pdf

6. In an increasingly fearful atmosphere, many journalists and human rights defenders have resorted to self-censorship, carefully crafting articles and statements to avoid antagonising the government and opting out of public appearances or television and radio interviews
7. The last four years have witnessed numerous incidents of human rights violations against journalists, including but not limited to, arbitrary detention and unlawful surveillance, physical and psychological attacks and intimidation, and forced closure of media houses. Impunity is endemic: investigations are ineffective or lack independence and perpetrators are not held to account.
8. Of particular note are the following cases:
 - Little progress appears to have been made in the case of journalist and critic of the government, Diing Chan Awuol, who was shot dead on his doorstep in 2012.
 - Those who shot Peter Julius Moi, a reporter for business weekly *The Corporate* and independent bi-monthly *New Nation*, on 19 August 2015, remain free.
 - The murder of Pow James Raeth, a journalist for *Radio Tamazuj* who was shot in the South Sudanese city of Akobo on 20 May 2015 remains unsolved.
 - On 25 January 2015 five journalists (Musa Mohamed, director of the state-run radio station *Raja FM*; Adam Juma, presenter and reporter for *Raja FM*; *Raja FM* reporters Dalia Marko and Randa George; and Boutros Martin, camera operator for the Western Bahr el Ghazal branch of South Sudan Television) were killed when unidentified gunmen ambushed an official convoy in South Sudan's Western Bahr al Ghazal state. The perpetrators are unknown.
9. Further deepening a climate of fear, the National Security Service (NSS) has harassed, intimidated, and arbitrarily detained journalists:
 - On 28 December 2015, Joseph Afandi, a journalist with the Juba-based daily newspaper *Al-Tabeer*, was held incommunicado by the NSS for more than six weeks. He was arrested and detained without access to his family or lawyer after he wrote an article criticising the ruling Sudan People's Liberation Movement and the government's response to the internal conflict. He was released on 19 February 2016 without charge.
 - Innocent Ngbati, a journalist working for government-owned *Yambio FM* was beaten on 22 January 2016 allegedly by security officers as while taking photos and talking to eye-witnesses at the scene where a police commissioner had been shot dead. They alleged Ngbati was one of the people who had shot the commissioner.
 - Silvestro Ruati was working for the Catholic Radio Network, Anisa FM in Yambio region when he was arrested and detained on 23 January 2016 by the NSS. He was released three days later without charge.
10. The government has arbitrarily closed down media outlets:
 - *Al-Taabir Arabic* daily newspaper has remained closed since 28 December 2015. Editor, Waziri Michael was summoned by NSS officers who complained about an article which criticised the SPLM Government. He was later forced to resign to apologise. Previously, his passport had been confiscated and his bank account frozen.
 - The government raided and closed *Bakhita Radio* in August 2014 but then allowed it to reopen a month later on the condition that it not air political programmes.
 - *Almajhar Alsayasy*, Arabic language newspaper, was shut down in March 2014, as a result of covering matters related to the internal armed conflict and interviewing politicians critical of the government. The editor-in-chief wrote letters of complaint to the NSS and the Ministry of Information and Broadcasting citing constitutional protections of freedom of expression, but received no response.
 - Another newspaper, *Juba Monitor*, has had various issues held temporarily or confiscated by the NSS

11. ARTICLE 19 notes that South Sudan has not responded to the Director General of UNESCO's request for information on the judicial follow up of killed journalists, hindering implementation of the UN's Action Plan on Safety of Journalists.

Weak legal framework for freedom of expression

12. South Sudan has not ratified core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), depriving all people in South Sudan of its specific protections for the right to freedom of expression. The country also has not issued a standing invitation to the special procedures of the UN Human Rights Council.

13. The right to freedom of expression is protected under South Sudan's 2011 transitional Constitution. Article 24(1) provides that '[e]very 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'.

14. The government of South Sudan has initiated processes to create a legal environment and regulatory framework supportive of freedom of expression. On 9 September 2014, President Salva Kiir signed into law the Media Authority Bill, the Right of Access to Information Bill and Broadcasting Corporation Bill. Enactment of these laws was a step in the right direction for media freedoms in South Sudan. Nevertheless, ARTICLE 19 remains concerned over their implementation, and considers that provisions within these laws still are not in conformity with international human rights law.

15. **The Broadcasting Corporation Act** envisages the creation of a national public service broadcaster, the South Sudan Broadcasting Corporation (SSBC). We are concerned that the process for appointing and dismissing members of the Board of Directors of SSBC lies with the executive branch, which allows for inappropriate influence over the SSBC by the government. A strong guarantee of independence from the executive branch is one of the key pillars of a democratic public service broadcasting law. With this pillar now taken away, it is very questionable whether the SSBC will be able to truly deliver on its otherwise well-defined mandate to serve the public, rather than the government.

16. ARTICLE 19 recommends that the Broadcasting Corporation Act is reviewed for its compliance with international standards. In addition:

- The Broadcasting Corporation Bill should expressly guarantee SSBC's independence from the executive and should prohibit all attempts to influence the members or staff of SSBC in the discharge of their duties, or to interfere with the activities of SSBC, except as specifically provided for by law.
- Members of the Board of SSBC should not be selected and dismissed by the President, but by a two-thirds majority vote of the National Legislative Assembly. Any role for the President should be purely ceremonial.
- The nominations process should be open and the selection should be made through public hearings, after the public has been given an opportunity to comment.
- Persons who are employed in the civil service or any other branch of government should be ineligible for appointment to the Board.
- Consideration should be given to extending the term of Board members to six years.
- The Managing Director of SSBC should be selected by the Board with no involvement of the government.
- A Board member who is removed should be guaranteed the right to appeal this decision in court.
- The annual report drawn up by the Board should be addressed exclusively to the National Legislative Assembly and the public.

- SSBC should be able to apply directly to the National Legislative Assembly for funding, rather than through the Minister of Information and Broadcasting.
 - The remuneration of Board members should be set by the National Legislative Assembly rather than the Council of Ministers.
17. ARTICLE 19 believes that the **Media Authority law** requires several improvements in order to create a safe legal environment for the media. In particular, the media regulatory body (Media Authority), created by enactment of the law, should have precisely circumscribed powers, be independent from government, and take measures prescribed by law. Legal remedy should be secured against all decisions of the authority.
18. In view of the international standards, ARTICLE 19 points out that the Media Authority will not be independent from the government for a number of reasons.
- Its members would be appointed by the joint action of the Minister for Information and Broadcasting, the Council of Ministers, and the President, and can be removed by the President, on the recommendation of the Minister. ARTICLE 19 notes that although apparently more participants contribute to the process, all are from parts of the government.
 - The Media Authority budget shall depend on government approval and it may accept grants from the government, thereby opening a door for undue influence.
 - The law gives the Ministry and governmental entities the right to initiate legal procedures by the Media Authority, which invites politically motivated procedures against media providers, and means an interference with the Media Authority's independence.
19. ARTICLE 19 is deeply concerned by the Media Authority's power in the field of content regulation. We suggest that certain powers should be limited:
- The Media Authority should not participate in defining content rules.
 - Investigative rights should only extend to holding meetings and requesting documents.
 - Its powers should not extend to the printed press in any way.
 - The role of the committees of the Media Authority should be defined without ambiguity, and pay respect to the principles governing the consistency of a media supervisory body: transparency, accountability, and independence.
 - The Media Authority or its committees should only act on the basis of laws rather than on codes of ethics and guidelines, which are tools of the self-regulation regime.
 - The powers of the Media Authority in respect of enforcement rules should be defined with more precision including in which cases the Media Authority may bring an action before court, and in which cases it may start an administrative procedure itself. The two sets of cases should not overlap
 - In case an independent appeals body is created, it should be independent from the government on the one hand, and from those who pass the first instance decisions on the other.
 - All administrative decisions, even second instance decisions, should be allowed to have a full court review, without restrictions on the grounds of the review or the tools of evidence.
 - A limit on fines should be laid down in law, rather than a decision by any authority.
 - Industry stakeholders should be excluded from giving grants or donations to the Authority.
 - The budget of the Authority should be approved by the National Assembly rather than the government as should be the case with other budget parts of the central administration in South Sudan.
20. South Sudan's Right to **Access Information law** positively enshrines a number of progressive principles. This includes the duty to disclose information from bodies stemming not from their public ownership but from their public functions, the right to seek information from private bodies, a clear and simple procedure for accessing information, a comprehensive proactive disclosure regime, public accountability for information officers, the protection of whistleblowers and the creation of criminal offences to reinforce the right of access to information. However, several areas of concern remain and ARTICLE 19 recommends the following changes:

- Everyone, not just citizens of South Sudan, should be entitled to access information under the law.
- Fees for provision of information should be limited to the reasonable reproduction costs of providing the information.
- The legitimate grounds for refusing disclosure of information should only be invoked where disclosure of the information poses an actual risk of substantial harm to that interest, subject to the public interest override.
- The right of all individuals to access information held by public and private bodies about themselves, and the right to correct that information, should be included in the amendment Bill.
- The nominations and selection of the Information Commissioner should be made by a cross-party parliamentary committee, and should not involve the President or the Ministry. Civil society and other representatives of the general public should be given the power and opportunity to nominate individuals to the post of Information Commissioner.
- Removal of the Information Commissioner from office should only be premised on serious violations of the constitution, gross misconduct, physical or mental incapacity to perform the functions of office, incompetence or bankruptcy. The Assembly must initiate and oversee any removal process.

Recommendations

21. In light of these concerns, ARTICLE 19 calls upon Member States to put forward clear and strong recommendations to the government of South Sudan to:
 - i. Ratify all major international human rights treaties, including the International Covenant on Civil and Political Rights;
 - ii. Extend a standing invitation to the UN Special Rapporteur on the promotion and protection of the right to freedom of expression to visit the country to allow for an independent review of their freedom of expression record and to assist in guiding the reform process;
 - iii. Prevent and protect against murders, violence, and other attacks against journalists and media workers;
 - iv. End impunity by ensuring impartial, speedy and effective investigations, to bring perpetrators to justice, and to ensure that victims and their families have access to appropriate remedies, and respond to the Director General of UNESCO's request for information on judicial follow-up in this regard;
 - v. Cease the harassment, intimidation, and arbitrary detention of journalists and media workers, including through abuse of the legal framework and extrajudicial action of the NSS, and release all those currently in custody;
 - vi. Ensure the full and effective participation of all stakeholders, including independent media and civil society, in legislative processes, in particular those that would impact on freedom of expression, including the safety of journalists and human rights defenders, or the enabling environment for civil society;
 - vii. Ensure the full and effective implementation of the Access to Information law, including by enhancing information collection and management by authorities, addressing the culture of secrecy and fear of reprisals for information disclosures, and undertaking extensive national public education;
 - viii. Ensure the Media Authority as recently formed, is fully resourced and free from interference by any political, economic or social entity.