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REPORT ON THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION IN SOUTH SUDAN SINCE THE JULY 2016 CRISIS



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Glossary

ARCSS	Agreement on the Resolution of the Conflict in South Sudan
AMDISS	Association for Media Development in South Sudan
AMWISS	Association of Media Women in South Sudan
ARCSS	Agreement on the Resolution of the Conflict in South Sudan
HCSS	Hybrid Court for South Sudan
HRD	Human Rights Division
IDP	Internally Displaced Person
IGAD	Intergovernmental Authority on Development
MDI	Media Development Institute
NEF	National Editors' Forum
NGO	Non-Governmental Organization
NSS	National Security Service
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
POC	Protection of Civilians
SGBV	Sexual and Gender-Based Violence
SPLA	Sudan People's Liberation Army
SPLA in Opposition	Sudan People's Liberation Army in Opposition
SSBC	South Sudan Broadcasting Corporation
SSNPS	South Sudan National Police Service
SSNCA	South Sudan National Communication Authority
TCSS	Transitional Constitution of the Republic of South Sudan
TGoNU	Transitional Government of National Unity
UJOSS	Union of Journalists of South Sudan
UNHCR	United Nations High Commissioner for Refugees
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNMISS	United Nations Mission in South Sudan
UPR	Universal Periodic Review

Republic of South Sudan



1. Executive summary

“You have to think if the stories you cover are worth your life. Anything can happen to you, especially when you are on the street and no one will find out because things are not carefully documented here”

Account of a National Security Service officer talking to a reporter, Greater Equatoria region, April 2017

“You go to the extreme. Stick to the rules and ethics and we’ll have no problem with you. Tell us the beauty about this country. It cannot be all ‘bad bad’. Otherwise we will look at you as someone with a hidden agenda”

Public official addressing a forum of journalists, Juba, December 2017

This report is jointly released by the Human Rights Division (HRD) of the United Nations Mission in South Sudan (UNMISS) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) and focuses on the right to freedom of opinion and expression in South Sudan. It covers the period from July 2016¹ to December 2017 and presents information gathered by HRD on progress and challenges faced by individuals to freely form, hold and express their opinions and views on a wide range of issues, including the political and security situation, peace negotiations, and other developments affecting the country.

Protracted conflict and the dire humanitarian and economic situation have prompted the Transitional Government of National Unity of South Sudan to pursue peace and national reconciliation through the revitalization of the Agreement on the Resolution of the Conflict in South Sudan (ARCSS) and the launch of the National Dialogue. For such initiatives to succeed in bringing peace, stability and prosperity to the world’s youngest country, it is imperative to create and expand the space for the exercise of public freedoms, such as freedom of opinion and expression, including to communicate dissenting views. By encouraging civic participation and political engagement, the Government of South Sudan will contribute to the strengthening of democracy, genuine reconciliation and sustainable peace in the country.

From July 2016 to December 2017, HRD received 99 allegations of incidents² involving violations of the legitimate exercise of the right to freedom of expression. HRD was able to verify 60 of these allegations, affecting at least 102 victims³, including 17 women. HRD was able to verify allegations of violations that

¹ Violations of freedom of opinion and expression which occurred between 8 and 12 July 2016 during and in the aftermath of the fighting between the Sudan People’s Liberation Army (SPLA) and the SPLA in Opposition in Juba are not included in this report as they were documented in the UNMISS/OHCHR *report on violations and abuses of international human rights law and violations of international humanitarian law in the context of the fighting in Juba, South Sudan, in July 2016* (January 2017).

² This report uses the term ‘incident’ to refer to one or several human rights violations or abuses committed by one or several perpetrators against one or several victims.

³ This report uses the term ‘victim(s)’ to refer to a person (or group of persons) having suffered some type of harm (e.g. physical, emotional, material) as a direct result of a human rights incident, involving at least one human rights violation. The overall number of victims presented in this report excludes individuals such as family members of a victim or other concerned persons who are indirectly affected by a human rights incident. Also, the number of victims does not include institutions that have been subjected to undue restrictions of freedom of expression, such as media houses. However, violations of freedom of expression perpetrated against institutions have been counted in the number of incidents. It is to be noted that, depending on the circumstances of each case documented in this report, individual incidents may have involved multiple victims.

took place in Government-controlled areas, however, insecurity and access restrictions limited the ability to verify incidents that occurred in opposition areas.

Freedom of expression constitutes a necessary condition for the realization of other rights, and cases documented in this report also led to undue restrictions to the rights to work, assemble peacefully, or move freely, among others. The 60 confirmed incidents documented by HRD included the killing of at least two individuals; the arbitrary arrest and detention of 58 people (including five women); the dismissal from their workplace of 16 individuals, and several acts of intimidation, harassment, and other forms of violence which violate the State's obligations under domestic and international human rights law. Also, at least nine media institutions were subjected to restrictions, with three media houses⁴ closed or suspended, four websites blocked, and at least eight articles censored from two newspapers.

Restrictions targeted individuals or entities, such as media houses or associations, whose opinions or work were perceived as critical of the Government, tarnishing the reputation of the country, or addressing issues considered sensitive. Topics that triggered restrictions included information on the political climate, criticism of the Government for alleged corruption, civilian casualties, conflict-related sexual violence, unemployment or political ineffectiveness. These restrictions and other measures limiting freedom of expression have a chilling effect on individuals and organizations, and led to increasing self-censorship due to safety concerns. This has resulted in further shrinking the space for debate and dissent.

Throughout the period under review, inflammatory language and hate speech, both online and offline, continued to target individuals and communities based on their ethnicity, perceived beliefs or political views. Through various forms of communication, including social media exchanges, SMS messages, images, cartoons and threatening letters, hate speech, sometimes marked with xenophobic rhetoric, has fueled a climate of mistrust, fear and violence among different ethnic groups. Although under human rights law, incitement to hatred may justify the exceptional use of restrictions on freedom of expression, in South Sudan, exceptional measures often failed to comply with international standards of legality, necessity and proportionality. Government institutions and actors have often invoked 'hate speech' as the basis for imposing restrictions, such as censorship of newspaper articles that were critical of the Government and did not meet the threshold of incitement to violence, hostility or discrimination.

Undue restrictions documented by HRD were imposed by State institutions, both at national and local levels. Government security forces, such as the National Security Service (NSS), Sudan People's Liberation Army (SPLA), and the South Sudan National Police Service (SSNPS) were responsible for two-thirds of the cases verified by HRD. The NSS' broad powers of surveillance, arrest, and detention, along with their practice of being embedded inside newspapers printing establishments or monitoring conferences discussing the state of the country or human rights issues, contributed to deterring participation and resulted in growing self-censorship.

Civil authorities, including governors, State ministers, and the Media Authority, were responsible for violations in the remaining one-third of cases. For example, this report documents instances where local officials required journalists or civil society organizations to seek clearance or "advice" before conducting activities or broadcasting, which generally led to censorship and hindered the public's right to information.

⁴ This report uses the term 'media house' to refer to public and private entities that disseminate information to the public through various means of communication. They include radio, television, newspapers and magazines.

Through its monitoring, HRD also observed that authorities in South Sudan have limited awareness about their roles and responsibilities in protecting and promoting freedom of expression.

Many victims told HRD they had not lodged formal complaints in connection with violations due to fear of reprisals (as many violations were allegedly perpetrated by prominent figures and powerful institutions) or due to lack of trust in the justice system. When complaints were filed, they seldom led to prosecutions or disciplinary sanctions against the perpetrator. Consequently, impunity persists for violations of, and unlawful restrictions on freedom of expression.

The ability of HRD to monitor and verify alleged violations was limited due to insecurity and the denial of access by authorities to locations and institutions where human rights violations and abuses had reportedly occurred. Thus, the incidents documented in this report may only reflect a portion of violations of freedom of expression actually committed.

The report highlights the urgent need for a review of the domestic legal framework pertaining to freedom of expression. While the Transitional Constitution of the Republic of South Sudan (2011) guarantees the right to freedom of expression, the legal framework inhibits its exercise, for example through the criminalization of defamation and the NSS' sweeping powers of arrest and detention, which have been used against journalists and other individuals for exercising their legitimate right to freedom of expression.

The report highlights some efforts undertaken by the Government, civil society and other stakeholders to promote an inclusive, enabling environment for the exercise of freedom of expression and democratic dialogue. This includes the release of several political activists and journalists who had been arbitrarily held in Government custody; the provision of educational opportunities to strengthen national capacities for responsible journalism; and training of State authorities on permissible restrictions to the exercise of freedom of expression.

The report makes recommendations to the Government and other relevant stakeholders to foster a safe, inclusive and conducive environment for the exercise of freedom of expression, and to ensure accountability for violations of the right to freedom of expression. The recommendations outline legal, institutional and policy reforms which should be adopted and implemented sufficiently swiftly to instill trust among all people in South Sudan - regardless of their gender, ethnicity or other factor - to voice opinions (including dissenting ones) in connection with political, economic and social developments, not least in the context of the ongoing reconciliation processes.

2. Methodology

The information contained in this report is based on human rights monitoring conducted by HRD between July 2016 and December 2017 across the country.⁵ HRD carried out interviews with a wide range of sources, including victims and witnesses of incidents, Government officials, local non-governmental organizations (NGOs), South Sudanese and international journalists,⁶ human rights defenders,⁷ civil society

⁵ The UNMISS Human Rights Division is present in South Sudan through 10 field offices, in Aweil, Bentiu, Bor, Juba, Kuajok, Malakal, Rumbek, Torit, Wau, Yambio. It also has a sub-office in Pibor.

⁶ In its General Comment No. 34, the United Nations Human Rights Committee defines a journalist as follows: "A function shared by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere" (para. 44).

⁷ The expression describes individuals who, individually or in association with others, act to promote or protect human rights. See article 1 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders), A/RES/53/144, 8 March 1999.

actors,⁸ as well as United Nations entities operating in South Sudan. Due to insecurity and movement restrictions, access in areas outside of Government control was extremely limited.

In addition, between 20 April and 18 July 2017, HRD reached out to over 380 South Sudanese individuals (including 148 women) during 22 group consultations conducted countrywide on the state of freedom of opinion and expression.⁹ Participants included journalists, civil society activists, women's groups, IDPs, religious leaders, and youth.

In terms of violations, the report focuses on undue restrictions to the right to freedom of opinion and expression targeting mostly media and journalists, other civil society actors, as well as public officials. Various modes of communication were affected, including print and online media, as well as public speeches.

Unless specifically stated, all information included in this report has been verified using independent, credible and reliable sources, in accordance with the human rights monitoring and investigations methodology developed by OHCHR. In all its interviews and other interactions, HRD was guided by the “do no harm” principle to avoid negative repercussions on its interlocutors. Incidents have been included only when sources granted their informed consent for public reporting. In numerous cases presented in this report, identifying details were omitted for security reasons, and based on requests by HRD's sources who feared reprisals. In line with the above, and mindful of the limited number of women working in the media sector or as civil society representatives in South Sudan, the information is often provided in gender-neutral terms for protection purposes.

Given the limitations inherent in the operating environment, including the protracted conflict, insecurity, and denials of access by authorities, HRD has continued to face restrictions in its ability to monitor and verify alleged human rights violations and abuses. Therefore, HRD does not claim the information presented in this report is complete or representative of the whole country. It is presumed that incidents and trends described in the report only reflect a portion of violations committed against those exercising their right to express themselves. Nevertheless, these findings confirm concerns highlighted in previous UNMISS/OHCHR reports¹⁰ about restrictions and violations of freedom of expression.

⁸ According to OHCHR's working definition, “Civil society actors are individuals who voluntarily engage in forms of public participation and action around shared interests, purposes or values that are compatible with the goals of the United Nations”, see *“A Handbook for Civil Society: Working with the United Nations Human Rights Programme”*, p. vii.

⁹ The consultations took place in Aweil, Bentiu, Bor, Juba, Kuajok, Maban, Malakal, Renk, Rumbek, Torit, Wau and Yambio.

¹⁰ See for instance the UNMISS/OHCHR *reports on the state of human rights in the protracted conflict in South Sudan* (December 2015) and *on violations and abuses of international human rights law and violations of international humanitarian law in the context of the fighting in Juba, South Sudan, in July 2016* (January 2017); *Human Rights violations and abuses in Yei between July 2016 and January 2017* (May 2017), all available at <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/SSIIndex.aspx>. See also, Reports of the Secretary-General on South Sudan dated 10 November 2016 (S/2016/950), 16 March 2017 (S/2017/224), 15 September 2017 (S/2017/784) and 1 December 2017 (S/2017/1011).

3. Context

The outbreak of violence in Juba, in July 2016,¹¹ between forces loyal to President Salva Kiir and former First Vice-President Riek Machar, stalled the implementation of ARCSS which had been signed by warring factions a year earlier, in Addis Ababa, Ethiopia, under the auspices of the Intergovernmental Authority on Development (IGAD). Following Riek Machar's departure from South Sudan in the wake of the violence, President Kiir appointed Taban Deng Gai as First Vice-President. This appointment caused a major rift within the Sudan People's Liberation Army (SPLA) in Opposition, which split between supporters of pro-Machar and pro-Taban factions.

The fighting in Juba spread to other parts of the country, also expanding the nature of the conflict. Since July 2016, the escalation of violence between SPLA and armed opposition groups was particularly brutal in the greater Equatoria region¹² and parts of the greater Bahr el-Ghazal region.¹³ From October 2016, a sudden rise in the use of ethnically-driven rhetoric and hate speech further polarized communities and led to an intensification of violence along ethnic lines (see chapter 6). Following the split within SPLA in Opposition, shifting alliances among rebel leaders and local commanders on the ground resulted in an increased fragmentation of the opposition. Defections¹⁴ of high-profile members of the army, the cabinet and the judiciary, and of members of SPLA in Opposition took place.¹⁵ Defectors often accused the Government and the opposition of pursuing an agenda driven by personal ambitions and ethnic interests.

Over the reporting period, the armed conflict continued to take a heavy toll on civilians as violence continued unabated throughout 2017, in a climate of widespread impunity, with accountability mechanisms for abuses and violations committed by parties to the conflict either weak or non-existent.¹⁶ Since July 2016, UNMISS' concerns over the dire human rights and humanitarian situation in South Sudan have been echoed by various international officials and experts¹⁷ who visited the country. In that context, concerns were also expressed by national and international observers over the state of freedom of expression, including freedom of media. According to the 2017 World Press Freedom Index¹⁸ compiled by Reporters Without

¹¹ A detailed account of the July 2016 events is available in the UNMISS/OHCHR *report on violations and abuses of international human rights law and violations of international humanitarian law in the context of the fighting in Juba, South Sudan, in July 2016* (January 2017).

¹² The greater Equatoria region includes Central Equatoria, Western Equatoria and Eastern Equatoria.

¹³ The greater Bahr el-Ghazal region includes Northern Bahr el Ghazal, Western Bahr el Ghazal, Warrap and Lakes.

¹⁴ This included the defection to SPLA in Opposition of parliamentarians Gatwech Lam Puoch, Pasquale Clement Batali, Justin Joseph Marona, and Martin Mabil Kong, on 19 October 2016; SPLA deputy chief of staff for logistics, Lt. General Thomas Cirillo Swaka, formed a new opposition group called the National Salvation Front, on 6 March 2017; Justice Kukurlopita Marino Pitia defected to the National Salvation Front on 21 November 2017.

¹⁵ Among others, the SPLA in Opposition Governor of Unity State, Lt. General Ruai Kuol Jal Thor, resigned from his position to form a new movement called the National People's Alliance of South Sudan, on 23 November 2017.

¹⁶ Violations included extrajudicial killings; abductions and enforced disappearances; sexual and gender-based violence, including rape; forced recruitment, including of children; looting; and the massive displacement of the civilian population. Parties to the conflict often targeted civilians on the basis of ethnicity and suspected support for the other side. Among others, violations were documented in the human rights chapters of the periodic Reports of the Secretary-General on South Sudan dated 10 November 2016 (S/2016/950) and 16 March (S/2017/224), 15 September (S/2017/784) and 1 December 2017 (S/2017/1011).

¹⁷ Including the United Nations Special Adviser on the Prevention of Genocide, the Assistant Secretary-General for Human Rights, the Commission on Human Rights in South Sudan, and the Chairperson of the African Union Commission.

¹⁸ See <https://rsf.org/en/ranking/2017>. The index is compiled by evaluating various criteria, namely pluralism, media independence, media environment and self-censorship, legislative framework, transparency, and the quality of the infrastructure that supports the production of news and information. More info on <https://rsf.org/en/detailed-methodology>.

Borders, South Sudan ranked 145th out of 180 countries¹⁹ - five places lower than in 2016, and falling from 20 positions compared to 2015.

3.1 Freedom of opinion and expression and reconciliation processes

On 14 December 2016, President Kiir announced the launch of the National Dialogue as an initiative aimed at uniting the people of South Sudan and at consolidating peace and security, through a series of consultations to be held at national, regional and grassroots levels. Several civil society actors and opposition figures²⁰ expressed concerns regarding the credibility and inclusivity of the process and questioned whether the overall environment was conducive for the free expression of views.

On 22 May 2017, during the swearing-in ceremony of the Steering Committee of the National Dialogue, President Kiir announced that so-called political prisoners would be released in order to create a conducive environment for the National Dialogue process. The Government has since claimed²¹ to have released from custody at least 30 individuals who had allegedly been detained on political grounds²², as well as an unspecified number of journalists.²³ At least two journalists were released by NSS: one journalist, who had been detained since February 2017, was released in April 2017; and another was released on 25 May, after being in detention without charge since 22 August 2014. The reasons for their detention remain unknown.

From October to December 2017, sub-committees of the National Dialogue Steering Committee organized over 200 consultations in various states of South Sudan,²⁴ as well as outside the country, to reach out to South Sudanese refugees, including in Uganda and Kenya. In South Sudan, consultations have been limited to Government-controlled areas. Attendees were often reportedly encouraged to speak up without fear. Most accounts collected by UNMISS referred to open and frank discussions, with participants being given adequate time to express themselves. The presence of NSS officers was, however, recorded in at least two consultations, and might have inhibited the ability of participants to speak freely. People were reportedly able to raise grievances related to corruption and recurrently called for a cessation of hostilities and inclusive peace negotiations. In an effort to ensure transparency, the South Sudan Broadcasting Corporation (SSBC) and other national media houses covered segments of the proceedings.²⁵

¹⁹ Available at <https://rsf.org/en/ranking/2017>

²⁰ See, among others, press releases by SPLA in Opposition, dated 15 December 2016 and 22 May 2017; report of the Voluntary Civil Society Taskforce on Implementation of the Peace Agreement, dated 3 March 2017; joint statement dated 30 April 2017 of a grouping of six prominent opposition entities: SPLA in Opposition, the Sudan Peoples' Liberation Movement Leaders and Former Detainees (SPLM Leaders -FDs), the Federal Democratic Party (FDP), the National Democratic Movement (NDM), the South Sudan National Movement for Change (SSNMC), the National Salvation Front (NAS); Joint Civil Society Communiqué dated 10 May 2017; press releases by SSNMC, dated 24 May and 21 August 2017.

²¹ Challenges faced by HRD in the verification process include lack of access to NSS facilities and the absence of a list of the released individuals.

²² Announcement made on 10 August 2017 by Jalban Obaj, Director of Legal Affairs at the NSS Internal Security Bureau, on the South Sudan Broadcasting Corporation State television.

²³ See speech by Taban Deng Gai, at the seventy-second session of the United Nations General Assembly, 23 September 2017. Throughout 2017, the Association for Media Development in South Sudan (AMDISS) advocated for the release of journalists arbitrarily held in detention and for the re-opening of closed media houses to allow full participation of the media in the National Dialogue.

²⁴ Information provided to the UNMISS Political Affairs Division by the National Dialogue Secretariat, January 2018.

²⁵ Information provided to UNMISS during a meeting with South Sudan Broadcasting Corporation, December 2017.

The Technical Committee for the formation of the Commission for Truth, Reconciliation and Healing (CTRH)²⁶ also encouraged citizens to publicly express their views on reconciliation in a number of sensitization activities organized throughout the country. In particular, between June and October 2017, members of the Technical Committee conducted sensitization sessions in at least 13 locations in South Sudan²⁷ to raise awareness about the mandate of CTRH, which remains unknown to the wider population. Overall, during these events, participants were able to express their views, for instance concerns over the perceived lack of inclusivity of peace efforts, tribalism, nepotism and corruption. Citizens' recommendations included the prompt implementation of ARCSS and the imperative to address the root causes of the conflict. In at least three locations - Juba, Bentiu and Bor – internally displaced persons (IDPs) were reportedly unwilling to engage in discussions with the Technical Committee due to a perception that it was a solely Government-owned process. While these sensitization events were generally conducted in an environment that enabled stakeholders to speak up, HRD is aware of at least one instance of intimidation during one of these events.²⁸

On 21 December 2017, within the framework of the High Level Revitalization Forum,²⁹ parties to the conflict signed a cessation of hostilities agreement. This agreement explicitly calls for the protection of media and civil society and prohibits parties from engaging in “any form of hostile propaganda or hate speech, or us[ing] any media, including social media to foment ethnic or sectarian hatred.”³⁰

4. Legal framework on freedom of opinion and expression

The Government of South Sudan bears the primary responsibility to protect and promote human rights within its territory. The violations described in this report are governed by international human rights law, international humanitarian law and domestic law.

4.1 International Human Rights Law

The Universal Declaration of Human Rights upholds the right of everyone to freedom of opinion and expression, which “includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.³¹ While South Sudan has not acceded to the main international treaties that enshrine the right to freedom of expression, specifically the International Covenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination, the provisions of these instruments reflect generally-accepted State practice which has become part of customary international human rights law.³²

²⁶ The Commission for Truth, Reconciliation and Healing is one of the transitional justice mechanisms outlined in Chapter V of ARCSS.

²⁷ Aweil, Bentiu, Bor, Kuajok, Leer, Malakal, Mundri, Renk, Rumbek, Torit, Wau, Yambio and Yei.

²⁸ Namely, a member of the CTRH Technical Committee publically reprimanded a Government employee who had voiced objections over the timing for reconciliation while conflict is still ravaging the country. The speaker was told that as a public official, he could not contradict the Government. For security reasons, details are withheld.

²⁹ Based on efforts led by IGAD, the Forum aims at revitalizing the South Sudan peace process.

³⁰ Agreement on Cessation of Hostilities, Protection of Civilians and Humanitarian Access, signed in Addis Ababa on 21 December 2017, Article 4 (1).

³¹ Universal Declaration of Human Rights, Article 19.

³² In addition, in a letter dated 31 October 2013, the Republic of South Sudan deposited a “voluntary pledge” with the General Assembly, in which it expressed its intention to accede to the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, and other international human rights treaties. See letter from the Permanent Representative of South Sudan to the United Nations addressed to the President of the General Assembly, A/68/565, 13-54246 (E). While the intention to join a treaty is not legally binding, it does signal

Article 2 of the Convention against Torture places an absolute prohibition on the torture or ill-treatment of individuals – including journalists and, more generally, individuals exercising their freedom of expression. As the prohibition is non-derogable, no exceptional circumstance, including war and national security emergencies, can be invoked to justify torture or ill-treatment.³³

South Sudan is also a state party to the regional African Charter on Human and Peoples' Rights.³⁴ In addition to provisions related to the right to life and integrity of person, the prohibition on cruel and inhuman treatment, and freedom from arbitrary arrest and detention, the Charter expressly recognizes the right to receive information and the right to express and disseminate opinions within the law (Article 9).³⁵ The African Commission on Human and Peoples' Rights³⁶ has identified the following actions as implicating a violation of the African Charter: arbitrarily arresting and detaining journalists; censoring articles merely because they are critical of a government; closing media houses; and establishing prohibitive registration requirements, for example through the imposition of high registration fees on news publications.³⁷

Both the International Covenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination recognize freedom of expression as a fundamental human right.³⁸ While the right to freedom of opinion is absolute, the right to freedom of expression can, in particular circumstances, be restricted in accordance with the high threshold for restrictions established under international human rights law. Article 19 (3) of the International Covenant on Civil and Political Rights³⁹ only permits restrictions or limitations on freedom of expression, if such restrictions are provided for by law and are necessary for respect of the rights or reputations of others, or for the protection of national security or of public order,

the aim of complying with the provisions of these treaties. South Sudan acceded to several treaties mentioned in the letter, including the Convention on the Rights of the Child (23 January 2015), the Convention against Torture (30 April 2015), and the Convention on the Elimination of All Forms of Discrimination against Women (3 July 2015).

³³ Committee against Torture, General Comment No. 2: Implementation of Article 2 by States Parties, 23 November 2007.

³⁴ On 19 May 2016, South Sudan deposited an instrument of adherence in accordance with Article 63 (2) of the Charter.

³⁵ South Sudan did not object or make any reservations to Article 9 when it acceded to the Charter.

³⁶ The African Commission on Human and Peoples' Rights is a quasi-judicial body established under Article 30 of the Banjul Charter. Article 45 of the Charter empowers the Commission to interpret the Charter and to formulate and lay down principles and rules relating to rights contained in the Charter.

³⁷ *Media Rights Agenda and Others v. Nigeria*, African Commission on Human and Peoples' Rights, Comm. Nos. 105/93, 128/94, 130/94 and 152/96 (1998).

³⁸ Article 19 (2) of the International Covenant on Civil and Political Rights provides that: "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."

³⁹ The United Nations Human Rights Committee, which is mandated to interpret the International Covenant on Civil and Political Rights, has specifically stated that any law seeking to implement the provisions of Article 19 (3) must not overstep the permitted restrictions on freedom allowed in Article 19 (3). See Human Rights Committee, General Comment No. 11: Prohibition of propaganda for war and inciting national or religious hatred (Art. 20), 29 July 1983.

health, morals.⁴⁰ International standards recognize that some expression is “protected” and cannot be curtailed.⁴¹

States have an affirmative responsibility⁴² to limit expression in circumstances involving “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”.⁴³ Similarly, the Convention on the Elimination of Racial Discrimination requires States parties to make unlawful all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin.⁴⁴

4.2 International Humanitarian Law

The parties to South Sudan’s non-international armed conflict are bound by international humanitarian law as codified in the four Geneva Conventions (1949) and their three additional protocols. South Sudan acceded to these treaties in 2013⁴⁵ and is also bound by customary international humanitarian law.⁴⁶ Under international humanitarian law, journalists as well as other civilians are protected. As such, failing to take

⁴⁰ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information elaborate on the use of national security to curtail speech. The Principles were adopted on 1 October 1995 by a group of experts in international law, national security, and human rights convened by ARTICLE 19, the International Centre Against Censorship, in collaboration with the Centre for Applied Legal Studies of the University of the Witwatersrand, in Johannesburg. The Principles have been endorsed by the United Nations Special Rapporteur on Freedom of Opinion and Expression, and have regularly been referred to by the United Nations Commission on Human Rights and its successor, the Human Rights Council, in their annual resolutions on freedom of expression, since 1996. According to the Principles, national security should exclusively be used to restrict expression when that expression incites violence and there is a direct and immediate connection between the expression and the likelihood of violence. *See also Arslan v Turkey*, 8 July 1999, Application No. 23462/94 (European Court of Human Rights) and *Keun-Tae Kim v. Republic of Korea*, 4 January 1999, Communication No. 574/1994 UN Doc. CCPR/C/64/D/574/1994 para 12.4.

⁴¹ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Principle 7(a)(ii). Such expression includes “criticism of, or insult to, the nation, the state or its symbols, the government, its agencies, or public officials,” and expression that “is directed at communicating information about alleged violations of international human rights standards or international humanitarian law.” *Ibid.* at 7(a)(iv). Further, no one can be punished for criticizing the government or nation unless such criticism “was intended and likely to incite imminent violence.” *Ibid.* at 7(b). In terms of limitations in relation to types of expression that would amount to advocacy of hatred constituting incitement to acts of violence, hostility or discrimination, as per article 20 (2) of the International Covenant on Civil and Political Rights, the following elements should be evaluated: severity, intent, content, extent, likelihood or probability of harm occurring, imminence and context. Such examination must be performed on an ad hoc basis, taking the context into consideration. *See* Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the United Nations General Assembly (A/67/357) and the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, appendix).

⁴² International Covenant on Civil and Political Rights, Article 20 (2).

⁴³ The Human Rights Committee has interpreted that restrictions under Article 20 (2) must also comply with restrictions under Article 19 (3), CCPR/C/GC/34, para. 48.

⁴⁴ Committee on the Elimination of Racial Discrimination, Article 4 (a).

⁴⁵ South Sudan acceded to the four Geneva Conventions, the two 1977 Additional Protocols, and the 2005 Additional Protocol on 25 January 2013, ICRC, “Treaties, States Parties and Commentaries: South Sudan”; ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=SS

⁴⁶ *See generally* ICRC, *International Humanitarian Law*, December 2014. International customary law consists of those legal obligations arising from past-accepted practice or custom. In the absence of sustained objection at the inception of a particular practice, a state practice can become customary international law if it is (1) “sufficiently dense (widespread, representative, frequent, and uniform)” and (2) accompanied by a belief that it imposes a state obligation (including prohibitions from action).

all precautions to protect civilians, or deliberately targeting civilians,⁴⁷ including journalists, would violate international humanitarian law.⁴⁸ Moreover, article 79 of the Additional Protocol I to the Geneva Conventions provides for a distinctive protection for journalists in international armed conflicts.⁴⁹ By virtue of customary international humanitarian law,⁵⁰ the same protection applies for journalists in non-international armed conflicts.

4.3 National Law

The Transitional Constitution of the Republic of South Sudan (TCSS) (2011) governs the actions of State actors. Its provisions on the right to freedom of expression are generally in line with international norms. Part Two of TCSS⁵¹ contains a “Bill of Rights”, and clarifies that “no derogations” can be made from the rights and freedoms enshrined in that Bill, except as permitted under a valid declaration of a state of emergency.⁵² The Bill protects fundamental rights, including the right to life and human dignity (Article 11), the right to be free from torture and cruel and inhuman treatment (Article 18), the right to a fair trial (Article 19), as well as freedom of expression and media (Article 24).⁵³

However, the national legislative framework, notably the Penal Code Act (2008), the Media Authority Act (2013) and National Security Service Act (2014), is not always in line with the Constitution’s protection of the freedoms of expression and media.

Contrary to international human rights standards,⁵⁴ the Penal Code Act criminalizes⁵⁵ defamation, an offence punishable by a prison term not exceeding two years or a fine or both. Additionally, article 75

⁴⁷ Article 13 (2) of Additional Protocol II prohibits making the civilian population as such, as well as individual civilians, the object of an attack.

⁴⁸ International humanitarian law also prohibits extra-judicial killings, torture, or humiliating and degrading treatment, among other acts.

⁴⁹ Article 79 of Additional Protocol I states that “(1) Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1. (2). They shall be protected as such under the Conventions and this Protocol, provided they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 A 4) of the Third Convention. (3). They may obtain an identity card similar to the model contained in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides, or in which the news medium employing him is located, shall attest to his status as a journalist”.

⁵⁰ ICRC “Rule 34. Journalists.” Available at ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule34. Civilian journalists engaged in professional missions in areas of armed conflict must be respected and protected as long as they are not taking a direct part in hostilities.

⁵¹ The Transitional Constitution of the Republic of South Sudan was ratified by the Legislative Assembly on 7 July 2011, and subsequently signed by the President. It came into effect on 9 July 2011.

⁵² Article 188 clarifies that during a lawfully declared state of emergency, a partial suspension of the Bill of Rights is permissible. For a declaration of a state of emergency to be lawful, the President, seeking a state of emergency for longer than 30 days, must get approval from the National Legislature. See TCSS, articles 187-198.

⁵³ 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.” Article 24 further clarifies that “[a]ll levels of government shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.”

⁵⁴ See Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to the Human Rights Council, Twentieth session, 4 June 2012. The Special Rapporteur emphasized that “criminal defamation laws are inherently harsh and have a disproportionate chilling effect on free expression. Individuals face the constant threat of being arrested, held in pre-trial detention, subjected to expensive criminal trials, fines and imprisonment, as well as the social stigma associated with having a criminal record”.

⁵⁵ Penal Code Act, 2008, article 289.

criminalizes the publication of “wholly or materially false” information that adversely affects the interest of South Sudan, including economic interests, or reduction in public confidence in law enforcement. A violation of this provision can lead to a sentence of up to 20 years of imprisonment.⁵⁶ Article 76 of the same Code allows for the prosecution of anyone who makes a statement about the President that is false or causes “hatred, contempt or ridicule of the President”, or makes “any abusing, indecent or obscene statement about the President”. These provisions are vaguely worded, thus prone to arbitrary interpretation which may be used against citizens, including journalists.

In December 2013, President Kiir signed into law the Media Authority Act, the Broadcasting Corporation Act, and the Right of Access to Information Act, also known as the ‘Media Laws’, which remain the key legal frameworks promoting press freedoms and access to information in South Sudan. Of relevance to this report, the Media Authority Act enshrines the principle that the “right to freedom of expression, including the public right to a pluralistic media, is a fundamental human right, protected under Article 24 of the Constitution.”⁵⁷ Noting the role of a free media as a “public watchdog,”⁵⁸ the Act states that “[m]ass media shall be protected from censorship by any official or non-official authority”.⁵⁹ It also protects sources, stipulating that “a journalist shall not be compelled to reveal his or her source of information obtained upon promise of confidentiality”.⁶⁰ The Act explicitly prohibits the unlawful arrest and detention of journalists, and stipulates there shall be no statutory regulation of print media.

The Media Authority Act provides for the establishment of an autonomous oversight body, the Media Authority, to regulate, develop and promote an independent and pluralistic media industry in the country.⁶¹ In February 2017, the Media Authority *de facto*⁶² commenced its operations. However, the functioning of the institution has been hampered by delays in the establishment of its required eight specialized committees⁶³ which, at the end of December 2017, was still pending. Concerns relate to the procedure for the appointment⁶⁴ and removal⁶⁵ of the Board of Directors of the Media Authority, which does not provide sufficient guarantees to protect members from political interference.

⁵⁶ Penal Code Act, 2008, article 75.

⁵⁷ Media Authority Act, 2013, article 6 (1).

⁵⁸ Media Authority Act, 2013, article 6 (13) (a).

⁵⁹ Media Authority Act, 2013, article 6 (13) (b).

⁶⁰ Media Authority Act, 2013, article 6 (13) (f).

⁶¹ The role of the Media Authority includes the formulation of general policies for the advancement of media freedom and independence in the public interest, promotion of the journalistic profession and a licensing system, and mechanisms for complaints against media and journalists.

⁶² Although the establishment of the Media Authority dates back to 2013, the Managing Director of the Media Authority and the Board of Directors were only appointed in April 2016. The Media Authority started operating in February 2017.

⁶³ See Media Authority Act, 2013, article 7 (6). The specialized committees are: the Press and Broadcast Complaints Council, the Hearing Panel, the Media Appeals Board, the Legal Committee, the Complaints and Monitoring Committee, the Broadcast Frequency Licensing Committee, the Public Affairs and Education Committee, and the Engineering and Technical Standards Committee.

⁶⁴ As per Article 9 (1) (2) (3) of the Media Authority Act 2013, the Minister of Information and Broadcasting, in consultation with the media and civil society, is to nominate twice the number of seats available for the Board of Directors and present the list of candidates to the President, who will decide which names to forward to the National Legislative Assembly for vetting and approval by simple majority. Concerns arise over the fact that the consultation process with media and civil society is not defined. Also, both the Minister of Information and Broadcasting and the President represent the interest of the Government.

⁶⁵ As per Article 12(1) of the Media Authority Act 2013, the President might remove members of the Board of Directors on a number of grounds, including “guilt of gross misconduct or incompetence or incapacitation”. These

Article 5 of the Media Authority Act maintains criminal defamation provisions referring to relevant clauses in the Penal Code Act. It further contradicts Article 28 of the Media Authority Act, which establishes clear procedures for handling defamation cases as civil offences by the Press and Broadcast Complaints Council. The contradiction generates confusion as to the authority competent for filing defamation complaints against journalists and the media, namely whether it should be the criminal courts or the Press and Broadcast Complaints Council of the Media Authority.

Specific provisions⁶⁶ in the Media Authority Act defining hate speech and incitement of violence are generally in compliance with the international human rights standards.⁶⁷ For example, Article 29 (2) requires that a nexus must be established between the words and an actual or probable act of violence or discrimination. This is to avoid, for example, limitations on the use of offensive or insulting language under the pretext of prohibiting hate speech. Pursuant to the Media Authority Act, complaints filed against media entities in relation to offences of hate speech and incitement to violence are treated as civil offences and subject to review and investigation by the Press and Broadcast Complaints Council and the Media Appeals Board, two of the eight specialized committees of the Media Authority. The Press and Broadcast Complaints Council is mandated to impose administrative sanctions envisaged in Article 29 (5).⁶⁸ However, in cases “where malicious intent or recklessness is shown and damage is serious”, offenders will be subjected to a prison term of up to five years by a competent court.⁶⁹

The National Security Service Act gives expansive powers to the State to “[p]re-empt and control any situation that may harm and cause danger to the national interest,” and contains provisions which have led to the active curtailment of freedom of expression. The National Security Service Act grants NSS sweeping powers with respect to surveillance, arrest and detention in situations where the national interest could be threatened.⁷⁰ It also allows security agents to arrest individuals without a warrant.⁷¹ This provision has been used against journalists and other individuals for exercising their legitimate right to freedom of expression. Moreover, while the NSS Act requires that individuals arrested and detained by NSS be brought before a magistrate within 24 hours, in practice, people are frequently held without any access to the court system.

grounds are overly broad and could possibly lead to the arbitrary removal of members of the Board, thus impacting the full independence of its members. Moreover, the Act does not envision a judicial review of the removal of members.

⁶⁶ Media Authority Act, 2013, articles 5 and 29.

⁶⁷ See Section 18 of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence: “Restrictions are clearly and narrowly defined and respond to a pressing social need; are the least intrusive measures available; are not overly broad, in that they do not restrict speech in a wide or untargeted way; and are proportionate in the sense that the benefit to the protected interest outweighs the harm to freedom of expression, including in respect to the sanctions they authorize”.

⁶⁸ Sanctions include the publishing or broadcast of a correction, apology or both; compensation for actual damages; a punitive fine; a warning; suspension of the broadcast license; denial of entry into premises; seizure of equipment; closedown of broadcast operations; termination of the broadcast license.

⁶⁹ Media Authority Act, 2013, article 29 (6).

⁷⁰ See National Security Service Act, 2014, articles 6 and 18. These powers of NSS include the ability to “[m]onitor frequencies, wireless systems, publications, broadcasting stations and postal services.” Also see National Security Service Act, 2014, article 18 (11) according to which NSS has the authority to “[r]equest any information, statement, document, or any relevant material from any suspect and potential witness for perusal or examination, keep or take necessary or appropriate measures in respect of such information, statement, document or relevant material. National Security Service Act, 2014, article 18 (12).

⁷¹ National Security Service Act, 2014, article 54.

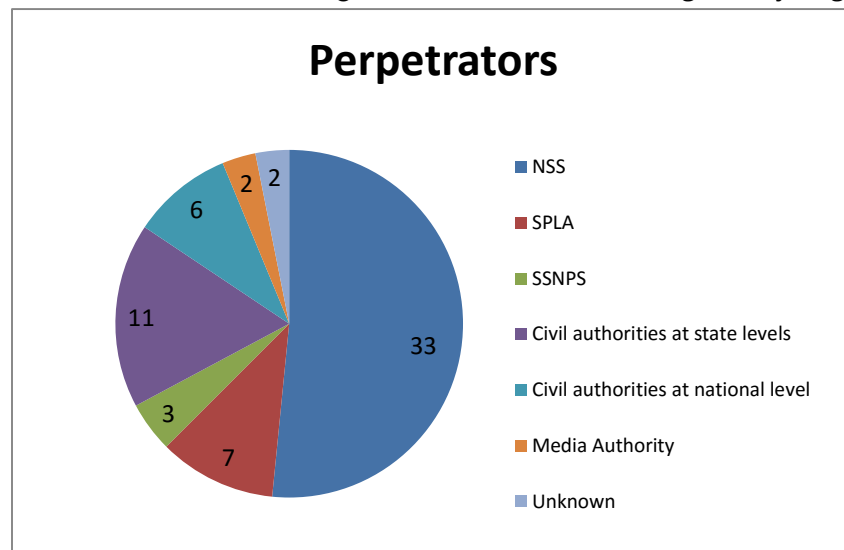
5. Violations of the right to freedom of opinion and expression

Following the July 2016 crisis, restrictions on freedom of expression, including press freedoms, intensified, with several reports of abductions and arrests of activists and journalists, and closure of media houses. From July 2016⁷² to December 2017, HRD received 99 reports of alleged unlawful infringements of the rights of individuals in direct connection with their legitimate exercise of the right to freedom of expression. HRD was able to verify 60 of these allegations, which affected at least 102 individuals, including 17 women. Journalists and media workers accounted for one fourth of the overall number of victims (25, including 6 women).

HRD was able to confirm the killing of at least two individuals; the arbitrary arrest and detention of 58 people (including five women); the dismissal of 16 persons from their workplace, as well as several acts of intimidation, harassment, and other forms of violence. Also, at least nine media institutions were targeted, including through the censorship of at least eight articles from two newspapers, the closure or suspension of three media houses and the blocking of four websites.

In two-thirds of the cases verified by HRD, restrictions were imposed by Government security forces: NSS, in the vast majority of cases; SPLA; and the South Sudan National Police Service (SSNPS), as illustrated in the below graph. The NSS' broad powers of surveillance, arrest, and detention, along with their practice of harassment, censorship, intimidation and closure of media houses contributed to a climate of insecurity and fear, which has resulted in significant self-censorship among journalists and other civil society actors. Civilian authorities, including governors, State ministers, and the Media Authority, are responsible for the remaining cases of human rights violations.⁷³

Based on HRD's monitoring, restrictions and violations generally targeted individuals or entities, such as



media houses or associations, whose opinions or work were perceived as undermining the reputation of the country, or who were presenting views about issues deemed 'sensitive'. Topics that triggered restrictions were numerous and broad, including corruption, political ineffectiveness, accountability for human rights violations, famine, displacement, the number of casualties during military operations, the economic crisis, unemployment

rates, or expressing positive opinions about opposition figures (such as former Vice-President Riek

⁷² As previously mentioned, violations of freedom of expression that occurred during the July 2016 crisis in Juba were documented in the OHCHR/UNMISS *report on violations and abuses of international human rights law and violations of international humanitarian law in the context of the fighting in Juba, South Sudan, in July 2016* (January 2017).

⁷³ The perpetrators of two incidents had still not been identified at the time of finalizing this report.

Machar). It is to be noted that undue restrictions imposed on journalists and civil society activists not only constitute a violation of someone's right to express opinions, but also indirectly undermine the right of individuals and society at large to seek and receive information.

The findings of HRD confirm trends highlighted in previous UNMISS/OHCHR public reports.⁷⁴ They indicate that the Government's interference with freedom of expression, in various forms, has contributed to shrinking the space for debate and dissent, deterring political participation and resulting in growing self-censorship. Through its monitoring, HRD also observed that authorities in South Sudan have limited awareness about their roles and responsibilities in protecting and promoting freedom of expression, especially concerning permissible restrictions to freedom of expression under international law. For example, this report refers to cases when authorities invoked 'hate speech' as the basis for curtailing freedom of expression (e.g. censoring of articles in newspapers) when the content was critical of the state of the country or of the Government, and did not constitute hate speech. Although South Sudan has a legal obligation to prohibit incitement to hatred, gaps exist when it comes to authorities performing a thorough analysis to determine whether a specific instance of expression constitutes incitement to hatred, or deciding upon an adequate response.

Overall, the general public in South Sudan has little knowledge of lawful limitations to the exercise of freedom of expression. There is also some recognition, among media professionals, of limited awareness in that regard. They often lack formal education on responsible journalism, and at times tend to foster or perpetuate mistrust through inaccurate reporting and / or inflammatory language.

The below chapters present emblematic incidents illustrating the ongoing restrictions of freedom of expression. The majority of victims of violations documented by HRD stated they had not reported the incidents to law enforcement agencies due to lack of trust in the criminal justice system and fear of reprisals as perpetrators were often powerful and feared local figures, such as members of the security forces or Governors. HRD noted that widespread impunity continued unabated for human rights violations in general, including for violations and unlawful restrictions of freedom of expression.

5.1 Violations against media and journalists

When the NSS officer found in my phone the number of someone in the SPLA in Opposition, he told me "Don't you know that talking to the rebels is not allowed in this country?"

Journalist, Greater Equatoria region, January 2017

"Don't get involved in matters of my state. These are not facts, but only propaganda"

Account of a governor responding to a reporter who was inquiring about mismanagement and embezzlement of public funds, Greater Bahr el Ghazal region, April 2017

"We are not independent. If we report events and incidents the way we find them, we can be arrested and possibly lose our job"

Journalist, Greater Bahr el Ghazal region, April 2017

⁷⁴ See UNMISS/OHCHR reports on *the state of human rights in the protracted conflict in South Sudan* (December 2015) on violations and abuses of international human rights law and violations of international humanitarian law in the context of the fighting in Juba, South Sudan, in July 2016 (January 2017); and on *human rights violations and abuses in Yei between July 2016 and January 2017* (May 2017), all available at <http://www.ohchr.org/EN/Countries/AfricaRegion/Pages/SSIndex.aspx>.

“When it comes to political issues, you are not allowed to express yourself freely”

Journalist, Greater Equatoria region, May 2017

5.1.1 Authorities’ interference with the media

During the second half of 2016 and throughout 2017, HRD documented persistent instances in which Government institutions, including security organs, sought to restrict the operations of media houses and control information to be published, including through censorship, closure of media houses and confiscation of publications.

5.1.1.1 Censorship

The Government has embedded security officials in newspapers printing establishments, which has led to the removal of numerous critical articles from newspapers. The Association for Media Development in South Sudan (AMDISS) indicated that in the course of August 2016, NSS ordered the removal of at least six articles from the *Nation Mirror* and the *Juba Monitor* newspapers.⁷⁵ One of the censored articles referred to a press release by the Chairperson of SPLA in Opposition’s National Committee for Information and Public Relations about the exile of Riek Machar. HRD notes that the determination of whether the censorship of articles is necessary and proportionate to protect a legitimate aim should be undertaken by a competent judicial authority or an independent body, and not by intelligence services.

The pattern of censorship of articles deemed critical continued throughout 2017, hampering the right of thousands of readers to form their own opinions about state of affairs in the country.⁷⁶ In 2017, HRD learnt that NSS had ordered the editing out of at least 10 articles, either partially or entirely, from local newspapers such as the *Juba Monitor*, *The Dawn* and *Al Maugif*. The original content of at least eight articles⁷⁷ did not appear to justify the restrictions on freedom of expression,⁷⁸ which should be implemented narrowly and be necessary to accomplish one of the legitimate objectives established in international standards.

⁷⁵ AMDISS, press release dated 22 August 2016.

⁷⁶ *The Dawn* and the *Juba Monitor*, for example, print respectively 1,000 and 2,000 copies daily. Some media houses claim that as they struggle to generate revenues amid the economic crisis, blank pages further deter customers from purchasing newspapers.

⁷⁷ HRD was unable to retrieve the original text of the remaining two articles and, therefore, to carry out its analysis.

⁷⁸ This analysis is based on the HRD’s preliminary assessment.

For example, the *Juba Monitor* daily newspaper of 17 May 2017 (pictured on the left) contained blank



pages as a result of edits ordered by NSS. The original piece was on the issuance of Presidential Decrees restructuring SPLA and of its leadership. Additional articles were removed from editions of the *Juba Monitor* reporting on the judges' demands within the framework of the then ongoing judicial strike (6 July 2017), SPLA corruption and ineffectiveness (11 July 2017), the security situation in Juba following the issuance of a Presidential order to arrest bodyguards of former SPLA Chief of General Staff Paul Malong (6 November 2017), and claims of irregularities during the Tonj Youth Union elections (7 December 2017). Upon review of the original articles, HRD assessed that the measures imposed by NSS did not appear to meet the test of necessity and proportionality.⁷⁹

NSS ordered the editing out of an opinion piece from the 14 September 2017 edition of *The Dawn* newspaper which was critical of the Government's failure to protect its citizens and others within the territory of South Sudan. Similarly, on 15 December 2017, parts of an

opinion piece entitled "ARCSS and HLRF: last or lost chance for peace in South Sudan?" were edited out of the same newspaper following orders from NSS. The removed excerpts criticized the Government for its role in the protracted conflict, including the July 2016 violence, and accused it of bad governance.

HRD raised concerns regarding the practice of censorship with both the Media Authority⁸⁰ and NSS.⁸¹ In response, NSS claimed that the removed articles were against national security and constituted hate speech, although they did not demonstrate why.⁸²

Furthermore, in several parts of the country, journalists have been required to request approvals from relevant authorities prior to publishing or broadcasting news. This practice of prior censorship is unlawful under international human rights law, and hinders the functioning of independent media as well as the public's right to information. For instance, in May 2017, the Minister of Information, Culture, Youth and Sports and the Director General for Information of Imatong State (created under Establishment Order 36/2015) told HRD about the blanket prohibition verbally imposed on journalists to report on "sensitive security issues". Moreover, reporters working for State-run media are required to obtain clearance from the Ministry of Information prior to publications on any subject. Authorities from the State Ministry of Information claimed to HRD that approval before publication aims at curtailing unprofessional reporting. Similar procedures have been imposed on media in the Northern Liech State (created by Establishment Order 36/2015). According to relevant authorities in that state,⁸³ journalists must seek prior authorization by the state Ministry of Information on any story covering security issues and critical opinions vis-à-vis the Government. When HRD enquired about such restrictions, the Ministry of Information of South Sudan⁸⁴

⁷⁹ Ibid.

⁸⁰ HRD's meeting with the Media Authority, September 2017.

⁸¹ Letter to the Director General of NSS, dated 25 October 2017; HRD's meeting with NSS, November 2017.

⁸² Information provided to HRD during a meeting with NSS, November 2017.

⁸³ Information provided to HRD during a meeting with the Ministry of Information and Communication of the Northern Liech State, July 2017.

⁸⁴ Information provided to HRD during a meeting with the Ministry of Information, September 2017.

claimed they were not informed about such practices. The official, however, admitted that each state can develop policies and procedures tailored to local circumstances, under the oversight of the State Governors.

5.1.1.2 Closure of media houses and website blocking

AMDISS estimates that about 70 media houses were operating in South Sudan in 2017, including eight newspapers and about 60 radio and TV stations.⁸⁵ This includes state-owned South Sudan TV and South Sudan Radio.

After the July 2016 crisis, NSS closed one radio station and at least three newspapers, namely the *Juba Monitor*, *Al-Watan* and the *Nation Mirror*.⁸⁶ It ordered the closure of the *Nation Mirror* on 14 September 2016, with no reasons provided for this decision. It is believed that it was triggered by the publication, on 12 September 2016, of an article related to a report⁸⁷ by The Sentry initiative, alleging large-scale corruption among families of leading national figures.

On 11 November 2016, *Eye Radio* was temporarily closed by NSS for broadcasting a 30-second voice clip of former First Vice-President Riek Machar. *Eye Radio* was granted permission to reopen on 19 November 2016 after it addressed an apology to NSS.

The Media Authority suspended the operations in South Sudan of *Al Jazeera's English Network* from 24 April 2017 to 9 May 2017. The Media Authority told HRD that the reason for this measure was an administrative issue, without providing further details.⁸⁸

By the end of 2017, the *Nation Mirror*, as well as four other media outlets (*The Citizen* newspaper, *Al Tabeer* newspaper, *Al Rai* newspaper and *Free Voice* radio) that were shut down by NSS in 2015, remained non-operational.⁸⁹ HRD requested clarification from NSS⁹⁰ on the circumstances surrounding the protracted closure of these media outlets. NSS did not provide to HRD details of the reasons for the closures and stated that the media houses could resume their operations by registering with the Media Authority (see chapter 5.1.1.4).⁹¹

Measures also appear to have been adopted by the Government to intentionally prevent access to, or the dissemination of information online. Beginning on 17 July 2017, the websites of two regional news organizations, *Radio Tamazuj* and *Sudan Tribune*, and two blogs, *Paanluel Wel* and *Nyamilepedia*, were blocked upon written instructions of the South Sudan National Communication Authority (SSNCA) dated 13 July 2017. SSNCA alleged that the websites were disseminating “non-peace” messages considered not to be “in the best interest of peace building in this country”. The executives of three of the affected outlets⁹² told HRD they were not notified by the Government about the blocking. By the end of 2017, the four websites remained blocked, though some access to the sites was possible through alternative Internet service

⁸⁵ Information provided to HRD during a meeting with AMDISS, September 2017. By the end of 2017, the list of all registered media houses was yet to be released by the Media Authority.

⁸⁶ On the circumstances surrounding the closure of the *Juba Monitor* and *Al-Watan* newspapers, see UNMISS/OHCHR *report on violations and abuses of international human rights law and violations of international humanitarian law in the context of the fighting in Juba, South Sudan, in July 2016* (January 2017);

⁸⁷ https://thesentry.org/wp-content/uploads/2016/08/Sentry_WCSP_Final.pdf

⁸⁸ Information provided to HRD during a meeting with the Media Authority, September 2017.

⁸⁹ Ibid.

⁹⁰ Letter to the Director General of NSS, dated 25 October 2017.

⁹¹ Information provided to HRD during a meeting with NSS, November 2017.

⁹² HRD was not able to reach the fourth outlet.

providers. Civil society activists, national and international media organizations denounced these measures.⁹³

Mandatory blocking of entire websites is an extreme measure of censorship, which can only be justified in accordance with international human rights law.⁹⁴ According to the Special Rapporteur on Freedom of Expression,⁹⁵ any restriction to freedom of expression through website blocking, must be applied after a careful assessment of the threat of such expression. In addition, blocking of websites must meet some minimum criteria, including the provision of an explanation on the affected websites as to why they have been blocked. Also, the determination on what content should be blocked should be undertaken by a competent judicial authority or an independent body. In order to ascertain whether blocking of the four websites was necessary for the purported aims put forward by SSNCA, HRD⁹⁶ attempted to obtain clarification from the relevant institutions, including on the specific content deemed to be promoting “non-peace messages”, to no avail. Based on information available, such criteria appear not to have been met. The prolonged duration of the restriction raises further concerns over the proportionality of the measure.

5.1.1.3 Confiscation of publications and media equipment

Cases of interference also included at least two instances of confiscation of publications or equipment by authorities. On 13 January 2017, an SPLA soldier interrupted a journalist who was conducting an interview with a local chief around Yei, Central Equatoria, on the issue of dowry. The soldier confiscated the journalist’s equipment and personal items (including his ID, recorder, mobile phone, notebook and pen). The equipment was returned after four hours, and only after the intervention of an influential local official. According to available information, the soldier was not subjected to any disciplinary measure. On 11 February 2017, in Juba, two NSS officials in civilian clothes accused the salesperson in a bookstore of being against the Government and “against Dinka people” because of selling a book entitled *The Collo boundary dispute*,⁹⁷ written by opposition figure Dr. Lam Akol.⁹⁸ The NSS officers threatened the salesperson with arrest and to close the book store, and confiscated all copies of the book.

⁹³ See for instance the Association for Media Development in South Sudan, press release dated 20 July 2017, Committee to Protect Journalists, see <https://cpj.org/2017/07/south-sudan-authorities-block-access-to-at-least-f.php>, and Reporters Sans Frontières, see <https://rsf.org/en/news/south-sudan-blocks-two-news-websites>.

⁹⁴ See Human Rights Committee, General Comment 34, CCPR/C/GC/34, adopted on 12 September 2011; Joint declaration on freedom of expression and the internet, adopted in 2011 by the Special Rapporteurs on Freedom of Expression of the United Nations, the Organization for Security and Cooperation in Europe, the Organization of American States, and the African Commission on Human and Peoples’ Rights.

⁹⁵ 2011 Report to the General Assembly of the Special Rapporteur on Freedom of Expression, paragraph 70. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/132/01/PDF/G1113201.pdf?OpenElement>

⁹⁶ Between July and November 2017, HRD approached officials from SSNCA, the Ministry of Information, the Media Authority and NSS. All denied that their institutions had been involved in the decision to block the four websites.

⁹⁷ The book discusses issues related to land ownership between the Collo (Shilluk) and Dinka communities in Upper Nile.

⁹⁸ Dr. Lam Akol is a South Sudanese politician of Shilluk descent. He was the leader of the opposition party SPLM Democratic Change until he resigned and founded the National Democratic Movement (NDM), an opposition group. His most recent appointment was within the Transitional Government of National Unity as Minister of Agriculture and Food Security, until his resignation on 28 August 2016, following the July crisis.

5.1.1.4 Administrative obstacles restricting operations of media entities

On 15 June 2017, the Media Authority issued a public notice⁹⁹ requesting all media houses (i.e., broadcast, print media and printing companies) and media associations operating in South Sudan to register before 31 July 2017. In a subsequent notice which appeared in local newspapers on 7 September 2017, the same institution listed 33 media entities that had complied with the request and 104 others which it urged to register before 21 September 2017, warning that non-compliance would lead to fines and de-registration. The list included five categories, namely, media advocacy groups and associations; television stations; radio stations; newspapers and magazines; and printing companies.

Pursuant to the notice, in the course of October 2017, at least two out of the six media advocacy groups listed by the Media Authority received letters of suspension on the basis of failing to register as required. The letters stated they had seven days by which to register in order to obtain a ‘media operational licence’ or risk indefinite closure. Several print media and advocacy groups concerned challenged the legality of the request¹⁰⁰ but nonetheless complied, or are in the process of complying with the new registration requirement to avoid closure. Registration with the Media Authority entails the payment of fees, as determined by the Financial Act, 2017/18.¹⁰¹

According to the Media Authority Act, the regulatory mandate of this body is confined to broadcast media and to overseeing the transformation of State-controlled television and radio into a Public Broadcasting Corporation.¹⁰² Print media are to be self-regulated¹⁰³ and, the Media Authority Act stipulates “there shall be no licensing or registration of newspapers, news agencies, magazines and periodicals or other printed media, or of web sites or sources of content on the Internet other than required by law for any business seeking to engage in a commercial or non-profit activity”.¹⁰⁴ This does not preclude a requirement that they register under other relevant national legislation such as the Non-Governmental Organizations Act (2016), the Companies Act (2012), or other laws, but it is assumed that registration under any other relevant legislation would not be enforced by the Media Authority. Media houses and advocacy groups fear that the new procedure would exert additional scrutiny on the work of media-related entities, thus directly limiting freedom of expression.

5.1.2 Violations of the rights to life, personal security and liberty of journalists

Since the 2016 July fighting, at least one journalist has been killed in the exercise of his profession in the context of the conflict.¹⁰⁵ On 26 August 2017, Christopher Allen, an American citizen and freelance

⁹⁹ The notice was published on local newspapers.

¹⁰⁰ For instance, on 9 August 2017, AMDISS submitted a petition letter to the Parliamentary Committee of Information, Telecommunication and Postal Services, challenging the request. The Committee had not replied as at December 2017.

¹⁰¹ Fees range from 30,000 South Sudanese Pounds to 300,000 South Sudanese Pounds, depending on the size of the media house. As of December 2017, the Media Authority was yet to release the list of media houses and associations that had completed the registration process.

¹⁰² Media Authority Act, 2013, article 7 (5).

¹⁰³ Media Authority Act, 2013, article 6 (13) (j).

¹⁰⁴ Media Authority Act, 2013, article 6 (13) (i).

¹⁰⁵ HRD is aware that at least two South Sudanese journalists were also killed during the period under review. However, information available to HRD seems to indicate that their death was not linked to their profession: Issac Vuni was kidnapped in June 2016 in Kerepi, Eastern Equatoria, and found dead in a nearby village, on 26 September 2016. Information available on the incident is insufficient to determine whether his death was linked to his professional duties. Gatluak Manguet Nhial was killed on 11 July 2016, at the Terrain Hotel compound, in Juba, reportedly by SPLA soldiers and because of his ethnicity. See *UNMISS/OHCHR report on violations and abuses of international*

reporter, was killed in Kaya, Central Equatoria, while covering clashes between SPLA and SPLA in Opposition. By the end of 2017, the circumstances of the incident remained unclear and HRD had not received any indication that anyone has been held accountable for this incident. Numerous institutions and organizations in South Sudan and across the world deplored the killing of the journalist, calling upon parties to the conflict to respect freedom of the press.¹⁰⁶ Christopher Allen was the tenth journalist killed in South Sudan since 2012.¹⁰⁷

On 9 October 2016, a journalist of the Arabic *Al-Mougif* newspaper was found alive, bearing marks of severe beatings, in a graveyard, in the Gumbo area of Juba. He had been allegedly abducted on 7 October 2016 from the Hai Jerusalem area of Juba by four or five men believed to be members of the security forces. After having been blindfolded, he was reportedly forced inside a vehicle and taken to an interrogation room in a facility located at approximately 20-minute drive from the site of the abduction. Throughout his detention, the journalist, a Dinka, was accused of criticizing the ‘Dinka Government’ and spoiling the image of President Kiir. He had previously written about pervasive corruption at the highest levels of Government and criticized President Kiir’s decision to establish 28 states. His abductors reportedly warned him not to report about the Government in the future. He was released on 9 October 2016 and sought medical attention. He subsequently went into hiding.

During the period under review, at least 13 national and foreign journalists, including one woman, were arbitrarily arrested and detained by security forces. For example, on 15 November 2016, NSS officers, together with SPLA soldiers, arrested two foreign journalists, three priests and 13 civilians near SPLA barracks in Nzara County, Western Equatoria, accusing them of supporting either SPLA in Opposition or some armed youth in the area by providing them food. The civilians were reportedly in a convoy of two vehicles on their way to a function in Nandi Payam, Ezo County, when they were arrested. They were taken to Nzara SPLA Commando barracks where they were interrogated for two hours about the contents of their notebooks and the photographs on their cameras before being transferred to the NSS facility in Yambio for further interrogation. The two foreign journalists were released without charges on 15 and 16 November 2016, but were told that their movements would be monitored. The priests and the other civilians were released without charge on 19 November 2016.

On the morning of 6 December 2016, an American journalist affiliated with the Associated Press was arrested by NSS in Juba. He was detained for a few hours at the NSS HQ in Jebel before being taken to the Juba International Airport and expelled from the country on the same day. He was not charged with any criminal activity and was not given the opportunity to challenge his detention or expulsion. When he asked why he was being forced to leave South Sudan, he was reportedly told that his articles “were too critical of the Government”. Like for other international journalists, the Government rejected his request when he applied for accreditation several months later (see chapter 5.1.4).

human rights law and violations of international humanitarian law in the context of the fighting in Juba, South Sudan, in July 2016 (January 2017).

¹⁰⁶ This includes statements by UNMISS, <https://unmiss.unmissions.org/unmiss-expresses-condolences-after-death-journalist-south-sudan>; UNESCO, <http://en.unesco.org/news/director-general-denounces-killing-war-reporter-christopher-allen-south-sudan>; the Committee to Protect Journalists, <https://cpj.org/2017/08/american-freelancer-killed-while-reporting-in-south.php>

¹⁰⁷ http://en.unesco.org/sites/default/files/unesco_condemns_killing_of_journalists_south_sudan_en.pdf. Two out of the 10 journalists killed were women.

On 24 January 2017, SPLA soldiers arbitrarily¹⁰⁸ arrested and detained a journalist working for the UNMISS-sponsored *Radio Miraya*. The journalist was on an assignment to the John Garang Mausoleum in Juba to cover the delivery of medical assistance provided by Moroccan military doctors. Upon his arrival to the Mausoleum, the reporter approached SPLA soldiers deployed to the site, showing his ID and disclosing the purpose for his assignment. He was told by the soldiers that his ID would not suffice to be granted access to the site, and that he needed an authorization from the Ministry of Information or the Ministry of Health. Soldiers detained the journalist for five hours, first at the Mausoleum, and later at the SPLA Giada military facility, in Juba. He was interrogated and questioned about his presence at the Mausoleum, and accused of seeking to obtain information about SPLA. When he was released, the soldiers confiscated his USB flash drive. UNMISS publicly condemned the arrest.¹⁰⁹ On the same day, two other journalists and their driver covering the same subject for *Eye Radio* were arrested by SPLA soldiers under similar circumstances and were released after a few hours.

From 10 to 19 July 2017, NSS detained the TV Director of SSBC, allegedly due to a 25-minute delay in the transmission of the President's address to the nation on Independence Day that prevented live broadcasting of the speech. On 25 July 2017, the Director was dismissed by the Minister of Information Communication Technology and Postal Services for reasons including alleged sabotage in connection with the failed live coverage of the President's address and alleged financial and administrative irregularities. According to the Broadcasting Corporation Act (2013),¹¹⁰ the Board of Directors of the Broadcasting Corporation has the power to remove senior staff of the Corporation on the recommendation of the Managing Director, not the Minister of Information.

5.1.3 Threats, harassment and intimidation of journalists

Journalists continued to be threatened by authorities in relation to articles published or produced by their employers. Threats were made through phone calls as well as in person. In August 2016, two radio journalists from Western Equatoria, accused by NSS of promoting the agenda of "Western governments", fled the country after being warned of their imminent arrest.

In April 2017, a media worker was reportedly questioned and threatened in three separate instances by NSS in Juba following stories covered by the reporter's employer about the ongoing famine and displacement across the country.

In May 2017, in the Greater Equatoria region, a journalist was warned by reliable sources of alleged attempts by prison officials to get him arrested, reportedly due to articles he had written on poor detention conditions in a State detention facility. The journalist went into hiding. Similarly, in June 2017, a journalist in the Lakes region was forced into hiding after receiving verbal threats by local officials in relation to articles he had published in May and June 2017, denouncing the involvement of local officials in human rights violations in the region.

Throughout the reporting period, many journalists told HRD that they had practiced self-censorship and reported only on non-controversial issues, fearing for their safety. One interlocutor in Western Bahr el Ghazal stated that media and civil society "hide in the closet". As a precautionary measure, some

¹⁰⁸ According to articles 151(7), 155 and 159-160 of TCSS, the civilian police service is the only law enforcement authority in South Sudan. Article 151(7) explicitly prohibits SPLA from having "any internal law and order mandate except as may be requested by the civilian authority when necessity so requires".

¹⁰⁹ <https://unmiss.unmissions.org/unmiss-protests-detention-radio-miraya-journalist-juba>

¹¹⁰ Broadcasting Corporation Act (2013), Section 18 (1).

newspapers and online news outlets have continued to attribute articles to “Staff Writer” or have been using the generic name of the media house to protect reporters from reprisals from State authorities in relation to their opinions, despite instructions from relevant authorities to disclose the authors’ name.

5.1.4 Denial of accreditation of foreign journalists

In South Sudan, accreditation for foreign journalists requires a visa.¹¹¹ In February 2017, the authority to issue such accreditation was transferred from the Ministry of Information, Communication Technology and Postal Services to the Media Authority. As of September 2017, the Media Authority had granted accreditation to over 300 foreign journalists.¹¹² However, during meetings held in June, September and December 2017, the Media Authority confirmed to HRD media reports stating that it had rejected the accreditation of 20 foreign journalists whose past reporting had been deemed inaccurate, or who were considered to have disseminated information with the intention to tarnish the image of South Sudan or to have incited violence.¹¹³

HRD notes that under international law,¹¹⁴ restrictions on the entry of foreign journalists into a country can be imposed only in exceptional cases, including incitement to violence, provided they fulfil the three-part test (i.e. requirements of legality, necessity and proportionality).¹¹⁵ However, the Media Authority did not provide HRD any specific detail on how the content of articles by the 20 journalists might have triggered the threshold for permissible limitations on freedom of expression.

In March 2017, one of the journalists affected was reportedly told by the Media Authority that the renewal of her accreditation had been denied because her past coverage on South Sudan had focused only on negative issues, such as the ongoing conflict and conflict-related sexual violence. She never received any official written justification for the decision. Another journalist concerned, known for writing articles critical of the Government, told HRD he was not provided with any reason for being denied accreditation, in March 2017.

HRD raised concerns with the Media Authority concerning the absence of guidelines on the procedure applicable for granting or denying accreditation for foreign journalists, including criteria for acceptance and rejection. HRD stressed with the Media Authority that the regulatory vacuum negatively affects the transparency of the process and possibly results in arbitrary decisions. Following advocacy by HRD and other organizations on this matter, the Media Authority issued¹¹⁶ “Procedures for Foreign Journalists Visiting South Sudan”, which and list the documents¹¹⁷ to be submitted by applicants to obtain the accreditation. This is a first step towards improving the accreditation process and its transparency. The document, however, remains silent on procedural aspects, such as the possibility of appeal in case the application is rejected.

¹¹¹ See *Procedures for Foreign Journalists Visiting South Sudan*, Media Authority, date illegible, shared with HRD in December 2017.

¹¹² Information provided to HRD during a meeting with the Media Authority, September 2017.

¹¹³ Information provided to HRD during meetings with the Media Authority, June and December 2017.

¹¹⁴ See, among others, section 4 (b) (d) of Joint Declaration on Freedom of Expression and Responses to Conflict Situations (2015), available at:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15921&LangID=E>

¹¹⁵ See Chapter on International Human Rights Law.

¹¹⁶ See *Procedures for Foreign Journalists Visiting South Sudan*, Media Authority, date illegible, shared with HRD in December 2017.

¹¹⁷ The required documents are the following: two passport-sized photos; a coloured photocopy of the passport; a copy of a press card issued in the country of origin of the journalist; qualification of the applicant’s profession (e.g., journalist, photographer); and a list of equipment to be used while performing professional duties in South Sudan.

5.2 Violations of freedom of expression of civil society actors, human rights defenders, public servants and elected officials

“You feel that there is something burning inside, but you cannot express it”

A religious leader about the state of freedom of expression, Greater Equatoria region, May 2017

“Because of threats, civil society and media are hiding in the closet”

Member of civil society, Greater Bahr el Ghazal region, May 2017

I was told “Just read the Bible and shut up”

Account of an NSS officer addressing a religious leader, Greater Equatoria region, September 2017

5.2.1 Authorities’ interference including through prior censorship

Throughout 2016 and 2017, HRD documented continued scrutiny and undue restrictions imposed by Government institutions on civil society organizations, hampering their ability to conduct activities in promoting human rights and democratic values in several parts of the country. Interference often took the form of an obligation imposed on civil society organizations or international organizations to seek clearance from Government officials prior to conducting activities.

For example, in November 2016, one human rights organization operating in a state of the Greater Equatoria region had to request prior clearance from the state Minister of Local Government and Law Enforcement to carry out a radio sensitization programme to mark the annual campaign against gender-based violence. The activity was eventually authorized with the condition that messages would not “be in support of the armed rebellion”.

In several parts of the country, the authorization of NSS is required for the conduct of public events, which has particularly affected NGOs as well as the United Nations. For example, in April 2017, NSS orally instructed a representative of civil society organizations in the Greater Equatoria region that civil society organizations should seek its approval before undertaking any activity in the state. NSS also requested a list of national and international staff members employed by civil society organizations as well as their planned movements from the state to Juba. Furthermore, an instruction issued in August 2016 in the same region to hotel managers, stipulated that no conference or workshop should take place inside hotels unless organizations would seek clearance from NSS at least 72 hours before the planned event. Civil society organizations and hotel directors in the Greater Equatoria region told HRD they were complying with the instruction for fear of negative repercussions on their activities. In Western Equatoria, Central Equatoria, Northern Bahr el Ghazal and Warrap, hotels hosting events organized by HRD asked to be informed of the topic of, and participants in workshops in advance, citing instructions by NSS. HRD noted the presence of NSS officers during at least three conferences it held in Juba between November 2016 and May 2017. UNMISS has engaged with senior NSS officials in Juba to raise concerns about their interference with the work of the Mission and were told that such practices did not reflect any NSS policy.¹¹⁸

In May 2017, in the Greater Equatoria region, four members of NGOs were summoned by senior state officials after expressing critical views about the performance of the state governor during a local radio programme. They were told to seek “advice” before going on air on any matter.

Authorities in the Greater Equatoria region also restricted civil society organizations from discussing political matters. For instance, on 9 November 2017, NSS in that region stormed into a meeting gathering youth, local chiefs and members of political parties, and ordered the participants to conclude, without

¹¹⁸ Information provided to UNMISS during meetings with NSS, June 2017.

providing any reason. The organizer of the meeting was later summoned to the NSS local office. As he explained that the meeting aimed at discussing how to improve relations between the youth, local chiefs and political parties, the NSS officials reportedly ordered him to refrain from discussing “sensitive matters”.

5.2.2 Violations of the rights to life, personal security and liberty

During the period under review, at least one human rights activist from Kajo Keji, Central Equatoria, was killed. He died on 23 February 2017 while in detention at the NSS facility in Jebel, Juba. NSS agents, together with SPLA soldiers, reportedly arrested him in Kajo Keji on 25 July 2014, alleging he was providing support to pro-Machar SPLA in Opposition. On 26 July 2014, he was transferred to the NSS detention facility in Jebel where he was held *incommunicado* until his death. His body was reportedly taken to a hospital in Juba the day he died, before being handed over to his family on 24 February for burial. The official cause of his death was hepatitis though reliable sources reported that his body showed obvious signs of strangulation. The victim was very outspoken, especially concerning human rights violations perpetrated by State security forces in Kajo Keji and surrounding areas.

Furthermore, at least 45 individuals, including four women, were arbitrarily arrested and detained in connection to the exercise of their freedom of expression, including community leaders, members of civil society, or elected officials. On 20 April 2017, the Director and the Field Assistant of a local NGO in Wau, Western Bahr el Ghazal, were arrested and detained at the NSS headquarters in Wau town on suspicion that the NGO collaborated and assisted elements of SPLA in Opposition. The Field Assistant was released on 27 April 2017 and the Director on 7 May.

On 13 February 2017, in Juba, NSS detained four members of a civil society organization for nine hours on suspicion of planning to overthrow President Kiir and due to public statements about South Sudan considered as negative. In a press release issued in late 2016, the organization had publicly denounced the dire economic situation in the country. All four individuals were released without charge. On 1 June 2017, NSS detained three members of civil society, including two of the individuals detained in February. They were blindfolded and taken to an NSS facility near the Nile river. The victims reported having been beaten with a leather whip during their detention and accused of planning a *coup d'état*. They were released without charge the following morning and warned not to inform the media about their arrest and detention. The victims reported that they were under surveillance, with NSS monitoring their movements and mobile phones.

HRD also documented the arbitrary arrest and detention of at least eight Parliamentarians, ordered by local executive authorities under the pretext of protecting freedom of expression and curtailing attempts to incite violence. On 15 August 2017, the Governor of Eastern Lakes State (created under Establishment Order 36/2015) ordered the arrest and detention of three Members of the State Legislative Assembly (MSLA) who were taken the same day to an unofficial detention facility operated by NSS in Nyang, about 15 kilometres from Yirol town. Among the five reasons enumerated by the Governor to order the arrest,¹¹⁹ two pertained to freedom of expression, namely the use of social media to address official issues, and incitement to exacerbate intercommunal violence.¹²⁰ The day before the arrest, one of the three MSLA had insinuated in a Facebook post that some local officials were profiteering from looted cattle instead of attempting to garner peace initiatives. After an initial review of the Facebook post,¹²¹ HRD noted that it did not amount

¹¹⁹ Letter from the Governor of Eastern Lakes State to the Speaker of State Legislative Assembly, dated 14 August 2017.

¹²⁰ Other reasons alleged were: unwillingness to execute state duties, obstruction of state policies related to the recovery of looted cattle, and drunkenness during working hours. The letter did not cite any specific legal provision.

¹²¹ This analysis is based on the HRD's preliminary assessment. As previously stated, the determination should be undertaken by a competent judicial authority or an independent body

to incitement. HRD advocated for the respect of due process guarantees in this case, including with the state Governor. One of the three MSLA was released on 4 November 2017 on health grounds while the other two were released on 13 November 2017. By the end of 2017, no formal charges had been brought against them, and their legislative immunity was not waived. However, they were dismissed from office, on 9 November 2017. HRD is following up with relevant authorities to ascertain the reasons for the dismissals.

Similarly, on 15 September 2017, the Governor of Gok State (created by Establishment Order 36/2015) ordered the arrest and detention of five MSLA, claiming their involvement in inciting violence. The lawmakers were detained in NSS facilities in Cueibet and Wau until 9 October 2017, when they were released without charges, on condition they should report to NSS in Cueibet on a weekly basis. Their legislative immunity was not waived. Through a Gubernatorial Decree dated 23 October 2017 announced on SSBC, and despite the lack of legal authority to do so, the Governor dismissed eight MSLA, including the five individuals who had been arbitrarily detained. The Decree did not cite any reason for the decision and referred to provisions of alleged amendments to TCSS and the Gok State Transitional Constitution. HRD was unable to locate the documents cited in the Decree but has repeatedly raised concerns with the state Governor over the arrests and has been following up with relevant authorities to ascertain the reasons for the dismissals.

5.2.3 Threats, harassment and intimidation

In July 2016, a prominent human rights defender in Central Equatoria was reportedly informed by a government source that senior officials were displeased about the activist's public statements denouncing SPLA's involvement in sexual violence during the 2016 Juba crisis. The human rights defender fled the country after unidentified individuals (believed to be security agents) broke into the activist's office in August 2016.

In October 2016, after a high-level event held outside South Sudan, a women's rights activist was threatened in person by a senior official after delivering a public presentation on conflict-related sexual violence. Following this incident, the activist has ceased being vocal on women's rights, fearing reprisals.

Religious leaders in the Greater Equatoria region reported that NSS personnel in civilian clothes would regularly monitor religious ceremonies, especially during sermons. The churches concerned have been accused by NSS of 'siding with the rebels' anytime criticisms were uttered toward the current Government. Interlocutors told HRD that the NSS presence had created an environment of intimidation, resulting in self-censorship. For instance, a religious leader was reportedly threatened with death on three occasions for openly speaking up regarding the suffering of the civilian population. On 15 September 2017, in Juba, an unidentified man in civilian clothes visited the office of that religious leader, accusing him of tarnishing the image of the Government, and threatening that his days were numbered.

In Central Equatoria, systematic surveillance by NSS has fueled a pervasive sense of mistrust among members of civil society who reported to HRD they were reluctant to speak up during events, including those organized by the international community, fearing the presence of informants.

5.2.4 Administrative measures limiting freedom of opinion and expression

During the period under review, HRD documented the dismissal of at least 16 public officials for exercising their right to freedom of expression.

On 8 March 2017, a public servant in Northern Bahr el Ghazal was officially notified about his suspension without pay for a period of three months. The official notification referred to his "involvement in a negative

political campaign against the leadership of the State Government”.¹²² There was however no mention of any specific alleged conduct justifying the temporary suspension. On 16 May 2017, the chair of the Investigation Committee in charge of the review of the case told HRD that the public servant was not ‘supporting the Government’. The employee told HRD he had expressed views on alleged corruption and nepotism by the leadership of the state during social gatherings, in public places. Attempts by HRD, in September 2017, to enquire about the outcome of the review conducted by the Office of State General Secretariat were unsuccessful as relevant officials refused to provide information. By the end of 2017, the public servant had not been reinstated to his position. He is unwilling to lodge a complaint with the court due to lack of trust in the justice system.

On 12 July 2017, following the decision of the General Assembly of Justices and Judges to strike, with effect from 24 April 2017, President Kiir ordered the dismissal of 14 judges who were members of the negotiating committee. The striking judges had put forward various demands, including better working conditions, the dismissal of the Chief Justice, and judicial reforms to eliminate corruption. The legal basis for the dismissal, Republican decree No. 100/2017, was read out by President Kiir on State television, referring to provisions of TCSS¹²³ and the Judiciary Act (2008)¹²⁴ that provide for the dismissal of judges based on “gross misconduct, incompetence or incapacity”. However, there was no mention of any specific alleged misconduct motivating the decision. The dismissal of the judges raises concerns related to the ability of members of the judiciary to freely express themselves and, more broadly, about the independence of the judiciary.¹²⁵ On 17 July 2017, as the strike of judges continued, the Deputy Minister of Justice publicly threatened more dismissals if judges failed to report to work. Though their demands were not met, judges called off the strike on 8 September 2017, citing adverse consequences for the delivery of justice throughout the country. On 13 September 2017, one of the dismissed justices filed a complaint before the East African Court of Justice to challenge the legality of the dismissal. The case was pending before the Court when this report was being finalized.

5.2.5 Violations of freedom of opinion and expression of South Sudanese citizens abroad

Throughout 2016 and 2017, HRD received credible reports of intimidation by South Sudanese authorities outside of South Sudan, against at least 11 South Sudanese citizens (including three women) engaged in advocacy on the promotion and protection of human rights in South Sudan. The targeted journalists and civil society activists were residing in countries neighbouring South Sudan or were attending international conferences. Victims’ accounts appear to indicate that they were targeted for expressing negative opinions about the state of the country or criticizing the conduct of individual officials, through public statements, articles, reports or petitions before competent courts. Those who spoke to HRD had extensively and publicly denounced human rights violations allegedly committed by Government officials and the army, including killings and conflict-related sexual violence, as well as corruption. Alleged incidents also included two attempted kidnappings of human rights defenders by NSS agents - in Kampala, in April 2017, and in Nairobi, in September 2017.

¹²² The letter was written by the Secretary General of the concerned state to the Director of Account within the Council of Ministers of that state.

¹²³ TCSS, article 134 (2) provides that ‘Justices and Judges may be removed by an order of the President for gross misconduct, incompetence and incapacity and upon the recommendation of the National Judicial Service Commission’. According to information available to UNMISS, the National Judicial Service Commission never convened to consider or recommend the removal of the 14 judges.

¹²⁴ Judiciary Act (2008), article 61 (1).

¹²⁵ See for instance the United Nations Basic Principles on the Independence of the Judiciary (1985).

All interlocutors reported receiving threats, often in the form of phone calls, SMS, emails, or social media messages, by individuals believed to be State officials who accused them of negatively depicting South Sudan. Those who spoke to HRD had extensively and publicly denounced human rights violations allegedly committed by Government officials and the army, including killings and conflict-related sexual violence, as well as corruption. In fear for their safety, the activists indicated that they would frequently change their mobile numbers and limit movements outside their places of residence.

HRD was unable to verify these allegations as they pertained to incidents that occurred outside UNMISS' area of operations. HRD has followed up on these allegations with NSS, requesting observations and any additional information and comments on the cases of eight South Sudanese nationals.¹²⁶ NSS has denied any involvement in the cases.¹²⁷

During his visit to South Sudan in February 2017, the Assistant Secretary-General for Human Rights, Andrew Gilmour, met with Government authorities and stressed the absolute need to avoid reprisals and threats against human rights defenders, including those who have cooperated with the United Nations.¹²⁸ He addressed specific cases of individuals cooperating with UNMISS and other United Nations entities outside of South Sudan, including cases of individuals who were forced to leave the country due to intimidation and threats. In July 2017, he further addressed to the Government in writing on the issue of reprisals.

6. Hate speech

Between October and November 2016, there was a sudden and alarming increase of inflammatory language by citizens, expressing hatred - and at times inciting violence - against individuals or groups, notably based on their ethnicity or perceived beliefs, acts or political views. This occurred in the context of the non-international armed conflict, exacerbating ethnic divisions and violence on the basis of ethnicity,¹²⁹ and heightening the risk of mass atrocities.



Hate speech was spread through various forms of communication, including private conversations, public speeches, social media exchanges, SMS intimidating messages, images, cartoons published in the press, and threatening letters. The use of degrading terms associating some communities with animals (e.g., parasites, insects, monkeys, baboons) was observed, aimed at dehumanizing groups or individuals (See cartoon pictured on the left, as an illustration).

On 18, 19 and 23 September, a staff member of a school in Yambio, Western Equatoria, reported having received text messages threatening her and 20 Dinka students with death, unless they left the school. One SMS read: “*Madam, you are given 7 hrs to leave Yambio with all dinka students or else you will face deadly*”

¹²⁶ Letter to the Director General of the National Security Services' Internal Security Bureau, dated 25 October 2017; Letter to the Director General of National Security Service's General Intelligence Bureau, dated 28 November 2017.

¹²⁷ Information provided to HRD during a meeting with NSS, December 2017.

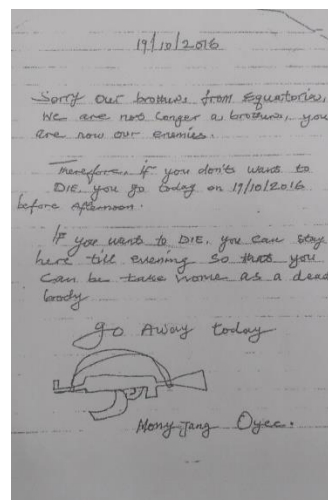
¹²⁸ OHCHR, “South Sudan: Senior UN human rights official condemns deplorable rights situation, calls for perpetrators to be held to account,” 17 February 2017.

¹²⁹ UNMISS/OHCHR previously reported incidents and impact of hate speech in the report on *Human Rights violations and abuses in Yei between July 2016 and January 2017* (May 2017).

attack!!” While the incident was reported to local authorities, security officials deemed the threat not sufficient to evacuate the school. Threats did not materialize.

Following the killing of civilians from the Dinka and Kakwa tribes during ambushes on the Juba-Nimule and Juba-Yei roads, Central Equatoria, in early October 2016, the “Jieng Youth Union” issued a statement, on 11 October 2016, condemning the attacks. It accused Equatorians of being perpetrators of the attacks and threatened to retaliate against Equatorians working in the Greater Upper Nile and Greater Bahr el Ghazal regions.¹³⁰

In Northern Bahr el Ghazal, between 11 and 19 October 2016, graphic letters were sent to different organizations operating in Nyamlel, Panthou and Aweil, threatening Equatorians that the authors of the letters would avenge the death of Dinkas in Central Equatoria, and warning Equatorians to leave or face consequences. HRD learnt that three individuals were arrested in Nyamlel in relation to these letters, but they were subsequently released without charge. The letter pictured on the left, containing the drawing of a machine gun, was received on 19 October 2016 by a United Nations agency in Aweil, Northern Bahr el Ghazal.



During the same month, threatening letters were placed on the gates of the residence of an international NGO staff member and of the Catholic Church in Aweil. On 16 October, two men attacked an Equatorian national staff member of an international NGO outside the compound of that NGO, also in Aweil. Two individuals were arrested in relation to the incident, with one suspect released without charge while charges of assault against the other suspect were dropped after the victim withdrew the complaint. On 18 October

2016, the former Acting Governor of Aweil State issued a press statement denouncing the threats and assuring the protection and peaceful coexistence of all ethnic groups in the state. During this period, over 90 national staff members of NGOs were temporarily relocated out of Northern Bahr el-Ghazal for safety reasons, which hampered the delivery of humanitarian assistance in the region.

Similar threatening letters against Equatorians, purporting to originate from the “Greater Bahr el Ghazal Youth” and the “Eastern Nile State Youth”, were disseminated in Wau (Western Bahr el Ghazal), Melut and Malakal (Upper Nile) between October and November 2016.

Equatorians responded to threats and incitement to violence with similar inflammatory rhetoric. For example, on 16 October 2016, a group called “Equatorian Youth” posted a statement online¹³¹ accusing the Government of “enshrin[ing] Dinka supremacy over other tribes”, and giving an ultimatum for Dinkas to leave the Equatoria region “immediately”. HRD is aware that senior officials in Lol, Aweil East, Wau States (created by Establishment Order 36/2015) and in Central Upper Nile (created by Republican Order 2/2017) issued public condemnations in an effort to defuse tensions in some regions, condemning hate speech, and reassuring communities under their jurisdiction concerning their safety.

In 2017, HRD continued to document incidents of hate speech, which appear to have occurred with less intensity than in 2016. The perceived exclusion of a particular community from employment opportunities remained a key factor inciting inflammatory language against specific communities. For example, on 28

¹³⁰ Signed by the Chairperson and the Secretary General of Jieng Youth Union, 11 October 2016.

¹³¹ Available at <http://www.southsudanliberty.com/news/index.php/latest-news/1302-it-is-time-for-dinka-to-leave-equatoria-and-now>

June 2017, the office of the United Nations Office for the Coordination of Humanitarian Affairs in Bor received a letter, reportedly from the Bor Community Youth Association (BCYA), stating that if Equatorians working for NGOs and international organizations were not evacuated from Bor within 72 hours, there would be consequences.¹³² All 16 members and leaders of BCYA were arrested by the police and SPLA¹³³ in early July 2017 in connection with the letters, and were released on 8 July 2017. Also on 4 July 2017, a group called “United States of Equatoria in the Republic of South Sudan” issued a press release, purportedly signed by representatives of Western, Central, and Eastern Equatoria, which characterized the BCYA ultimatum as a declaration of war against Equatorians. The document demanded support from international organizations to relocate Equatorians from Bor to “Equatoria land”.

In addition, economic hardship affecting the country, including the scarcity of employment opportunities, triggered manifestations of xenophobia. In several instances, competition for scarce employment opportunities with international organizations constituted a key factor triggering xenophobic sentiments against ethnic groups perceived as depriving local communities of employment opportunities. The use of hate speech, xenophobic rhetoric and harmful stereotyping fueled a climate of mistrust, fear and violence among different ethnic groups.

For example, on 5 and 7 July 2017, a County Commissioner and a youth group from the Greater Mayom region in Northern Liech State (created by Establishment Order 36/2015) in Unity accused an international NGO of excluding applicants from the local community from employment and of favouring Equatorian candidates. Tension was defused after the NGO actively engaged with local authorities to dispel any allegation of discrimination, and upon the intervention of the Governor of Northern Liech State, who reportedly reprimanded the concerned County Commissioner.¹³⁴

In 2016 and 2017, South Sudanese internet users often resorted to social media platforms such as Facebook, Twitter or other blogs, as tools to spread derogatory content and inflammatory messages. During the First National Conference on “Countering Hate Speech for Peace in South Sudan”, held in Juba, on 2 May 2017¹³⁵, panelists from the Government and civil society were of the view that online hate speech was often driven by South Sudanese diaspora.¹³⁶ Difficulties in prosecuting online abusers, due to the frequent use of pseudonymous accounts and the transnational reach of online communication, are believed to embolden users to use inflammatory language and images on the internet. Social media platforms have been used to express derogatory terms targeting members of different ethnic groups, such as “MTN” directed toward Dinkas in reference to their widespread presence in the country and among government positions; or against members of the same ethnicity as the authors, but holding different political preferences/affiliations (intra-ethnic), such as insults toward Nuers who have sided with the Government (e.g., “Nuer Wau”).

¹³² In a subsequent letter dated 4 July 2017, the association clarified that ordinary traders and businesspersons, government employees, and technical workers including contractors would not be affected.

¹³³ Among the 16 BCYA members arrested on 4 July 2017, five were arrested by police in Bor while 11 by the SPLA who detained the men inside Maluwal chat military barrack, contrary to South Sudanese law, before transferring the civilians to police custody.

¹³⁴ As the youth group had directed inflammatory language against international hiring managers of the NGO, the latter were relocated for safety reasons. This temporary relocation, which lasted approximately 10 days, slowed down the NGO’s operations in the Greater Mayom region, including the delivery of food and nutrition services.

¹³⁵ The event was organized by UNESCO in collaboration with national partners.

¹³⁶ While access to internet in South Sudan has been increasing, it remains limited. According to Internet World Stats, as of June 2017, there was a 16.6% internet penetration in South Sudan while in neighbouring Uganda and Sudan, it was 45.6% and 28% respectively. <http://www.internetworldstats.com/africa.htm#ss>.

The proliferation of online hate speech has triggered a number of organizations to undertake research initiatives, such as PeaceTech Lab and #defyhatenow, to map and monitor the occurrence and diffusion of online hate narratives that could fuel violence, with the aim of preventing and countering the spread of hatred on social media. Resources developed include a lexicon of hate speech terms used in the context of South Sudan.¹³⁷ However, little is known about the connection between online expressions of hatred and actual violence, warranting further data collection on the matter. As highlighted in chapter 5.1.1, the Government reacted to alleged online hate speech with shutdowns of at least four websites – a response that appears to abuse limitations allowed by international human rights law.¹³⁸

In 2016 and 2017, the Government made few efforts to address incidents of hate speech. Responses were mostly confined to public condemnations and verbally reprimanding alleged perpetrators.

On 20 June 2017, the Media Authority issued a memorandum warning media houses against the publication of hate speech. In particular, it prompted the media to refrain from using derogatory words based on ethnic or tribal affiliation that might incite violence against groups or individuals. Given the potential role of the media, including social media, in propagating hate speech, this instruction is welcome. However, HRD is not informed about any perpetrator, either private individuals or public officials, held accountable for the use of hate speech or incitement to violence. One of the main challenges in the fight against impunity for hate speech arises when messages are sent anonymously, thus increasing the difficulty of verifying the authenticity of threatening letters, including their authors.

7. Measures taken by the Government and other stakeholders to promote freedom of expression

At national and local levels, the Government continued to publicly express its commitment to comply with its international and domestic human rights obligations, including the creation of an environment conducive to democratic dialogue and reconciliation.¹³⁹ Yet, concrete measures to follow up on public pronouncements on freedom of expression have been limited. The focus of the Government's attention and resources appeared to prioritize issues such as the ongoing insecurity and the challenging economic conditions affecting the country.

With the assistance of the NGO Community and Empowerment for Progress Organization (CEPO), the Media Authority drafted a 'Code of Conduct for the practice of Journalism' which, as at December 2017, was not finalized. In November 2016, the first batch of 18 students, including five women, graduated from

¹³⁷ Refer for example to PeaceTech Lab *A lexicon of hate speech terms*, available at <https://static1.squarespace.com/static/54257189e4b0ac0d5fca1566/t/5851c214725e25c531901330/1481753114460/PeaceTech+Lab+SouthSudanLexicon.pdf>

¹³⁸ See also the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4, appendix, para. 11): "It is of concern that perpetrators of incidents, which indeed reach the threshold of article 20 of the International Covenant on Civil and Political Rights, are not prosecuted and punished. At the same time members of minorities are de facto persecuted, with a chilling effect on others, through the abuse of vague domestic legislation, jurisprudence and policies. This dichotomy of (1) non-prosecution of "real" incitement cases and (2) persecution of minorities under the guise of domestic incitement laws seems to be pervasive."

¹³⁹ For example, President's Kiir speech delivered on the occasion of the swearing-in ceremony of the Steering Committee of the National Dialogue, May 2017; speech delivered by First Vice President Taban Deng Gai at the United Nations General Assembly, September 2017.

the Media Development Institute (MDI) - the first South Sudanese journalism training centre.¹⁴⁰ Twenty-five students enrolled in MDI's second batch, for 2017-2018, which started in 15 September 2017.

In 2017, the National Editors' Forum (NEF), a professional body set up in 2014, and consisting of media editors and managers in South Sudan, finalized *Editorial Guidelines for South Sudan's Media*, with the aim of fostering high standards of journalism. The guidelines are set to be launched in early 2018. Throughout the period under review, UNESCO continued to promote the implementation of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity.¹⁴¹ As at December 2017, a multi-stakeholder committee was in the process of being established to review existing safety mechanisms for journalists, with the purpose of establishing a national mechanism to prevent violence against journalists and ensure adequate responses, including the prosecution of alleged perpetrators.

The inclusion of Alfred Taban, a prominent South Sudanese journalist, in the Secretariat of the National Dialogue, was a positive step to promote broader representation and inclusivity in reconciliation efforts. While since early 2017, at least 30 political activists and two journalists have allegedly been released from Government custody, it is believed that the number of civilians still held without charge by NSS or SPLA for reasons related to the peaceful expression of their opinions is much higher.¹⁴²

On 17 March 2017, during the Universal Periodic Review (UPR) of South Sudan, the delegation of South Sudan indicated that its Government had accepted 203 out of 233 recommendations while it had noted 30.¹⁴³ South Sudan publicly committed, in generic terms, to taking measures to ensure freedom of expression.¹⁴⁴ However, it rejected the recommendations requesting amendments to the National Security Service Act (2014) to enhance the protection of journalists and civil society organizations from arbitrary arrests. The delegation of South Sudan requested technical assistance and resources from the international community to conduct impartial investigations into all cases of intimidation and violence against civil society actors.

8. Engagement of the Human Rights Division of UNMISS in the promotion of freedom of opinion and expression

In 2016 and 2017, HRD continued to regularly engage with authorities, civil society and media practitioners, to promote and protect freedom of expression, in accordance with its mandate. Its advocacy¹⁴⁵ focused on reminding duty-bearers of their obligations regarding the protection of the right to freedom of expression, including on the conditions foreseen in international law concerning possible restrictions of this right. In that regard, HRD emphasized that such restrictions, as well as other forms of interference, had to

¹⁴⁰ Established in Juba with the support of various donors, MDI operates under the auspices of AMDISS and offers a nine-month certificate programme in journalism to current and aspiring journalists.

¹⁴¹ http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/official_documents/UN-Plan-on-Safety-Journalists_EN_UN-Logo.pdf

¹⁴² HRD has not been granted access to NSS facilities while access to SPLA facilities has been rare.

¹⁴³ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/SSindex.aspx>

¹⁴⁴ See A/HRC/WG.6/26/L.11, Section 126.67.

¹⁴⁵ As part of its advocacy strategy, HRD has also been a vocal advocate on the promotion and protection of freedom of expression in South Sudan through public statements delivered during national and international high level forums. Among others, see key addresses by the Director of HRD during the Human Rights Forum in Juba in March 2017, and during the interactive dialogue held by the United Nations Human Rights Council, in Geneva, in September 2017. Also see interview of the Director of HRD published in the *Juba Monitor* (Vol. 7, Issue No. 1015; Page 2), 23 March 2017, enclosed in an article entitled "Freedom of Expression is fundamental for National Dialogue".

be exceptional, and should not be used to discourage or suppress dissenting voices and political participation.

HRD's initiatives on the issue of freedom of expression fed into UNMISS' advocacy efforts on the promotion of good governance and the rule of law as well as support to credible and effective reconciliation processes in South Sudan. As a member of the UNESCO-led working groups on media development and on the safety of journalists, HRD contributed to discussions in accordance with its mandate.

Throughout 2017, HRD engaged with relevant Government officials across the country on their obligations to promote and protect freedom of expression, including following up on individual cases. At the national level, HRD advocated for the prosecution for violations of freedom of expression, including with senior officials of the Ministry of Information, Communication Technology and Postal Services, the Media Authority, NSS, and the National Dialogue Steering Committee.

HRD also regularly interacted with civil society organizations, the South Sudan Human Rights Commission, human rights defenders and media practitioners to share information and provide technical support to initiatives promoting freedom of expression. HRD provided comments to a Gender Training Manual for Journalism developed by the Association of Media Women in South Sudan (AMWISS) and other partners.

More specifically, with the aim of addressing capacity and knowledge gaps identified through its human rights monitoring, HRD initiated various activities in 2017 to strengthen the capacities of targeted stakeholders, including civil society actors. For example, in March 2017, in Juba, HRD organized a training for 45 NSS officers (including four women) on basic concepts of human rights standards and principles, including relevant legal frameworks guaranteeing freedom of the press. In July 2017, in partnership with the Union of Journalists of South Sudan (UJOSS) and UNESCO, HRD conducted a two-day training workshop for 20 journalists (including seven women), on the role of journalists in combating hate speech, the indicators of hate speech, and a human rights approach to reporting. Similar efforts were also carried out outside the capital. For example, in Rumbek, HRD conducted an awareness-raising session for 22 representatives of civil society and journalists (including 10 women) on the admissible restrictions to freedom of expression during a workshop held in April 2017. In Wau, in November 2017, HRD and UJOSS conducted an awareness-raising session for 35 media professionals (including 12 women) on domestic and international legal frameworks on freedom of expression, followed by discussions on challenges in the exercise of their profession.

9. Conclusions and recommendations

The creation and expansion of a conducive environment for the exercise of the rights to freedom of opinion and expression, including to communicate dissenting views, is vital to strengthening democracy and the pursuit of national reconciliation and peace in South Sudan. In line with its human rights obligations, the Government must guarantee freedom of expression to everyone who manifests his / her opinions - both online and offline – so that their contributions and opinions might shape their country's future.

As the present report shows, the restrictive domestic legal framework, which criminalizes defamation and does not clearly define the clauses limiting the exercise of freedom of expression, leaves a wide margin of interpretation which might lead to arbitrary implementation. As media outlets and civil society play a key role in promoting good governance and accountability, journalists and outspoken civil society actors have been especially targeted with censorship, harassment, threats and violence. As a result, citizens fear criminal

prosecution for expressing their views or are concerned about their safety, and tend to practise self-censorship.

Despite positive developments, such as the establishment of the Media Authority, the key regulatory institution aimed at promoting freedom of the media, effective civic participation remains a challenge. Main concerns include a restrictive legal framework and the imposition of undue restrictions by State institutions, at the national and local levels, including by security forces, to the legitimate exercise of the right to freedom of expression of media workers and other individuals. Restrictions, such as censorship of newspaper articles that are critical, have been misused to muzzle individuals and media critical of the Government or perceived as such – in some cases with the pretext of prohibiting hate speech.

There is an urgent need to increase awareness, among the Government, media professionals and the public, about lawful limitations to the exercise of freedom of expression as permitted under international human rights law, notably to prevent intolerance and hate speech and incitement to violence. This is critically needed to de-escalate tensions among communities, and in the context of peace and reconciliation efforts.

UNMISS/OHCHR calls on the Transitional Government of National Unity, all parties to the conflict and the international community to act on the following recommendations:

To the Transitional Government of National Unity and Transitional National Legislative Assembly:

Legal reform and implementation

- Accede to all core international and regional human rights treaties, including the International Covenant on Civil and Political Rights and the Convention on the Elimination of Racial Discrimination which include specific provisions protecting freedom of expression and prohibiting hate speech and incitement to discrimination and violence;
- Review and repeal legislation that is inconsistent with the right to freedom of expression. In particular:
 - o take actions to decriminalize defamation;
 - o amend the National Security Service Act to ensure that powers granted to NSS with respect to surveillance, arrest and detention do not infringe on the legitimate rights of individuals to exercise freedom of expression, in compliance with TCSS and applicable international, regional and national human rights norms and standards;
 - o provide clear definitions of any limitations to the exercise of freedom of expression, with due regard to the strict conditions set out in international human rights law;
 - o ensure that restrictions imposed on the right to freedom of expression are limited to exceptional circumstances, are grounded in law, and meet the test of necessity and proportionality.

Accountability

- Conduct prompt and thorough investigations into all violations of freedom of expression, including when perpetrated against journalists and other civil society actors, and prosecute alleged perpetrators. In particular:
 - o ensure victims have access to an effective remedy;
 - o ensure that all individuals held in detention in relation to the exercise of their legitimate right to freedom of expression are either released immediately or, as appropriate, produced before a competent judicial authority without further delay;

- condemn incidents of hate speech and incitement to violence; and ensure they are duly and promptly investigated and prosecuted;
- collaborate with relevant partners in the implementation of the United Nations Plan of Action on the Safety of Journalists and the Issue of Impunity.

Strengthening institutions

- Strengthen institutions at national and sub-national levels mandated to protect freedom of expression, in line with commitments enshrined in domestic legislation. In particular:
 - ensure that institutions established pursuant to the Media Laws, especially the Media Authority, are fully operational, independent and duly resourced to fulfil their mandated duties;
 - promote programmes that recognize, foster and widen independent media and civic space;
 - strengthen the capacity of relevant duty-bearers to identify instances of hate speech, including when the expression meets the threshold of incitement to discrimination, hostility or violence;
 - support the training of journalists as part of a broader strategy to ensure that the media, including traditional and new/social media, are not used to incite intolerance, hatred and violence, and to ensure that they contribute to foster a safe, inclusive environment, notably through objective, gender-sensitive and ethical reporting;
- Support strategies that safeguard open and inclusive debate, especially in the context of the ongoing consultative initiatives and processes on peace and reconciliation;
- Extend an invitation to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and to the Special Rapporteur on the situation of human rights defenders to visit South Sudan to provide technical expertise on further improving the promotion and protection of the right to freedom of expression.

To SPLA, SPLA in Opposition and other armed opposition groups:

- Guarantee the protection of journalists and other civil society actors, including human rights defenders, as civilians under international humanitarian law, and respect their rights to monitor and report safely and freely on the armed conflict, without fear of attacks, reprisals or any other interference with their work.

To the International Community:

- Continue to support strategies and programmes aimed at widening the space for rights-holders to freely express their opinions, including when deemed critical of the country or of the authorities;
- Regularly engage the Transitional Government of National Unity on issues related to freedom of expression, including to advocate for the establishment of accountability mechanisms for violations of freedom of expression;
- Advocate with the Transitional Government of National Unity and the National Dialogue leadership to ensure freedom of expression during the National Dialogue process;
- Support regular monitoring on progress and challenges with regard to the exercise of freedom of expression, as well as initiatives that aim at creating space where civil society actors can openly and constructively discuss matters of public interest;

- Continue to support programmes aimed at enhancing the capacities of South Sudanese media professionals as well as at increasing the number of women involved in journalism;
- Advocate for the protection of human rights defenders and journalists and for the release of those arbitrarily detained in relation to the peaceful and legitimate exercise of their activities.