

# Critical Examination of the Law Relating to the Freedom of Expression and Media in South Sudan

Kuek William Wek

School of Law Kampala International University, Uganda

---

## ABSTRACT

The right to freedom of expression and the media is a cardinal right in any democratic society or any society that opines about being democratic. It is in this light that South Sudan has come up with various laws concerning the right to freedom of expression and media since 2011. However, the concern remains on the practice of the right to freedom of expression and media in South Sudan which has been infringed upon to a larger extent especially by the central government. On this note, this article calls for the executive to aptly respect and promote the right to freedom of expression and media in South Sudan as they are mandated to do other than using the National Security Service guide in violating the right. The judiciary is equally advised to take up its place in making well-reasoned decisions on the course of protecting the said right just as the international courts have done. Furthermore, media personnel should learn how to explore other mechanisms of enforcing human rights such as the African Commission on Human and People's Rights and the Court thereof. This will guide them in enforcing their rights.

**Keywords:** Cardinal rights, Freedom of expression and media, Human rights, International legal framework, National framework

---

## INTRODUCTION

Human rights are the rights and freedoms to which every human being is entitled [1]. Human rights and fundamental freedoms are the birth right of all human beings; their protection is the first responsibility of all governments [2]. It is in this light that the freedom of expression and media is recognized by international treaties and domestic Constitutions. Although the Transitional Constitution of the Republic of South Sudan, 2011 [3] does not define freedom of expression, freedom of expression has been defined as the freedom to hold opinions and to receive and impact ideas and information without any interference [4]. It is also generally accepted that this right entails the freedom to hold opinions and to seek, receive and input information and ideas all kind, either orally, or in writing, in print, or through other chosen media, without inference by public authority [5]. Media refers to means of receiving information or entertainment through the press, publication, television, radio or electronics [6]. Freedom of media/press is therefore a freedom under the broad freedom of expression. Freedom of press covers not only the right of the press to impact

information of general interest or concern but also the right of the public to receive it as the court held in **Schering Chemicals v Falkman Limited** [7]. The right to freedom of expression has existed time immemorial, however just like many human rights, it gained prominence after World War two when individuals attained concrete status under international law. Before World War two, most of the human rights were not recognized however after the war in issue, the Universal Declaration of Human Rights 1948 (UDHR) was adopted and later came into force which saw a new wave of the respect of human rights and individuals being subjects of international law [8]. From the entering into force of the Universal Declaration of Human Rights, many other human rights instruments ipso facto came into existence which also included regional international human rights instruments [9]. The right to freedom of expression which covers all media was therefore enshrined in various international human rights instruments though in most cases, it is not envisaged as an absolute right however any limitation put on the same should also pass the test of

international law as was held in Article 19 v Eritrea 19[10].

This right in issue is provided under Article 24 of the Constitution of South Sudan 2011[3] and to operationalize the same right, various laws having been enacted since 2011 such as the Media Authority Act 2013 and the National Security Service Act 2014. There have been several conflicts in South Sudan since 2011 such as the violence in Juba between forces loyal to President Salva Kiir and the former First Vice-President Riek Machar. On 14 December 2016, President Salva Kiir announced the National Dialogue initiative which ipso facto looked at uniting the peoples of South Sudan however the civil society organizations voiced concerns regarding inclusiveness in the process and as to whether the environment could encourage freedom of expression. Such concerns have not only been made by civil society organizations but also by opposition leaders[11].

The Transitional Constitution of the Republic of South Sudan[3] states that, every citizen shall have the right to freedom of expression, reception and dissemination of information, publication and access to the press without prejudice to public order safety or morals as prescribed by law. Its further state that, all level of government shall guarantee the freedom of press and other media rights shall be regulated by law in the Democratic society[3]. All media shall abide by professional ethics. There has been claims from journalists that South Sudan government is not observing the provisions of the constitution specifically on the right to freedom of expression and media and it has been evidenced by the fact that journalists gets to injured and their equipment confiscated almost every time they are out to cover issues that concern the State and the government, one time in 2019 when the citizens wanted to demonstrate peacefully the minister for information was quoted saying *"we've got no tear gas but live bullets so if you want to go out there do it at your own risk"*[12]. From that statement there is no doubt that the freedom of expression and media is at stake currently.

An officer of the National Security Service (NSS) once told a reporter in the Greater Equatorial region in April 2017 that "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". Many of such incidents which infringe on Article 24 of the South Sudanese Constitution 2011 have happened in South Sudan. It was discovered that at least- seven journalists were killed in South Sudan in 2015 and the incidents surrounding their demise have remained unknown. Such incidents entail the right to freedom of expression and media in South Sudan. This study will

therefore identify and examine such legal framework in promoting the right to freedom of expression and media in South Sudan.

### National Legal Framework

The national legal framework consists of the various laws in the Republic of South Sudan providing for the right to freedom of expression and media. These laws mentioned therein also envisage other supporting laws to the right to the freedom of expression and media such as the right to access information by the citizens of South Sudan. These laws comprise of the Transitional Constitution of the Republic of South Sudan 2011, Media Authority Act 2013[13] and Right to Access of Information Act 2013[14], Broadcasting Corporation Act 2013[15] and National Social Security Service Act 2014[16].

### The Transitional Constitution of the Republic of South Sudan

The Constitution of South Sudan 2011 is the supreme law of the land and any law or custom inconsistent with it in South Sudan is thus void or null to the extent of its inconsistency[3]. Since the Constitution is the grandmom in the state, other laws derive their validity from it inclusive of laws providing for freedom of expression and media. Part Two of the Constitution of South Sudan, 2011 provides for the bill of rights where the freedom of expression is envisaged. Such rights and freedoms of individuals enshrined in this Bill are to be respected, upheld and promoted by all organs and agencies of Government and by all persons. Article 24 of the Constitution of South Sudan, 2011 provides for the right to freedom of expression and media. It stipulates in extenso;

1. "Every citizen shall have the right to the freedom of expression, reception and dissemination of information, publication, and access to press without prejudice to public order, safety or morals prescribed by law.
2. All levels of government shall guarantee the freedom of the press and other media as shall be regulated by law in a democratic society.

Article 24 of the Constitution of South Sudan, 2011 envisaged herein above is the primary law providing for the freedom of expression and media in South Sudan. However various laws have been enacted by the National Legislature of South Sudan since 2011 which envisage the same right. Article 24 of the Constitution of South Sudan, 2011 provides for the right to freedom of expression and media in its singular form however this right is supported by various rights in the same grund-norm such as the right to access to information[3]. The media personnel are supposed to access information

before they can air it out on the various platforms for the peoples to receive it. No derogations can be made from the rights and freedoms envisaged in the Bill of Rights of the Constitution of South Sudan, except where permitted under a valid declaration of a state of emergency[3].

The Constitution of South Sudan 2011 provides for the National Legislature, which is given a mandate under Article 55 of the same Constitution. The primary mandate of the National Legislature in South Sudan is to enact legislation on all matters assigned to it by the Constitution and to exercise its legislative powers through bills in accordance with the Constitution. The National Legislature of South Sudan has thus made laws in relation to the right to freedom of expression which encompasses the media as envisaged later on.

#### **Media Authority Act 2013**

The Media Authority Act[13] provides for regulation and development of the media in South Sudan with a view to promoting an independent pluralistic media in the public interest. It also establishes an autonomous regulatory Authority to oversee the media in South Sudan; defines the powers, functions and duties of the Authority. It also provides for the exercise of powers relating to broadcast frequency management by the Authority; and use of media services and for incidental or related matters. The Media Authority Act was therefore legislated with the aim of streamlining the freedom of press and other media in South Sudan. The Media Authority Act has certain guiding principles which include but are not limited to the right of expression, including the public right to a pluralistic media being a fundamental right as envisaged under Article 24 of the Constitution of South Sudan, 2011. These guiding principles aim at promoting and protecting the right to freedom of expression and media.

The Media Authority is established under the Media Authority Act and it is mandated to regulate, develop and promote an independent and professional media in South Sudan[17]. The Authority has the capacity to sue or be sued. The Media Authority has various powers namely;

- Initiation of legal proceedings against any person or entity for violating a provision of an order or regulation to the competent court.
- Bringing an action before a court of law for equitable relief to redress a violation by any person or entity of a provision or regulation issued under the Right of Access to information Law.
- The Authority also has powers as may be necessary for carrying out its functions as:- duties under the Media Authority Act

and similarly has the power to regulate other media procedures.

- The Media Authority also has various functions as stipulated under Clause 19 of the Media Authority Act. The Authority is therefore supposed to ensure media development and press freedoms in South Sudan by following the stipulated functions including but are not limited to;
- Overseeing advertisement, the development and implementation of programs and technical codes;
- Issuing licenses for broadcasting services, allocating broadcast frequencies and managing the broadcast frequency spectrum with a view to facilitate the emergency of a commercial broadcast sector;
- Ensuring that broadcast license conditions are respected by the licensees;
- Investigating any breach of media ethics or access to information law on its own initiative
- The initiation by the Ministry, governmental entity or upon complaint by a third party and taking appropriate action in accordance with provisions of this Act; and
- Advising the Government on the media related issues, policies and events, and managing the transformation of state broadcasting to public broadcasting service.
- Establishing and working with a Press and Broadcast Council to hear and resolve ethical and legal complaints of journalistic wrongdoing;
- Taking, investigating, hearing and resolving ethics complaints appealed from or passed on by the Press and Broadcast Council;
- Amicably resolving legal complaints of defamation, incitement to violence, hate speech and invasion of privacy.

The Media Authority in South Sudan therefore regulates the media personnel in the State in very many ways such as licensing of media entities for example the televisions and radios which enables the promoting and protection of the right to freedom of expression and media and other supporting rights such as the right to access to information. The Media Authority Act provides for a modus operandi of lodging a complaint by media personnel in case of breach of the set down procedures under the Act.

***The Right to Access of Information Act, 2013***

The freedom of expression and media entails being able to access information which is provided as a separate right under the laws of South Sudan although various international human rights instruments envisage the right to access of information under the broad freedom of expression for instance Article 19 of the Universal Declaration of Human Rights (1948) which states that the fundamental right of freedom of expression encompasses the freedom to seek, receive and impart information and ideas through any media and regardless of frontiers[18].

The right to access of information is so much connected to the right to freedom of expression and media although it is very vital to have them as separate rights. This however does not take away the pure enjoyment of the right in issue since it has to be enjoyed by other very vital right; inclusive of the right to access of information. This Right to Access of Information Bill was assented to by the President of South Sudan in 2013 hence becoming law however the implementation of this Act has always been in question by various rules.

The Right to Access to Information Act therefore makes it a right for every citizen of South Sudan to access information subject to making a request as provided in the same law[19]. This law enables the citizens of South Sudan acquire information from public and private bodies unlike in other East Africa states such as Uganda where a citizen can acquire information from a public body and not a private body. Some information is however not accessible according to the Right to Access of Information Act[14] namely.

- Personal information
- Information privileged from production in legal proceedings
- Commercial and confidential information
- Frivolous, vexatious or repetitive requests
- Information pertaining to public economic interest
- Information that would interfere with policy making and operations of public bodies
- Information related to national defense and security
- protection of health and safety of another person.

The Right to Access to Information Act[14] therefore enables the promotion of the freedom of expression and media in South Sudan because where the citizens are allowed to access information from public and private bodies, the right in issue is thus being protected and promoted. The implementation of this Act has been

put to question although the aspect where only citizens remain the only individuals to acquire such information remains an area of advocacy. The information that is not accessible by the citizens of South Sudan under the Right to Access to information Act envisages the duties as highlighted in various human rights documents for example personal information relates to the right to privacy of persons which is also envisaged under the same Bill of Rights.

***The Broadcasting Corporation Act, 2013***

The Broadcasting Corporation Act was enacted with its primarily role being to promote high quality broadcasting and guarantee the independence of the public broadcasting service, free flow of information and any related matters in the public interest through the establishment of South Sudan Broadcasting Corporation.

The Broadcasting Corporation Act majorly provides for the South Sudan Broadcasting Corporation herein after referred to as the Broadcasting Corporation. Although many people contest the information aired by the Broadcasting Corporation as it is always seen to be in favour of the government, it does not take away the fact that it has promoted the right to freedom of express (on and media to a certain extent. The Broadcasting Corporation has the right to sue and be sued in its own name.

The Broadcasting Corporation is supposed to protect and promote the right to freedom of expression of the peoples in South Sudan by providing a service that:

- Is independent from political or economic control by the government and reflects editorial integrity;
- Includes comprehensive, impartial and balanced news and current affairs program during prime time, covering South Sudan and international events of general public interest;
- Contributes to a sense of South Sudanese identity, while reflecting and recognizing the cultural diversity of South Sudan and its regional and international status;

***National Security Service Act 2014***

The National Security Service Act was enacted in 2014 with the purpose of providing the legal framework to govern the establishment, organization and mandate of the National Security Service. The National Security Service is established under Section 8(1) of the National Security Service Act and it is composed of various organs namely;

- The National Security Council and,
- Two operational organs, General Intelligence Bureau and Internal Security Bureau.

These organs are aptly envisaged under the National Social Security Service Act however in a nutshell these organs enable in promoting security in South Sudan. This Act puts a restitution on information of the service, it stipulates in extenso under Section 31;

"Subject to Article 32 of the Constitution, the Service shall not release information likely to prejudice public security or the right to privacy of any person."

The National Security Service is also permitted to gather and retain information to any person, persons or institutions as it is necessary for carrying out its duties and functions. These provisions of the National Security Service Act envisage the right to freedom of expression and media in South Sudan in that an individual is not allowed to receive or gather information that is likely to be prejudicial to public security or the right to privacy of any person although such a right as envisaged in most Constitutions and international instruments is not absolute. The only challenge is when a chilling effect is put on the same right as will be envisaged later on.

#### **International Legal Framework**

The international legal framework herein under comprises of various laws at the international level providing for the right to freedom of expression and media. The laws envisaged are in the Treaties that have been ratified by the Republic of South Sudan; some would envisage the customary international law principle literally meaning that even if the state does not become a party to the said treaty, it remains bound by the treaty. It is vital to note that the principle of *pacta sunt servanda* applies under international law literally meaning that parties to a treaty are obliged the treaty. These Conventions in issue include the African Charter on Human and Peoples' Rights 1986, Universal Declaration on Human Rights 1948 and International Covenant on Civil and Political Rights.

#### ***African Charter on Human and Peoples Rights***

The Africa Charter on Human and Peoples' Rights is the international human rights instrument that majorly governs the African region in the promotion and protection of human and peoples' rights. However, this protection of human rights was not at the core agenda of the Organization of African Unity now African Union during its formation in 1963. Nevertheless, the Organization of African Unity came up with the African Charter on Human and Peoples' Rights[20].

The African Charter on Human and Peoples' Rights is widely recognized for its formulation of peoples' rights under Articles 19-24 which encompass the rights of a people. South Sudan is

now a party to the same Charter in issue hence bound by Article 26 of the Vienna Convention on the Law of Treaties 1969 providing *pacta sunt servanda* literally meaning that parties to a treaty are bound by a treaty. South Sudan is therefore bound by the provisions of the African Charter on Human and Peoples' Rights by virtue of Article 26 of the Vienna Convention on the Law of Treaties 1969.

Article 9 of the African Charter on Human and Peoples' Rights stipulates in extensor "I. Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law."

The individuals in South Sudan thus enjoy this right by virtue of the fact that their state is a party to the African Charter on Human and Peoples' Rights and in case of violation, the same Charter provided for the African Commission on Human and Peoples' Rights as a place to acquire a remedy.

#### ***Universal Declaration on Human Rights 1948***

The Universal Declaration on Human Rights[21] was adopted without a dissenting vote although eight States abstained. The passage of time has enabled this international instrument to develop into hard law from soft law and this was the first international human rights instrument to aptly articulate about human rights. The Universal Declaration on Human Rights has raised many questions about its binding effect as certain provisions are seen to reflect customary international law principles since it has been recognized by many States in the world hence raising the issue that even though a State does not ratify such an instrument, it thus remains binding. Members States of the United Nations such as the Republic of South Sudan are therefore supposed to respect the Universal Declaration on Human Right. The Declaration provides for the right to freedom of expression and media under Article 19 as stipulated herein under in extenso.

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." The Universal Declaration just as the African Charter on Human and Peoples' Rights envisages duties to the individuals under Article 29 hence where one has a right, she also has a duty. Today Article 19 of the Universal Declaration is viewed as encapsulating a general freedom of expression and it is even arguable that parts of it are now acceptable as customary law.

#### ***International Covenant on Civil and Political Rights***

The Republic of South Sudan is a party to the International Covenant on Civil and Political Rights[22] hence bound by the Covenant by

virtue of Article 26 of the Vienna Convention on the Law of Treaties providing *pacta sunt servanda* literally meaning that parties to a treaty are bound by a treaty. The International Covenant on Civil and Political Rights encompasses the international bill of rights. Most importantly is that it provides for the freedom of expression and media under Article 19 and it provides in extensor.

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, or through any other

South Sudan has come up with various laws concerning the right to freedom of expression and media since 2011. It is in fact a party to certain vital international instruments that envisage the same right. However, the concern remains on the practice of the right to freedom of expression and media in South Sudan which has been infringed upon to a larger extent especially by the central government. On this note, this article calls for the executive to aptly respect and promote the right to freedom of expression and media in South Sudan as

### CONCLUSION

media of his choice.

3. The exercise of the rights provided in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by the law and are necessary:

- a) For the respect of the rights or reputation of others;
- b) For the protection of national security or of public order, or of public health or morals"

Article 19(3)(b) of the International Covenant on Civil and Political Rights is in harmony with the provisions of the National Security Service Act which prohibit acquisition of information as long as it is prejudicial to national security or of public order.

they are mandated to do other than using the National Security Service guide in violating the right. The judiciary is equally advised to take up its place in making well-reasoned decisions on the course of protecting the said right just as the international courts have done. Furthermore, media personnels should learn how to explore other mechanisms of enforcing human rights such as the African Commission on Human and People's Rights and the Court thereof. This will guide them in enforcing their rights.

### REFERENCES

1. Interparlamentarische Union ed: Human rights, Geneva (2016)
2. Vienna Declaration and Programme of Action, <https://www.ohchr.org/en/instruments-mechanisms/instruments/vienna-declaration-and-programme-action>
3. South Sudan: The Transitional Constitution of the Republic of South Sudan, <https://www.refworld.org/legal/legislation/natlegbod/2011/en/122678>
4. Freedom of speech, [https://en.wikipedia.org/w/index.php?title=Freedom\\_of\\_speech&oldid=1223645285](https://en.wikipedia.org/w/index.php?title=Freedom_of_speech&oldid=1223645285), (2024)
5. Schabas, W.A.: Fundamental freedoms. In: Schabas, W.A. (ed.) The Customary International Law of Human Rights. p. 0. Oxford University Press (2021)
6. Onyango-Obbo and Another v. Attorney-General. International Law Reports. 140, 566–623 (2011). <https://doi.org/10.1017/CBO9780511675775.007>
7. Schering Chemicals Ltd v Falkman Ltd, <https://vlex.co.uk/vid/schering-chemicals-ltd-v-793847937>
8. A history of the Right to Freedom of Expression, <https://www.orfonline.org/expert-speak/a-history-of-the-right-to-freedom-of-expression>
9. Gilmore, E.: 40th Anniversary of the Adoption of the African Charter on Human and People's Rights-Intervention, <https://www.gilmore.ie/40th-anniversary-of-the-adoption-of-the-african-charter-on-human-and-peoples-rights-intervention-in-session-3-on-the-contributions-of-the-african-charter-to-international-human-ri/>, (2021)
10. 275 03 Article 19 v Eritrea • Page 1 • African Human Rights CLA 2.0, <https://caselaw.ahrda.org/ar/entity/x5uxhytg5xz1ree0u0bv5cdi?page=1>
11. Instability in South Sudan | Global Conflict Tracker, <https://www.cfr.org/global-conflict-tracker/conflict/civil-war-south-sudan>
12. South Sudan clashes: Salva Kiir and Riek Machar order ceasefire - BBC News, <https://www.bbc.com/news/world-africa-36763076>
13. Media Authority Act - ICNL, [https://www.icnl.org/research/library/south-sudan\\_maa2013/](https://www.icnl.org/research/library/south-sudan_maa2013/)
14. Right To Access To Information Act, [https://www.icnl.org/research/library/south-sudan\\_right/](https://www.icnl.org/research/library/south-sudan_right/)
15. Broadcasting, <https://nca.gov.ss/industry/broadcasting/>
16. National Security Service Act, 2014 - DocumentRepository,

- <https://dr.211check.org/slug/national-security-service-act-2014/>
17. Opinion | Media Authority Order against journalist Rial has no basis in law, <https://radiotamazuj.org/en/news/article/opinion-media-authority-order-against-journalist-rial-has-no-basis-in-law>
  18. South Sudan: ARTICLE 19 and Free Press Unlimited Contribute to the Universal Periodic Review, <https://www.article19.org/resources/south-sudan-article-19-and-fpu-press-upr/>
  19. South Sudan Approved Right to Information Law in 2013, <http://www.freedominfo.org/2014/12/south-sudan-approved-right-information-law-2013/>, (2014)
  20. African Charter on Human and Peoples' Rights | African Union, <https://au.int/en/treaties/african-charter-human-and-peoples-rights>
  21. Nations, U.: Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
  22. International Covenant on Civil and Political Rights | OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

CITE AS: Kuek William Wek (2024). Critical Examination of the Law Relating to the Freedom of Expression and Media in South Sudan. IDOSR JOURNAL OF CURRENT ISSUES IN ARTS AND HUMANITIES 10(1):27-33. <https://doi.org/10.59298/IDOSRJCIAH/2024/101.2733004>