

Media Policy Framework for Southern Sudan

Introduction

Media freedom is an essential component of peace building and democratic development that achieves the goals and aspirations of the people of Southern Sudan.

Given the establishment of the Government of Southern Sudan, there is now a need for a legislative and policy process to give effect to the Interim Constitution and ensure that Freedom of Expression and Media rights are respected in accordance with international guarantees.

The Comprehensive Peace Agreement

The Comprehensive Peace Agreement includes the following as a principle to guide the distribution of power and the establishment of structures:

Acknowledgement of the need to promote the welfare of the people and protect their human rights and fundamental freedoms....

The Agreement also deals directly with human rights. The parties agreed to comply fully with their treaty obligations under international law, including the *International Covenant on Civil and Political Rights* (ICCPR) and the *African Charter on Human and Peoples' Rights* (ACHPR). The agreement specifically recognises a long list of rights, including the following:

Freedom of Thought, Conscience and Religion

Everyone shall have the right to freedom of thought, conscience and religion;

Freedom of Expression

Everyone shall have the right to freedom of expression...

The Agreement does not actually specify whether or under what conditions the right to freedom of expression, or any other right, may be restricted. However, the agreement provides:

No derogation from these rights and freedoms shall be made under the Constitution or under the ICCPR except in accordance with the provisions thereof and only with the approval of the Presidency and the National Legislature....

It may, therefore, be presumed that restrictions in accordance with the ICCPR are permissible. Indeed, the Interim Constitutions provide for this.

The Interim Constitutions also provide for Human Rights Commissions, with a mandate to monitor the rights set out in the respective constitutions.

Any transitional strategy should have as its overriding goal the development of a framework that creates the necessary space for the fullest exercise of freedom of

expression as defined in the ICCPR, the African Commission for Peoples' and Human Rights *Declaration of Principles on Freedom of Expression in Africa*, and other international human rights instruments. It should empower independent and professional journalism rather than restrain it and it should encourage pluralism and diverse political debate.

The transitional strategy should:

- Suspend any current laws restricting freedom of expression, including the suspension of the National Press and Publication Act 2004, which would also restrict the development of a free media in Southern Sudan;
- Abolish the current National Press Council that also restricts the development of a free media in Southern Sudan; and
- Provide for the establishment of an independent broadcast regulator, including the licencing of private broadcasters and allow for the development of true public service broadcasting.

At the same time, new legislation and independent institutions to promote and protect freedom of expression need to be developed both nationally and in Southern Sudan.

Implementing the Constitutional Framework

To put the Interim Constitutional provisions into effect, legal frameworks need to be developed that underpin, among other things, respect for freedom of expression, the free flow of information and ideas, media pluralism and diversity, and the transformation of State media into public service media. Legislation should also provide for the establishment of independent bodies to regulate the broadcasting sector fairly and in the public interest, and to ensure that broadcasting reflects a diversity of views broadly representing Southern Sudanese society.

Principles which Underpin the Media Policy

The aim of this policy is to promote and ensure a free, independent, dynamic and public-spirited media that will provide access for all, and not only some, of the Sudanese people. It seeks to ensure for all the people of Southern Sudan the right to participate freely, fully and creatively at the community, national and global levels in the expression, exchange and discussion of knowledge, information and ideas, as well as in the management and operations of institutions governing the media. It thereby seeks to build a just, prosperous and equitable society, enriched by its diversity and informed by its values, with its people able to interact as equals and to their mutual benefit with other citizens of the world.

Building on the principles expressed in international human rights instruments, the following principles serve as the foundation of this policy:

- Free media representing all groups and divisions of society, giving independent scrutiny to and comment on the workings of the National, State and the Government of South Sudan and institutions, serving as the public's watchdog and advocate. Providing a free flow of information and diverse opinion are essential to democracy.
- The media shall be protected from any censorship or government interference.

- Respect for religious, ethnic and cultural diversity shall be guaranteed in accordance with the principles set out in international human rights instruments as expressed in the Interim Constitution.
- No restrictions shall be imposed on freedom of expression and of the media other than those that are set out in law, that are specifically and narrowly defined, and that are subject to tests of necessity, proportionality and pressing social need, as required by international human rights law.
- Journalists shall not be forced to reveal the identity of sources of information.
- No one shall require a government license in order to practice journalism as a profession.
- There shall be no licensing or registration requirement for newspapers, news agencies, magazines, periodicals or other print media, other than pursuant to general rules governing all bodies seeking to engage in commercial or non-profit activities.
- Broadcast operators shall be required to obtain licences for the purposes of frequency allocation. Such licences shall be issued by an independent broadcasting regulator, and shall include only limited rules to give effect to the fact that the airwaves are a limited public resource which must serve the public interest.
- Broadcast frequencies shall be allocated in an equitable way by independent broadcasting regulators established at the National, Southern and State levels.
- All government broadcasters shall be transformed into public service broadcasters, whose editorial independence shall be guaranteed. An independent body, such as a Board of Governors, shall be responsible for protecting editorial independence and for ensuring accountability to the public, in accordance with modern democratic standards.
- Any laws that prescribe criminal penalties for media or journalistic offences shall be suspended.
- Truth shall be an absolute defence to an allegation of defamation. A defence of reporting in the public interest in good faith and in a fair and balanced manner shall also be recognised as a defence in a defamation action.
- Journalists shall be allowed to form associations to promote professional standards through training, education and the development of codes of ethics, and to advocate for editorial independence, the rights of journalists and the rights of an independent media.
- Laws shall be adopted providing for a right to access information held by public authorities and ensuring that decision-making processes and the business of government are open to public scrutiny.

Detailed Policy Statement

Legal Framework

A Media Law shall be drafted in accordance with current international best practice, as well as the principles set out above.

The Print Media

- There shall be no licensing of media outlets nor any registration system.

- The print media shall not be subject to special restrictions on the content of what may be published, over and above restrictions found in laws of general application.
- A system of self-regulation by media practitioners shall be recognised as the legitimate means of governing the profession.

Broadcasting

An Independent Broadcasting Regulator shall be established and shall, in accordance with the principles set out below, oversee the creation of a public broadcasting system alongside a genuine private one, including a plan for the management of the frequency spectrum and the issuance of broadcasting licences. At the same time, the State authorities shall be allowed to establish independent broadcasting regulation of their own.

The setting up of independent broadcasting regulators and the regulation of broadcasting in general shall be governed by current international best practice and in accordance with the following:

- The independent broadcasting regulators shall be protected against government or commercial interference by, among other things, explicit guarantees of independence, an open and transparent process of nomination and appointment of members, rules on conflict of interest (commercial and political) and adequate and protected sources of funding.
- The frequency spectrum management plan shall take into account the need for equitable access to frequencies by regional and state broadcasters, as well as the need for equitable allocation of frequencies among all levels and tiers of broadcasting.
- The independent broadcasting regulators shall have the power to allocate licenses, along with appropriate frequencies, to private broadcasters.
- Licensing processes shall be fair and transparent and shall be based on the need to promote pluralism in the broadcasting sector, as well as the need for equitable allocation of licences to all levels and tiers of broadcasting
- The broadcasting system shall provide for the development, in a consultative manner, of a code of conduct for broadcasters, as well as the implementation of that code, including through a regime of graduated sanctions for breach.

Access to Information

- The Law shall establish a presumption in favour of disclosure of all information held by public bodies, subject only to a limited regime of exceptions.
- Public bodies shall be under an obligation to publish proactively a wide range of information about their activities and the information they hold.
- Clear and transparent procedures for the processing of requests for information, which may be lodged by anyone, shall be established.
- A clear and narrowly defined set of exceptions to the right of access shall be set out in law, so that access may be refused only where disclosure poses a risk of harm to a legitimate protected interest and the overall public good is served by non-disclosure of the information.
- Individuals shall have the right to appeal to an independent body against any refusal by a public body to provide access to information.

- Any secrecy laws shall be reviewed and amended as necessary to bring them into line with international standards in this area, as well as the above principles.

Defamation and Other Content Restrictions

- The rules relating to defamation shall be revised to bring them into line with international standards. In particular:
 - defamation shall be decriminalised;
 - truth shall be a complete defence to a charge of defamation;
 - defendants shall benefit from a defence of reasonable publication;
 - public officials shall not benefit from special protection against defamation;
 - sanctions for defamation shall be strictly proportionate to the harm caused; and
- Any other laws imposing restrictions on media content shall be reviewed and amended as necessary to bring them into line with international and constitutional standards.

Journalists

- There shall be no licensing or registration of individual journalists.
- Media practitioners in the print and broadcast media shall have the right to organise themselves into an association or associations with a leadership elected from amongst themselves.
- The various professional associations shall have the right to establish their own internal accreditation systems for their members.
- Media practitioners shall have the right to develop their own codes of ethics and establish self-regulatory systems.